

# Legal Consequences of Delaying the Obligation to Repay Home Ownership Loans by Debtors Affected by the Covid-19 Pandemic (Study at PT. Bank Tabungan Negara Syariah Banda Aceh)

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**Abstrak:** The government has declared the Covid-19 pandemic to be an emergency rather than a natural disaster based on Presidential Decree No. 12 of 2020, which has a very detrimental impact on the debtor, especially Home Ownership Credit debtors because it is unavoidable and unpredictable. The government through the Financial Services Authority issued POJK 11 / POJK.03 / 2020 concerning National Economic Stimulus as an effort to save the economy in the form of providing credit relaxation due to the co-19 pandemic. Therefore, research was conducted to find out and analyze the legal consequences of postponing the obligation to repay mortgage loans by debtors affected by the co-19 pandemic. The results of the study found that the legal consequences of granting credit delays or home ownership credit financing at Bank BTN Syariah Banda Aceh are changes in the agreement between the creditor and the debtor in terms of the implementation of the rights and obligations of the parties to the credit agreement, but the credit agreement is not canceled or canceled.

**Keyword:** Covid-19, Home Ownership Credit Agreement.

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## 1. Introduction

Lending is a form of business carried out by banks to process capital owned and customer deposits to provide loans to other customers by taking advantage of payments in the form of interest from debtors for providing credit (Suartama et al., 2017). Banks in providing credit must be careful. Because in this case banking gives trust to the debtor. To return the money received by the bank from people who trust the bank by keeping their money in the bank.

The spread of the Corona Virus Disease pandemic in 2019 (Covid-19) has resulted in an increase in the number of victims and property losses, increased the scope of the affected areas, and caused impacts in broad socio-economic aspects in Indonesia. In response to this, the President declared the Covid-19 pandemic a national disaster through Presidential Decree of the Republic of Indonesia Number 12 of 2020

concerning the Determination of the 2019 Corona Virus Disease (Covid-19) Non-Natural Disaster as a National Disaster (Oktavira, 2021). As a result, the data states that the economic system in Indonesia has weakened from the previous year, according to the Minister of Finance, the Indonesian economy is currently contracting by minus 5.32% in the second quarter of 2020." (Sembiring, 2020)

The deteriorating state of the Indonesian economy also affects credit. The influence in question relates to credit risk where debtors are at risk of being designated as non-performing loans (Siregar et al., 2022). On this issue, the Financial Services Authority (OJK) has worked hand in hand with the Government, BI, and LPS to maintain the stability of the financial system. In accordance with its authority, OJK continues to take extraordinary steps but still pays attention to and maintains the prudential aspects in a measurable manner (Ningsih & Mahfudz, 2020). Various policies were issued by banks to survive in the midst of the Covid-19 pandemic.

The Financial Services Authority issued Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy Impact of the Spread of Coronavirus Disease 2019. The consideration for making the regulation is due to the need to restructure credit because the COVID-19 pandemic has an impact on the performance and capacity of debtors, increasing credit risk which has the potential to disrupt banking performance and financial system stability so that it can affect economic growth.

In response to this, PT Bank Tabungan Negara Syariah Banda Aceh, which is one of the Islamic banking sector financing institutions that provides services including home mortgage lending for its customers with a murabahah financing contract. According to Raihan in an interview "so far, Bank Tabungan Negara Syariah has recorded approximately 300 (three hundred) applicants for postponement of credit or financing payment obligations due to the Covid-19 pandemic, and those that have been running are approximately 200 (two hundred) debtors." Raihan added "BTN Syariah Banda Aceh has several bases and considerations to approve the application for postponement of credit or financing payment obligations due to the Covid-19 pandemic."

Response to this, it certainly has implications for whether or not the application for postponement of installment payments or relaxation of customer credit is accepted, even though it is known that the government has declared the covid-19 status as an emergency. Furthermore, the relaxation policy on postponement of credit repayment obligations has caused problems for debtors, where many customers complain that banks still impose mandatory monthly installments, where they know that there is relief in the form of "postponement of installments" as well as a "decrease in interest" as stated by the President.

Based on this, there is a mismatch between the President's statement and POJK 11/2020 in responding to credit relaxation where POJK provides instructions to provide restructuring without postponing installments. The discrepancy also exists when viewed from the perspective of civil law, where 'emergencies' are also known as force majeure which can be one of the reasons for delays to cancel the agreement. For this

reason, the author is interested in conducting a deeper study, especially regarding the legal consequences of home ownership credit agreements, where in practice there are still creditors who do not carry out the provisions stipulated by the OJK. As a result, many of the debtor customers make every effort (including through litigation) to obtain the credit relaxation facility. Then, what are the legal consequences of the credit agreement?

## **2. Metode Penelitian**

This is a normative juridical research and descriptive analysis. The data sources used are primary data and secondary data. Primary data was obtained through interviews with PT Bank Tabungan Negara Syariah Banda Aceh. While secondary data consists of primary legal materials, secondary materials, and tertiary legal materials. Data collection techniques in this study were carried out by means of library research and field research, then the existing data was inventoried, classified, and analyzed so that it could be used as the main reference in conducting research analysis and problem solving using qualitative analysis methods. Furthermore, deductive conclusions are drawn.

## **3. Hasil Penelitian dan Pembahasan**

During the Covid-19 Pandemic, the debtors' income became unstable or decreased so that the debtors became difficult to fulfill their responsibilities to pay off the mortgage. So that debtors are forced to default on payments. This is caused by the debtor's business factor which is usually normal, due to the Covid-19 pandemic plus the government's policy on social or physical distancing making the debtor's business quiet or business activities not running smoothly. Raihan added "The existence of debtors who were affected by employee reductions during the Covid-19 pandemic at their workplace, as well as debtors who were hit by a disaster due to Covid-19 so that the debtor was no longer able to pay the financing installments he submitted to the Bank."

According to Raihan in the interview "issuance of POJK No.11/POJK.03/2020. Stimulus policy, there are 200 (two hundred) debtors who apply for a delay in repayment of Home Ownership Credit, where out of these 200 have different incomes according to their jobs with different factors that make it difficult for debtors to pay off home ownership credit. Of the 200 (two queens) debtors, there are approximately 90 (ninety) debtors who are given delays and the rest are given rescheduling. So far, the Bank has not found debtors who are looking for benefits from this credit relaxation, because the Bank has so far been very strict in assessing applicants for postponement of repayment of mortgage loans, one of which is by directly checking the debtor's situation. Is it true that the debtor is directly affected or not."

Of the 200 debtors, there were 20 debtors who were met, these 20 debtors experienced the impact of the Covid-19 pandemic, with various background problems experienced by debtors, including dismissal by the agency where the debtor worked, the lull in the tourism sector, which made debtors have to look for other jobs where the income was

not like before. There are debtors whose businesses are quiet due to the PPKM which requires them to close early, whereas, at the hour that requires them to close, the visitors are usually crowded. And also the death due to covid-19 so that it is difficult for the family to get income as before. With various factors behind the debtors in arrears, BTN Syariah Banda Aceh provides delays and another restructuring.

As seen in Article 2 Paragraph (2) letter b of Financial Services Authority Regulation Number 11/POJK.03/2020, it is explained that "policies that support the stimulus of national economic growth are in the form of credit or financing restructuring policies. This restructuring policy is carried out for all debtors affected by Covid-19 including micro, small and medium enterprises" where this is in line with Article 2 Paragraph (1) of the Financial Services Authority Regulation Number 11/POJK.03/2020. In the event that a debtor is said to be affected by COVID-19 and his credit can be restructured, the arrangements regarding this matter are regulated by each Bank which in Article 2 Paragraph (4) of the Financial Services Authority Regulation Number 11/POJK.03/2020 stipulates that banks must have guidelines for determining debtors affected by Covid-19.

In the interview Raihan said that "to restructure the Home Ownership Credit (KPR) at Bank BTN Syariah Banda Aceh, there are at least several conditions set by Bank BTN Syariah Banda Aceh that must be fulfilled by debtors affected by Covid-19, namely the debtor must be able to prove that he was affected by the covid-19 pandemic; if the debtor is dismissed by his institution due to the covid-19 pandemic, there must be a dismissal letter explaining that the institution where he works is affected by covid-19; and every debtor who applies for a postponement of credit obligations due to the covid-19 pandemic must have a statement letter from the local government or at least a letter from the Village Head that the person concerned is really affected by covid-19 and has difficulty paying debts."

Raihan added "bank BTN Syariah also did not issue a special policy regarding arrangements for resolving non-performing loans during the pandemic, either on mortgage collection, or mortgage settlement. The provision of delays or restructuring refers to POJK No.11/POJK.03/2020 in Article 5, specifically there is an internal circular of Bank BTN Syariah itself regarding the provision of delays or restructuring of financing during the Covid-19 Pandemic itself. Where the internal circular is broadly the same as POJK No. 11/POJK.03/2020 because the Bank is the regulator in granting relaxation."

This restructuring is expected to provide space for customers or debtors who still have business prospects but need a longer time to return to normal but can still fulfill their obligations to the bank. With the enactment of this POJK, banks can better manage liquidity and capital, as there is no delay in interest income received, and there is also no need to form CKPN or allowance for impairment losses. Credit restructuring helps entrepreneurs, communities, and banks through the economic crisis caused by the pandemic (OJK, 2022). This can be done by the bank if the debtor has a good intention to settle his obligations. By implementing credit restructuring, Raihan said "it is hoped that it can save non-performing loans in order to reduce the level of non-performing

loans.” Therefore, the issuance of POJK no. 11/POJK.03/2020 really helped the community, because the debtor's income was uncertain or could not be equated with the situation before the co-19 pandemic. Where POJK provides legal certainty to be given credit relaxation, if no POJK is issued regarding this economic stimulus, it will make it difficult for debtors, because in the credit agreement between the debtor and the creditor there is no Force Majeure as a reason for granting relief from credit installments or financing, on the basis of this the debtor can fulfill his responsibility to the creditor for the repayment of home ownership credit. Thus, the creditor will get certainty about the return of funds from debtors who have difficulty making payments.

From the point of view of civil law, the relationship between banks and customers is based on the two most related elements, namely law, and trust (Pane, 2022). Because BTN Syariah KPR Financing is given for the purchase of houses based on the murabahah principle at the purchase price plus a margin agreed between the bank and the customer. So for legal certainty on both sides, a KPR financing agreement is made, where the two parties have poured the things that have been agreed upon into an agreement, then the agreement binds both of them like a law, this is in accordance with Article 1338 paragraph (1) of the Civil Code, that a valid agreement that has been made will be considered a law for the parties who have made it. This has legal consequences that the parties are obliged to carry out the obligations as stated in the agreement. If the agreement is a credit agreement, the debtor is obliged to make payments made periodically with the amount and interest in accordance with what was agreed.

The legal consequences of the implementation of restructuring credit agreements in special attention are the consequences of the cancellation of credit agreements that have fulfilled the agreement, and cancel all rights and obligations for creditors and debtors. In addition, collateral that has been bound by Mortgage Rights has its own legal consequences. For the debtor, the consequence is the existence of a negative clause (negative covenant) included in the binding of Mortgage Rights. This clause obliges the debtor not to carry out legal actions in any form as additional collateral. The meaning of not taking legal action is not transferring, leasing or even selling the collateral without the permission of the creditor. For creditors, the binding of this guarantee gives legal consequences to the bank as the party that controls the collateral, so that the bank becomes the preferred creditor This legal effect is beneficial to the bank, because the debtor will provide the repayment money he gets through the auction-execution of collateral based on the amount of money owed to the creditor in full. This repayment is of course prioritized due to the existence of a meritorious event (Simamora, 2017).

In terms of restructuring due to covid-19 based on Financial Services Authority Regulation No.11 / POJK.03 / 2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of Corona Virus Disease 19 Bank BTN Syariah Banda Aceh provides payment delays and also reschedules as credit or financing restructuring policies. According to Raihan in the interview “when the restructuring has been running until the time agreed by the creditor and the debtor, the debtor is still unable or still having difficulty paying off his obligations, the creditor provides

additional time, but after the additional time given is still unable to pay, the financing agreement will be taken legal action."

Basically, failure to fulfill an agreement or default can be justified if the debtor is negligent in fulfilling his obligations, by proving the existence of obstacles or force majeure that cannot be avoided and predicted in advance to perform his obligations. Force majeure is one of the concepts in civil law whose existence is accepted as a principle in law, especially in the scope of treaty law. The existence of force majeure can be accepted as an excuse for not fulfilling the performance of obligations due to the loss or disappearance of an object which is the main purpose of the agreement. The situation is aimed at physical and legal implementation, not only due to difficulties in carrying out its obligations (Arini, 2020).

Force majeure is a situation that occurs after the agreement is made, which prevents the debtor from fulfilling his performance, for which the debtor cannot be blamed, and does not have to bear the risk and cannot predict when the agreement is made. All of this is before the debtor fails to fulfill his obligations, at the time of the emergence of these circumstances. According to Subekti, force majeure is "a defense from the debtor to prove that the non-performance of what has been promised due to things that are not expected at all and the debtor cannot do anything about the events or circumstances that occur." Force majeure can be divided into several categories, namely Force majeure according to its type and according to its implementation. (Setiawan, 1999).

Force majeure by type consists of First, objective force majeure. This type of force majeure can also be called physical impossibility, which means that the force majeure occurs on the object of the contract, so that the performance is impossible to fulfill, and without any fault on the part of the debtor. Second, subjective force majeure. Unlike objective force majeure, this type of force majeure is related to the circumstances of the debtor himself. Force majeure, according to its implementation, consists of First, absolute force majeure, which is a force majeure, which causes an obligation that can only be performed by the debtor with such great sacrifice, that it is no longer appropriate for the creditor to demand the performance of the obligation. Third, relative force majeure is a situation where the fulfillment of the performance cannot be done normally, but there is still a possibility to be done again. Lastly, Force majeure, according to the period of validity, consists of : First, permanent force majeure. This force majeure has the effect that in the fulfillment of a contract, the performance cannot be carried out at any time. Second, temporary force majeure. Temporary force majeure is where in the fulfillment of a contract, the performance cannot be performed temporarily and within a predetermined time the performance can be performed/fulfilled again (Setiawan, 1999).

The existence of force majeure in a contract will provide a consequence for the parties, where the party who cannot fulfill its performance cannot be declared as a default. Thus, in the event of force majeure, the debtor is not obliged to pay compensation and the creditor cannot demand cancellation because the obligation is considered canceled or erased. According to R. Setiawan (1999), "a force majeure can stop the operation of

the obligation and cause several consequences, namely: The creditor cannot request the fulfillment of the performance; the debtor can no longer be declared negligent, and therefore is not obliged to pay compensation; The risk does not pass to the debtor; and In reciprocal agreements, the creditor cannot demand cancellation."

According to Sri Soedewi Masjchoen Sofwan (1980) "force majeure must be distinguished between temporary and permanent. In a temporary force majeure, the suspension of power and the obligation to perform can be carried out again if the force majeure factor no longer exists. Whereas in force majeure which is permanent in nature, the obligation is canceled."

The essence of Force majeure is that there is no fault of the party that does not fulfill its obligations, thus causing a right or an obligation in a legal relationship cannot be carried out by referring to two teachings on Force majeure, the existence of objective Force majeure and subjective Force majeure. The meaning of objective force majeure is that every person is absolutely impossible to fulfill verbintenis (engagement). The basis of the subjective force majeure doctrine is difficult. For example, after a sale and purchase agreement is made suddenly, there is an increase in the price of goods that cannot be predicted in advance so, in order to fulfill his obligation to deliver/deliver goods, the seller must buy the goods that must be delivered at a very high price, but these two teachings are meaningless if they are not complemented by the teaching of risk (Aji et al., 2021).

Based on this, it can be concluded that the legal effect of holding a credit or financing restructuring during the Covid-19 Pandemic is that there is a change in the agreement between the creditor and the debtor in terms of the implementation of the rights and obligations of the parties to the credit agreement, where the credit or financing agreement is not canceled or canceled. Because creditors and debtors will make new agreements in credit restructuring or financing in terms of the terms and procedures for credit or financing payments, payment schedules for the number of credit installments that must be paid by the debtor to the creditor, and also other rights and obligations of creditors and debtors which by mutual agreement will be written down in a new credit agreement deed in the context of implementing the problematic credit settlement.

The agreement is not canceled against debtors who get credit or financing relaxation. It becomes a legal certainty for both parties because the debtor is no longer unable to perform his performance, but the debtor cannot perform his performance as normal. This creates a legal certainty where legal certainty is a guarantee regarding the law that contains justice. With the granting of credit or financing relaxation by not canceling the credit or financing agreement, it makes both parties get justice, where the debtor gets justice in compensation for credit or financing repayments during difficult economic times, and also the creditor gets certainty of returning credit or financing funds without having to go through legal efforts that can make losses for creditors.



#### 4. Conclusion

Based on the discussion above, it can be concluded that the legal consequences of holding credit restructuring or financing during the Covid-19 Pandemic are changes in the agreement between the creditor and the debtor in terms of the implementation of the rights and obligations of the parties to the credit agreement, where the credit or financing agreement is not canceled or canceled. And the relationship between debtors and creditors does not break up with this credit relaxation, it's just that there are changes to the contents of the agreement to help debtors pay off their credit. POJK has not been able to provide legal certainty where the weak substance has resulted in multiple interpretations in its implementation. Therefore, it is hoped that the Government will firmly provide legal certainty to the Creditor that the policy must be implemented, provide clear, detailed requirements and simplify the requirements for debtors if they need credit relaxation or financing during the covid 19 pandemic which is a critical condition so that the POJK does not have the impression of an instruction to the bank but has clear legal certainty..

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