Research Article

Resolution of Nonperforming Loan by the New Creditor Regarding Loan Transfer in Syndicated Loan Agreement

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Abstract: The present study was aimed at examining and finding out the legal implication of loan transfer made by the creditor and nonperforming loan settlement done by the new creditor in a syndicated credit agreement. This study may broaden knowledge regarding civil law and provide alternative solutions for issues in the syndicated credit agreement. The present study was categorized as prescriptive legal study with statutory, case, historical, comparative, and conceptual approaches. The study employed primary legal material and tertiary legal material, the materials were analyzed and conclusion was drawn following the result of the study. The result of the study shows that the loan transfer through cessie, which is lawful under Article 613 of Indonesian Civil Code received by PT. Gaston Investment Limited, as the new creditor, is lawful, giving it complete rights upon the preceding agreements. PT. Gaston Investment Limited used its right to settle the dispute due to default by PT. Gerai Wijaya Prestige through court process. Supreme Court Decision no. 1116 K/Pdt/2015 of 7 October 2015 that decides to deny the appeal requested by the cassation requester and sentencing the cassation requester to pay court case in this appeal for Rp.500,000.-(five hundred thousand rupiahs) is correct, although not all, because PT. Gaston Investment Limited’s claim on immaterial loss Gaston Investment Limited should be granted by the judge.

Keywords: Credit Agreement, Dispute Settlement, Syndication, Court.

A. Introduction

According to the official website of Bank Indonesia, loan syndication refers to an activity where a group of banks acts as a creditor for one debtor, where the amount of the loan is too big to be covered by one bank¹, according to Stanley Hurn, “A syndicated loan is a loan made by two or more lending institutions, on similar terms and condition, using common documentation and administered by common agent.” Loan syndication should contain some pivotal elements. First; loan syndication involves more than one financing institution, second; the loan is provided under similar terms and condition for the member of syndication; third; there shall be only one credit document, this document acts as reference for all members of syndication; fourth; the syndication is administered by one agent.² Agent bank does not represent the debtor, it represents the member of syndication and is responsible for carrying out administration.³ An agent’s duty is to do rate fixing, collecting the interest and receiving the principal and delivering it, maintaining good relationships with the debtors and informing the members about any significant change. ⁴ An agent’s role is crucial for the member of syndication, accordingly only few banks that willing to participate in a syndication, they participate in a syndication if the agent is experienced in syndicated loan transactions.⁵ In the course of the implementation of syndicated loan, creditors sometime want to withdraw, this withdrawal may affect the debtor's business. Accordingly, in order to maintain the financing run

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¹ Hukum online, https://www.hukumonline.com/klinik/detail/ulasan/cl2004/sindikasi/, 20 October 2019, 10.00
² Adrian Sutedy, Tinjauan Yuridis Letter Of Credit dan Kredit Sindikasi, Alfa Beta, Bandung, 2012, p. 165
³ Sutan Remy Sjahdeini, Kredit Sindikasi:Proses, Teknik Pembentukan dan Aspek Hukum, cet. II (edisi revisi), Pustaka Utama Grafiti, Jakarta, 2008, p. 69
⁵ Ibid, Op Cit, p. 10
smoothly, there is what so-called loan transfer. In a syndicated loan agreement, there are some reasons why a creditor make a loan transfer (Cessie), and it is necessary to prevent violation of Maximum Credit Limit, to solve the liquidity problems of the bank member, it acts as exit clause in sharing potential credit risk that may arise due to macro-economic changes, or political changes.\(^6\)

In the process of withdrawal from participation in syndicated loan, dispute sometimes happens. One of the causes of dispute in syndicated loan is the debtor's default, leading to the new creditor’s (cessie recipient) loss.

The new creditor, as the cessie recipient, cannot issue warning and collect the payment since it waits for legal action made by the facility and security agent. Facility agent and security agent's failure in carrying out their responsibility can result in new problems, and new creditor thus makes its own attempt to settle that nonperforming loan.

B. Problem Statement

Based on the background described above, our problem statement is formulated as follow: What is the new creditor’s attempt in settling nonperforming loan related to loan transfer in syndicated loan?

C. Research Method

This was a legal study. Legal study is conducted by studying literature covering research on legal principles, legal systematics, horizontal and vertical synchronization, legal comparison, and legal history.\(^7\) The nature of the present study was prescriptive. Prescriptive study aims to give an argumentation on the result of the study. The present study employed statutory approach, case approach, historical approach, comparative approach, and conceptual approach.\(^8\) The legal materials used in the present study consist of primary legal material, i.e., Indonesian Civil Code, Law on Banking Loan Agreement Deed; secondary legal material, i.e., books on contract, banking law, and security law; and tertiary legal material i.e., legal dictionary, encyclopedia, and Indonesian Dictionary. Literature study refers to a technique in collecting legal materials, the legal materials were analyzed along with other relevant materials.

D. Result And Discussion

New Creditor’s Attempt in settling nonperforming loan regarding loan transfer in Syndicated loan agreement

Default occurs in the implementation of Loan Agreement Deed no. 8 dated 28 November 1995. PT. Geria Wijaya Prestige, as the debtor, fails perform its obligation in the form of payment of principal, interest, and fine of US$ 20,389,661,26. One of the parties harmed by this default was Gaston Investment Limited as the new creditor due to Cessie. The attempts made by Gaston Investment Limited to settle the dispute were:

1) Settlement outside the Court process;\(^9\)

Article 6 paragraph 1 of Law no 30 of 1999 on Arbitration and Alternative Dispute Resolution reads “Disputes or differences of opinion may be resolved by the parties by alternative dispute resolution based on good faith by waiving the resolution by litigation in the District Court.”\(^10\) Settlement outside the court can be done through consultation, negotiation, mediation, conciliation, or expert judgment.

The attempt outside the court made by PT Gaston Investment Limited was in the form of sending warnings, this is proven by four letters dated 29 October 2012 and four letters dated 12 November 2012 sent to PT. Geria Wijaya Prestige as the debtor. The letter was sent to ask PT Geria Wijaya Prestige to pay its debt comprising of principal, interest, and the late fee, which has been Past due based on Loan Agreement dated November 1995 no. 8. Yet, until the lawsuit is filed, there has been no goodwill made to fulfill the obligation.

2) Settlement through court process.\(^11\)

Dispute Resolution through court is a correct choice for this default case. In court, Loan dispute resolution is categorized as civil law case. It consists of two disputing parties, the plaintiff and the defendant. This is ended by a court decision.\(^12\) Agreement, in a literature regarding common law agreement, is a set of promises to fulfill, the failure of fulfilling the promises can be sued through

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\(^6\) Andrey uzzia sitanggang, Arman Nefi, Adiwarman, Metode Pengalihan Kredit Sindicad, Ghalia Indonesia,Bogor, 2002, p. 41-42

\(^7\) Soerjono Soekamto dan Sri Manuji, Penelitian Hukum Normatif, Suatu Tinjauan Singkat, Raja Grafindo, Depok, 1995.p. 15

\(^8\) Ibid: p. 41-42


\(^10\) Law no 30 of 1999 on Arbitration and Alternative Dispute Resolution

\(^11\) Ibid, op cit p. 184

\(^12\) Gatot Supramono, Perjanjian Utang Piutang, Prenadamedia Group, Jakarta, 2014, p. 150
Agreement is a deal that can be carried out or be defended before the court. Gaston Investment Limited attempts to settle this nonperforming loan through court because the process outside the court does not bring the expected result.

The case in Supreme Court Decision no. 1116 K/Pdt 2015 dated 7 October 2015 that comes from Syndicated loan agreement with loan agreement deed no. 8 of 28 November 1995 is as follows:

- The plaintiff, PT. Gaston Investment Limited, as the new creditor in Cessie, demands the defendant to collect the debt of 20,389,661.26, comprising of principal, interest, and fine.
- Demands the defendant to pay forced money of Rp. 100,000,000,00 (one hundred million rupiahs) to the plaintiff per day for being late/ fail to implement the court decision.
- Jakarta District Court has made decision no. 26/Pdt.G/2013/PNJ.kjt.Pst. Dated 8 October 2013.

- In Exception
  - Rejecting the defendant’s exception
- In Substance
  (1) Granting the plaintiff’s claim partially;
  (2) Declaring that the Defendant default;
  (3) Declaring that the documents, namely, security deed, Cessie deed, are lawful and binding for the Plaintiff, the Defendant, and the Co-
  (4) Defendant in a quo case;
  (5) Declaring that the Plaintiff is the Defendant’s creditor;
  (7) Declaring that Deed no. 9 dated 28 November 1995 on Agreement among the creditor about the appointment of Facility and Security agent as null;
  (8) Declaring that the plaintiff can collect and perform legal attempts without Facility and Security Agent to gain its repayment to PT. Geria Wijaya Prestige and Harijanto Karjadi without facility and security agent;
  (9) Declaring sequestration based on the Sequestration Decision dated 03 September 2013;
  (10) ReJECTING other debtor’s claim;

- Sentence the defendant to pay the court cost of Rp6,776,000,-.

Default brings legal implication to both parties, it makes the creditor holds right to sue the debtors. PT, Geria Wijaya Prestige’s default In Loan Agreement deed no. 8 dated 28 November of 1995 by not making payment for 15 (fifteen) years causes creditor’s financial loss consisting of the principal, the interest, and the late fees for US$ 20,389,661.26. In an agreement, time is important. In general, it can be said that in an agreement, the concerning parties want to have the agreement stipulation takes effect as soon as possible. Determining time of implementation agreement important so that each party knows when to fulfill their promise or to implement the agreement.

Thus, in any agreement, the debtor should fulfill the performance. Performance is a content of an agreement, if the debtor does not perform as determined in the agreement, it can be considered default.

Loan agreement deed no. 08, dated 28 November 1995 should not be violated by both parties since it has satisfied the requirements regulated in article 1320 of Indonesian Civil Code. Yet, PT. Geria Wijaya Prestige never fulfills its obligation to make payment to PT. Gaston Investment Limited. It does not respond to the invoices made by PT. Gaston Investment Limited, there is no goodwill and expected result.

The principle of goodwill is one of the principles known in contract law, in implementing an agreement, any individual should not ignore the norms of compliance and equity. Goodwill prevents harmful acts and dishonesty that may be committed by a party during the implementation of an agreement. Article 1338 number 3 of Indonesian Civil Code states that agreement should be made with goodwill, implemented rationally and fairly to guarantee that both parties’ expectations to be realized. This is asserted by Article 1339 of Indonesian Civil Code, which is closely associated with article 1338. It is stated that Agreements is binding for the parties not only to that which is expressly stipulated but also to that which, pursuant to the nature of the agreements,
shall be imposed by propriety, customs, or the law. This stipulation also contains purpose to guarantee that an agreement is implemented fairly under the stipulation in this article.18

PT. Geria Wijaya Prestige, as a defaulting debtor, did not exhibit a goodwill toward the agreement. This is proven by two lawsuits with same object coming from Loan Agreement no. 8 dated 28 November 1995. Supreme Court Decision no. 1116 K/Pdt/2015 of 7 October 2015 concerns with the lawsuit on nonperforming loan sued by new creditor after Reconsideration on Supreme Court Decision no. 1300 K/Pdt/2013 of 19 August 2013 sourced from Loan Agreement Deed no. 8 of 28 November 1995. Regarding the Decision, noticing Law no. 48 of 2009 on Judicial Power, Law no. 14 of 1985 on Supreme Court as amended by Law no. 5 of 2004 and second amendment with Law no 3; to adjudicate:

1) Denying Cassation
2) Sentencing the Appellant to pay the court cost of Rp. 500,000.- (five hundred thousand rupiahs).

Based on the description of Supreme Court decision above, the author is in agreement with the judicial panel of Central Jakarta District Court and the Supreme Court, although not all. We argue that the Plaintiff's claim on immaterial loss should be granted because it is one of the forms of the Defendant's responsibility on profit the plaintiff supposes to obtain. It is understandable, given that the defendant did not perform its obligation for more than 15 (fifteen) years, hampering the plaintiff's liquidity as a business entity that should continue carrying out business activities.

E. Conclusion

As the recipient of cessie, the new creditor has right to file a lawsuit, considering that if the loan transfer agreement is lawful, its preceding agreement related to that loan is also considered lawful. PT. Gaston Investment Limited had attempted to settle the dispute outside the court such as mediation, sending invoices, and warning letters, yet its attempt does not bring the expected result due to troublesome facility and security agent. It makes PT. Gaston Investment Limited settle the dispute through court. Supreme Court Decision no. 1116 K/Pdt/2015 of 7 October 2015 that decides to deny the appeal requested by the cassation requester and sentencing the cassation requester to pay court case in this appeal for Rp.500,000.- (five hundred thousand rupiahs) is correct, although not all, because PT. Gaston Investment Limited’s claim on immaterial loss supposes to be granted by the judge as it is one of the responsibilities of PT. Gerai Wijaya Prestige on its obligation so that PT. Gaston Investment Limited gain profits it supposed to gain, both financial and reputation.

F. Recommendation

It is recommended that the rights and obligations of Facility and Security Agents are determined in detail in one document until the end of the main agreement in syndicated loan agreement, including that when cessie occurs, the agency rights are transferred to the new creditor.

References

1. Adrian Sutedy, Tinjauan Yuridis Letter Of Credit dan Kredit Sindikasi, Alfa Beta, Bandung, 2012.
8. Law no 30 of 1999 on Arbitration and Alternative Dispute Resolution.

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Authors Profile

Pambudi Wiyono was born in Sragen, Central Java, Indonesia on 19.02.1973. He completed his undergraduate study in Law Faculty in University of Surakarta in Master of Management in University Sebelas Maret Surakarta, Indonesia. Now he is a Graduate Student in University Sebelas Maret, Surakarta, Indonesia in Master of Notary.