

Legal uncertainty of the arrangement for the implementation of foreclosed collateral (ayda) through auction

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ABSTRACT

Foreclosed Collateral or AYDA is one of the instruments in the settlement of bad loans that can be used by the Bank. However, there are overlaps in the implementing regulations which result in legal uncertainty for the Bank when it chooses this method. This research aims to reveal the legal uncertainty of the arrangement for the implementation of Foreclosed Collateral (AYDA) through auction. This research is a normative or doctrinal legal research method. This research was explanatory in nature. The approach used in this study was the statutory approach and conceptual approach. The legal materials data was obtained through library research as secondary data in the form of primary legal materials and secondary legal materials related to \ the legal uncertainty of the arrangement for the implementation of Foreclosed Collateral (AYDA) through auction. The results showed that in the banking law, the Bank is prohibited from owning AYDA and must be resold as soon as possible within one year so that the proceeds from the sale of AYDA can be immediately utilized by the Bank but in the auction regulations and land registration regulations the Bank is determined as the owner of AYDA if within one period the Bank does not may appoint other parties as buyers. Uncertainty regarding AYDA implementation arrangements after the oneyear period has passed has an impact on the large costs and taxes that must be borne by the Bank.

ABSTRAK

AYDA merupakan salah satu instrument dalam penyelesaian kredit macet yang dapat digunakan oleh Bank. Namun dalam aturan pelaksanaannya terdapat tumpang tindih yang mengakibatkan ketidakpastian hukum bagi Bank apabila memilih cara tersebut. Penelitian ini bertujuan untuk mengungkap ketidakpastian hukum pengaturan pelaksanaan Agunan Yang Diambil Alih (AYDA) melalui lelang. Penelitian ini merupakan metode penelitian hukum normatif atau doktrinal. Penelitian ini bersifat eksplanatori. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan perundang-undangan dan pendekatan konseptual. Data bahan hukum diperoleh melalui penelitian kepustakaan sebagai data sekunder berupa bahan hukum primer dan bahan hukum sekunder terkait dengan ketidakpastian hukum pengaturan pelaksanaan AYDA melalui lelang. Hasilnya menunjukkan bahwa dalam undang-undang perbankan Bank dilarang memiliki AYDA dan secepat-cepatnya harus dijual kembali dalam jangka waktu satu tahun agar hasil penjualan AYDA dapat segera dimanfaatkan oleh Bank namun dalam peraturan lelang dan peraturan pendaftaran tanah Bank ditetapkan sebagai pemilik AYDA apabila dalam jangka waktu satu Bank tidak dapat menunjuk pihak lain sebagai pembeli. Ketidakpastian pengaturan pelaksanaan AYDA setelah melewati jangka waktu satu tahun tersebut berdampak kepada besarnya biaya dan pajak yang harus ditanggung oleh Bank.

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I. INTRODUCTION

Settlement of bad credit is a problem that must be resolved immediately by the Bank through a variety of available settlement mechanism options (Djamil, 2022). Broadly speaking, the resolution of bad loans by banks can be divided into several options (Matnuh, 2021). The first is the choice of settlement of bad loans through the court (litigation), the second is the choice of settlement of bad loans outside the court (non-litigation) and the third is the choice of settlement of bad loans through the transfer of receivables which includes cessie, novation and subrogation. This needs to be done so that bad loans or non-performing loans do not reach a ratio of 5% (five percent) of the total loans realized by the Bank.

The high level of non-performing loans is an indicator of failure of the Bank in managing its business which will result in liquidity problems (inability to pay third parties) (Punagi & Fauzi, 2022), profitability problems (uncollectible debts) (Mashange & Briggeman, 2022) and solvency problems (reduced capital) (Yenni et al., 2021) which result in reduced profits due to Banks lose their source of income (Belkhaoui et al., 2020), besides that the Bank must also set aside reserves according to credit collectibility, where the higher the credit collectibility, the greater the credit risk that must be borne by the Bank (Putra, 2021).

One of the settlements for bad credit or non-performing loans that can be chosen by the Bank is by way of AYDA but according to the explanation at the beginning of the paragraph above there are still discrepancies in the implementation arrangements for AYDA if AYDA has passed a period of one year since implementation which results in legal uncertainty if the Bank chooses this method.

Foreclosed Collateral, also known as AYDA in Indonesian, is one of the instruments that can be selected by the Bank as a creditor for the resolution of bad loans (Dilapanga, 2021) by “buying part or all of the collateral, either through auction or outside of auction based on voluntary submission or based on the power to sell outside of auction from the owner of the collateral as the debtor” (Sumartik & Hariasih, 2018). However, there were overlaps in the implementing regulations which result in legal uncertainty for the Bank when it chooses this method. In the explanation of Article 12A of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, “Banks are prohibited from being owners of AYDA and if AYDA passes a period of one year from the auction, an asset quality assessment applies which requires the Bank to carry out allowance for asset quality assessment formed from the Bank's profit” (OJK, 2019).

However, in the provisions of Regulation of the Minister of Finance Number 213/PMK.06/2020 Concerning Instructions for Implementation of Auctions and Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Land Registration, The Bank is determined as the owner of the AYDA if within one year from the implementation of the auction the Bank is unable to appoint another party as a definitive buyer (Indrawan et al., 2021). In accordance with the explanation of the laws and regulations above, there are conflicting provisions between one regulation and another for AYDA after the one year period has passed. These conflicting laws and regulations create legal uncertainty for the Bank as the party that runs AYDA whether the Bank is prohibited from owning AYDA or instead the Bank is determined to be the owner of AYDA after a period of one year has passed. The different treatment of the above regulations against AYDA that passes the period of the year creates legal uncertainty if the Bank chooses the AYDA mechanism as a settlement of bad debts.

In accordance with the provisions in "Article 4 of Bank Indonesia Regulation Number 15/2/PBI/2013 concerning Determination of Status and Follow-Up Supervision of Conventional Commercial Banks, whereas Bank Indonesia places a Bank under intensive supervision if it is assessed that it has potential difficulties which could jeopardize its business continuity". Banks are considered to have potential difficulties that could jeopardize their business continuity if one of them has a net non-performing loan ratio of more than 5% (five percent) of its total loans (Shonhadji, 2020). These provisions can also be used as an indicator of the soundness of the quality of the Bank's assets.

To avoid bad credit or non-performing loans as explained above, Banks must carry out prudential banking (Asiyah et al., 2019) and also apply credit principles which include the 5C principles (Character, Capacity, Capital, Condition of Economy, Collateral), 5P principles (Party, Purpose, Payment, Profitability Protection) and 3R principles (Returns, Repayment, Risk Bearing Ability) (Sudaryo & Yudanegara, 2021).

The above banking principles are actually generally known by the Bank, but in practice bad loans or non-performing loans are always exist and cannot be avoided, in general this is caused by two main factors. "First, the internal factors that cause bad credit or non-performing loans (non-performing loans) include credit granting procedures that are less comprehensive, irregularities in the implementation of credit procedures, bad faith on the part of bank owners, managers or employees, weak administrative systems and credit supervision (Sudaryo & Yudanegara, 2021)." "Second, namely external factors, the causes of bad credit or non-performing loans (non-performing loans) include the failure of the debtor's business, disaster for the debtor or the debtor's business activities, as well as decreased economic activity and high loan interest rates and the latest is the emergence of the Covid-19 outbreak which greatly disrupted world economic activities" (Sudaryo & Yudanegara, 2021).

In this case, laws and regulations are enacted so that the government has a foundation on which to perform its regulatory authority, and so that the governed may act in accordance with the dictates of the state. When laws are enacted, they are done so with the intention of providing a specific framework for the judicial system. Clarity of standards for the society governed by this law is what we mean when we talk about "legal certainty". To ensure there is no room for interpretation, a rule must be governed explicitly and rigidly if legal certainty is to be achieved. According to Gustav Radbruch, the law has three components: fairness, finality, and legal certainty (Susanto et al., 2022). In this context, "fairness" refers to the strict definition of being treated fairly under the law. Legal certainty is understood via promises in which the law can serve as a rule that must be respected, whereas legal finality or expediency relates to the goals that the law is willing to reach. Further, Radbruch emphasize that tensions among the three factors are inevitable.

Van Apeldoorn adds further: "Legal certainty might also refer to concrete items that can be resolved by the law. Legal certainty is the assurance that the law will be applied, that the law's holder of rights will get them, and that the award will be enforceable. Legal certainty is a court protection against arbitrary conduct that ensures a person will be able to get an expected outcome under specific conditions" (Wico, 2021). On the basis of the above-mentioned vision of the theory of legal certainty offered by Gustav Radbruch and Apeldoorn, the Banking Law's banking regulation is designed to guarantee legal certainty for all parties involved in the banking sector. With legal

clarity, it is intended that a healthy banking sector would emerge that can efficiently support the national economy through the bank's primary duty as a financial intermediary, as well as its additional duties as a trust agent, a development agent, and a service agent (Sembiring, 2021). Thus, it is important to establish further agreements on which laws should be implemented in the aforementioned circumstances in order to offer legal clarity, a sense of fairness, and advantages for the parties involved.

Based on the background above, this research aims to reveal the legal uncertainty of the arrangement for the implementation of Foreclosed Collateral (AYDA) through auction. Indeed, several research have been explored had similar idea (Insolvensi, 2017; Kurniawaty et al., 2022; Natsya & Ora, 2021), while this research significance lies on the exploration about how the legal uncertainty for the execution of foreclosed collateral (AYDA) through auction after one year expiration.

II. RESEARCH METHODS

This study uses a a normative or doctrinal legal research method. This method was carried out through literature study or document study because it refers to written regulations and other legal materials. This research was explanatory in nature, namely legal research that provides explanations and aims to test a theory or hypothesis in order to strengthen or even reject an existing theory or research hypothesis (Asikin, 2016).

The approach used in this study was the statutory approach and the approach from the views of experts (conceptual approach). The statutory approach was used to examine normatively juridically by looking at the form of statutory regulations and examining the content material regarding several aspects related to the legal issues at hand. As for conceptual approach that was used to study the problems that have been formulated referring to legal principles in the opinions put forward by several scholars or legal doctrines (Asikin, 2016).

The legal materials data collection technique used was carried out through library research as secondary data in the form of primary legal materials and secondary legal materials related to the legal uncertainty of the arrangement for the implementation of Foreclosed Collateral (AYDA) through auction. Library research and document or archive studies are carried out by studying / reviewing various literature / books, invitees, journals, documents, and other supporting literature materials for the relevant topic.

The qualitative descriptive approach was employed for the analysis of the data in this study. While conducting an analysis of qualitative descriptive data, it is essential to pay close attention to the facts as they currently stand. These pieces of information or data are gathered in the form of recordings, interviews, observations, or written materials in the form of verbal expressions that are then presented and analyzed in a methodical manner so that they may be comprehended and deduced with greater ease. Following that, it is related with legislative provisions pertaining to the legal certainty of the object of Dependent Rights managed by the bank that has been executing the AYDA for more than 1 (one) year.

III. RESULTS AND DISCUSSION

1. Legal Uncertainty Arrangement for Execution of Foreclosed Collateral (AYDA) Through Auction After One Year Expiration

1) Regulations for the Implementation of Foreclosed Collateral (AYDA) by Auction

AYDA's regulations through auction are divided into several laws and regulations that are interrelated with one another, with the following explanation:

(a) Foreclosed Collateral (AYDA) in Banking Regulations

(1) Law No. 10 of 1998 concerning Banking and Law no. 21 of 2008 concerning "Sharia Banking"

There are not many articles that regulate AYDA in Law no. 10 of 1998 and Law no. 21 of 2008, setting the implementation of AYDA in Law no. 10 of 1998 only regulated in Article 12A and Article 40 in Law no. 21 of 2008. In this regulation "purchasing part or all of the collateral by way of AYDA can be done in two ways, namely: first, the Bank can buy AYDA through an auction at the KPKNL (State Asset Management and Auction Services Office) and second, the Bank can buy AYDA outside the auction based on a power of attorney to sell from the debtor or the customer as the owner of the collateral if the debtor or customer does not fulfill his credit obligations to the Bank".

In the elucidation of Article 12A it states that "Banks are prohibited from owning AYDA and must be resold as soon as possible within one year so that the proceeds from AYDA's sale can be immediately utilized by the Bank. Purchase of collateral by Banks through auctions to assist Banks in accelerating the settlement of bad loans." In addition to the prohibition as mentioned above, there are also conditions that can be carried out, namely "AYDA can only be made by the Bank for collateral whose credit has been categorized as bad for a certain period of time. The credit period is categorized as bad credit if the debtor or customer has arrears in principal or interest installments that have exceeded 180 (one hundred and eighty) days."

(2) POJK No. 40/POJK.03/2019 Concerning Asset Quality Assessment for Commercial Banks and POJK No. 2/POJK.03/2022 Concerning "Asset Quality Assessment of Sharia Commercial Banks and Sharia Business Units"

The main provisions contained in Article 34 to Article 37 40/POJK.03/2019 and Article 36 to Article 39 POJK No. 2/POJK.03/2022 can be divided into two matters, the first regarding the Bank's obligations before carrying out an AYDA and the second regarding assessing the quality of an AYDA after its implementation (OJK, 2019, 2022). "Bank obligations prior to making an AYDA consist of Banks are required to determine the quality of productive assets to be non-performing before carrying out the takeover of AYDA, Banks are required to make efforts to settle AYDA and are required to document the settlement of AYDA in full, the Bank is required to reassess collateral (retaxation) prior to implementation of AYDA. Meanwhile, the determination of AYDA's quality assessment consists of "current if AYDA is owned for up to 1 (one) year, substandard if AYDA is owned for more than 1 (one) year up to 3 (three) years, doubtful if AYDA is owned for more than 3 (three) years up to 5 (five) years or default if AYDA is owned for more than 5 (five) years".

The consequence of determining the quality of the AYDA requires the Bank to calculate the allowance for asset quality assessment (PPKA) with the following conditions: “5% (five percent) of Assets with Special Mention quality after deducting the value of the collateral, equal to 15% (fifteen percent) of assets with Substandard quality after deducting collateral value, equal to 50% (fifty percent) of assets with doubtful quality after deducting collateral value or 100% (one hundred percent) of assets with Loss quality after deducting collateral value”.

(b) Foreclosed Collateral (AYDA) in the Auction Rules

(1) Law No. 4 of 1996 concerning “Mortgage right on Land and Objects Related to Land”

The bank as the holder of mortgage rights can sell collateral through an auction if the debtor is in default and the credit is bad “based on executorial title contained in the mortgage right certificate”. The sale of collateral through an auction is carried out based on Article 6 of Law no. 4 of 1996, namely “if the debtor defaults, the holder of the first mortgage has the right to sell the object of mortgage on his own power through a public auction and collect the settlement of his receivables from the proceeds of the sale”.

In addition to the provisions of the Bank as the seller of collateral as explained above, “Banks as mortgage holders are also not prohibited from acting as buyers of mortgage objects in auctions”. The action of the Bank as a seller and at the same time as a buyer for the mortgage object in the auction is the AYDA concept as stipulated in Article 12 of Law no. 10 of 1998, thus Law no. 4 of 1996 also indirectly regulates the implementation of AYDA through auctions.

(2) Regulation of the Minister of Finance no. 213/PMK.06/2020 Concerning “Instructions for Conducting Auctions”

In the provisions of Finance Minister Regulation (PMK) No. 213/PMK.06/2020 sale of collateral by means of AYDA through an auction of immovable objects is included in the category of types of execution auctions. AYDA's inclusion in the qualification for the execution auction is due to the implementation of AYDA through an auction based on Article 6 of Law no. 4 of 1996.

The thing that distinguishes AYDA through an auction with the sale of collateral through an auction is that the seller and the buyer are the same, namely the Bank. In the provisions of Article 79 paragraph (2) PMK No. 213/PMK.06/2020 there are special requirements if the Bank will act as an AYDA buyer, namely “Bank must submit to the auction official a statement in the form of a notarial deed containing a statement that the purchase was made for another party to be appointed later within 1 (one) year from the date of the auction, the notarial deed is known as the *Acta de Command*”. If within a period of one year the Bank is unable to appoint another party to become a definitive buyer of AYDA, then the Bank is determined as the buyer.

(c) Foreclosed Collateral (AYDA) in Land Regulations

There are several provisions of AYDA through auctions that intersect with land regulations, especially regarding the registration of auction objects in the form of land or land and buildings which will be registered for the transfer of rights through the

Land Office after the winner of the auction has been appointed, while these provisions can be explained as follows:

(1) Government Regulation (PP) no. 24 of 1997 concerning "Land Registration"

In Government Regulation (PP) No. 24 of 1997 there are no provisions that directly regulate AYDA, but the government regulation regulates the transfer of rights as a result of land sales through auctions, Government Regulation (PP) No. 24 of 1997 this. Whereas, "Transfer of rights resulting from the sale of land through an auction can only be registered if it is proven by excerpts from the minutes of the auction made by the Auction Officer". Document requirements for registration of transfer of rights obtained through auction must be submitted to the Head of the Land Office consisting of "quotation of minutes of auction, submission of certificates or other statements, proof of identity of the auction winner and proof of payment of the auction price".

(2) Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency concerning "Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration"

Technical provisions regarding land registration due to the transfer of rights by auction are further regulated in Article 107 to Article 110 Permenag/Ka.BPN No. 3 of 1997. Article 110 states that "transfer of land rights or ownership rights to flats won by the Bank through auction in order to repay the credit can be registered directly on behalf of the final buyer appointed by the Bank, provided that in the minutes of the auction it is stated that in the auction purchase the Bank acts for the buyer whose name has not been named and the name of the buyer and his identity are then stated in a statement letter by or on behalf of the Board of Directors of the bank concerned".

"Application for registration of transfer of rights must be submitted by a buyer appointed by the Bank no later than one year from the date of the relevant auction. If the provisions above are violated, the registration of the transfer of rights to the buyer appointed by the Bank can only be carried out based on the deed of sale and purchase between the Bank and the buyer after the registration of the transfer of rights in the name of the Bank concerned is carried out based on the minutes of auction".

(d) Foreclosed Collateral (AYDA) in Tax Regulations

In the implementation of AYDA through an auction, there are taxes and fees incurred and must be paid, either before the auction or after the auction, the taxes and fees incurred can be submitted as follows:

(1) Auction Request Fee

An application for the implementation of an AYDA through an auction to the KPKNL must be accompanied by proof of payment of the application fee for executing the mortgage right auction. The auction application fee is Non-Tax State Revenue or often abbreviated as PNBP are levies paid by individuals or entities by obtaining direct or indirect benefits from services or utilization of resources and rights obtained by the state based on laws and regulations which become central government revenue excluding tax revenues and grants and managed in the

mechanism of the state revenue and expenditure budget. “Fare amount the fee for the application for auction of mortgage rights carried out by the KPKNL is set at Rp. 150.000.- (one hundred and fifty thousand) per debtor in each application and the Bank as the applicant is obliged to pay the duty so that the application documents can be further processed by the auction official. Auction fee execution of mortgage rights first it is deposited by the Bank through the KPKNL receiving account then the treasurer verifies it and when it has been verified then the funds are deposited into the state treasury.”

- (2) Income Tax on Income from Transfer of Rights to Land and/or Buildings (PPh)
- Income from the transfer of rights over land and/or buildings is “income received or earned by the party transferring rights over land and/or buildings through sales, exchanges, waiver, transfer of rights, auction, grants, inheritance, or other means agreed between the parties”. The amount of income tax rate from the transfer of land and/or building rights (PPh), is determined as follows:
- (i). “2,5% (two point five percent) of the gross amount of the transfer value of land and/or building rights other than the transfer of land and/or building rights in the form of simple houses or simple flats carried out by taxpayers whose main business is to transfer land and/or building rights;
 - (ii). 1% (one percent) of the gross amount of the transfer of rights over land and/or buildings in the form of simple houses and simple flats carried out by taxpayers whose main business is transferring rights over land and/or buildings; or
 - (iii). 0% (zero percent) for the transfer of land and/or building rights to the government, state-owned enterprises that receive special assignments from the Government, or regional-owned enterprises that receive special assignments from regional heads, as referred to in the law regulates the procurement of land for development in the public interest”.

(3) Land and Building Rights Acquisition Fee (BPHTB)

Land and/or building rights acquisition fees, abbreviated as BPHTB, are “taxes on the acquisition of land and/or building rights, while the acquisition of land and/or building rights are legal acts or events that result in the acquisition of land and/or building rights by private individuals or an agency. Land and/or building rights are land rights, including management rights, along with the buildings on it, as referred to in the law on land and buildings” (Lubis & Ramadhani, 2021).

Prior to the promulgation of Law no. 28 of 2009, the application of BPHTB based on Law no. 21 of 1997 as last amended by Law Number 20 of 2000 concerning Fees for Acquisition of Land and Building Rights. Furthermore, Law no. 20 of 2000 was revoked and declared no longer valid as of January 1 2011 and replaced with Law no. 28 of 2009 concerning Regional Taxes and Regional Levies.

The enactment of Law no. 28 of 2009 brought a significant change in the collection of BPHTB in Indonesia, which was originally a central government tax and changed to a district/city government tax. In the provisions of Law no. 28 of 2009 the maximum BPHTB rate is 5% which was previously in the provisions of Law no. 20 of 2000 the BPHTB rate is 5% (five percent). With the transfer of BPHTB to the authority of district/city governments based on their respective regional

regulations, it will have an impact on the amount of BPHTB tariffs between one district/city and other districts/cities to be unequal and non-uniform, it is possible to use a maximum rate of 5% (five percent) but it can also be less than 5% (five percent), this depends on each regional regulation.

(4) Value Added Tax (VAT)

In addition to being subject to BPHTB and income tax as explained above, AYDA buyers are also subject to value added tax (VAT) as stipulated in the Circular Letter of the Director General of Taxes Number Se-121 / Pj / 2010 of 2010 concerning Affirmation of Value Added Tax Treatment of Banking Business Activities, which states that "In addition to the business in points 3 to 5 above, commercial banks can also carry out activities that are not delivery of services, for example, in the form of buying part or all of the collateral, either by auction or outside the auction based on voluntary surrender by the collateral owner or based on the power to sell outside the auction from the collateral owner in the event that the debtor customer does not fulfill his obligations to the bank, provided that the purchased collateral must be disbursed as soon as possible, as stipulated in the provisions of Article 12A of the Banking Law. In this case, the sale of collateral, which has been taken over by the bank, constitutes the delivery of Taxable Goods owed by VAT".

(5) Auction Fees

Auction fee is "a fee based on statutory regulations imposed on sellers and/or buyers for each auction implementation (Sudiarto, 2021), which constitutes Non-Tax State Revenue". Based on the above understanding, the obligation of auction duty is divided into two, namely to the seller of the auction and also to the buyer of the auction. As for the amount of the auction fee rate if the Bank will conduct an AYDA through an auction that will act as a seller and at the same time as a buyer can be explained as follows: "Seller Auction Fee for immovable property 2% of the principal auction and for movable property 2.5% of the principal auction". Whereas, "Buyer's Auction Fee for immovable property 2% of the principal auction and for movable property 3% of the principal auction".

2) Legal Uncertainty Regulations for the Implementation of Foreclosed Collateral (AYDA) Through Auction After One Year Past the Time Period

(a) Banks Prohibited from Having Foreclosed Collateral (AYDA)

In AYDA there is a prohibition that cannot be carried out by the Bank, namely the Bank is prohibited from owning AYDA and must be resold as soon as possible so that the proceeds from the sale of AYDA can be immediately utilized by the Bank. This prohibition sentence does not appear in Article 12A of Law no. 10 of 1998 but listed in the elucidation of Article 12A of Law no. 10 of 1998. The above prohibition aims to keep the Bank in accordance with its function, namely "as an intermediary institution that collects funds from the public in the form of savings and distributes them to the community in the form of credit and or other forms in order to improve the standard of living of the common people" (Purba et al., 2020). This prohibition is also in line with the order to the Bank to quickly appoint another party as a buyer so that the Bank can immediately use AYDA's sales proceeds.

Not allowing a Bank to have AYDA also aims to maintain the liquidity of the Bank itself, high asset liquidity will have an impact on making these assets easier to liquidate if needed at any time and vice versa if low asset liquidity will have an impact on making these assets more difficult to liquidate. In the explanation of the third paragraph Article 40 of Law no. 21 of 2008 taking into account the recovery of the Bank's liquidity conditions by providing a time limit of one year as a reasonable period to sell the AYDA. If the Bank makes massive purchases of AYDA with the aim of reducing its bad loans below the ratio of 5% (five percent) of the total loans as stipulated in Article 3 paragraph (2) letter d POJK No. 15/POJK.03/2017, bank money will be in the form of assets in the form of buildings or buildings that have low liquidity or are not easy to disburse if needed at any time, so that it will have an impact on the difficulty for banks to distribute credit to the public or the bank will have liquidity difficulties if the public will withdraw the deposit. This would violate the Bank's function as an intermediary institution as explained above.

The prohibition of the Bank having AYDA as explained above is also in line with the consequences if AYDA after a period of one year, the Bank will be indirectly penalized if within a period of one year it fails to appoint another party as a permanent buyer of AYDA by enforcing the determination of the quality assessment of AYDA.

Even though the Bank has made auction payments to pay off bad loans through the AYDA mechanism as explained above, the bad loans are not finished all of a sudden. Banks are still charged with establishment provision for asset quality assessment (PPKA) if AYDA has passed the period of one year with the PPKA value calculated from determining the quality assessment of AYDA as calculated above. This is of course burdensome for the Bank if it is unable to appoint a permanent buyer for AYDA immediately within one year.

(b) The Bank is Determined as the Owner of the Repossessed Collateral (AYDA) After the One Year Expiration

In contrast to the provisions of AYDA regulated in elucidation of Article 12A of Law no. 10 of 1998, Article 40 Law No. 21 of 2008 Article 36 to Article 39 POJK No. 2/POJK.03/2022 and Article 37 POJK No. 40/POJK.03/2019 which prohibits Banks from having AYDA and applies the stipulation of AYDA quality assessment and provision for asset quality assessment (PPKA) if it exceeds the one year period as explained above. In Article 79 paragraph (3) PMK No.213/PMK.06/2020 and Article 110 paragraph (3) Permenag/Ka.BPN No. 3 of 1997 the Bank is actually determined as a permanent buyer of AYDA if within a period of one year the Bank cannot appoint another party as a buyer. With the Bank determined as the buyer of the AYDA, legally the Bank becomes the owner of the AYDA based on the minutes of the auction issued by the KPKNL.

The difference in AYDA's arrangement after passing the one-year period above between AYDA in banking regulations and AYDA in auction regulations and AYDA in land regulations creates legal incompetence for the Bank. AYDA in banking regulations which include Law no. 10 of 1998, UU No. 21 of 2008, POJK No. 40 /POJK.03/2019 and POJK No. 2/POJK.03/2022 states that banks are prohibited from having AYDA and applies the stipulation of AYDA quality assessment as well provision for asset quality

assessment (PPKA) after a period of one year has passed, while AYDA is in auction regulations and land regulations which include Permenag/Ka. BPN No. 3 of 1997 and PMK No. 213/PMK.06/2020 states that the Bank is designated as the buyer of AYDA after a period of one year has passed.

The provisions of Article 110 paragraph (3) Permenag/Ka. BPN No. 3 of 1997 above, making the Bank a permanent buyer of AYDA which requires the Bank to transfer rights or transfer the name of the certificate in advance based on the minutes of auction and by transferring rights or transferring the name of the certificate first based on the minutes of auction on behalf of the Bank according to the provisions above, the Bank is determined as the owner of the AYDA because the certificate has been registered on behalf of the Bank. Recording the certificate in the name of the Bank is proof of a perfect transfer of rights and also a strong proof of rights that the Bank is the owner of the AYDA. Furthermore, the Bank will act as the second seller apart from being the first seller during the auction if the Bank will sell the AYDA to another party based on a sale and purchase between the Bank and the buyer which is carried out before the local PPAT.

Determination of the Bank as the owner of AYDA based on Article 110 paragraph (3) Permenag/Ka. BPN No. 3 of 1997 above contradicts the elucidation of Article 12A of Law no. 10 of 1998 which prohibits the Bank from being the owner of AYDA, giving rise to legal uncertainty and impacting all costs and taxes to be borne by the Bank, starting from pre-auction processing costs to taxes and costs after the auction process, plus fees and taxes incurred after AYDA has passed one year period.

2. The Impact of Settlement of Bad Loans with the Mechanism of Foreclosed Collateral (AYDA) Through an Auction After One Year Has Passed to Banks

1) Taxes and Fees for the Implementation of Foreclosed Collateral (AYDA) Through an Auction After One Time Year Period

In implementing AYDA through an auction for the settlement of bad loans by the Bank, it will certainly incur costs and tax burdens for the parties implementing it (Aisyah et al., 2020). The costs and taxes that arise must of course be a consideration for the Bank when it chooses AYDA as the mechanism for resolving bad loans, considering that the Bank will not only act as a seller but will also act as a buyer. Cost and benefit considerations are important for the Bank because the Bank is an institution that is also profit oriented for its survival. The costs and taxes incurred for the implementation of AYDA through auction after a period of one year can be explained as follows:

(a) Taxes and Bank Fees as a Foreclosed Collateral (AYDA) Seller Through Auction

- (i). Bank fees as bidders consist of auction application fees of Rp. 150.000, - (one hundred and fifty thousand) per debtor in each application to the KPKNL, the cost of announcing the auction through a newspaper in the amount of the value between one newspaper and another is not the same, but it can be taken that the average cost of an auction announcement through a newspaper is Rp. 5.000.000,- (five million rupiah) and cost of valuation of collateral in the amount of value varies depending on the agreement between the Bank and KJPP. Apart from the agreement, other things that affect the amount of the appraisal service

fee are the objects to be appraised, for example the area of land or the area of land and buildings for immovable objects to be appraised.

- (ii). Bank Tax as a Seller consists of PPh by 2,5% (two and a half percent), the Bank's auction fee as a seller in the amount of 2% (two percent) of the principal for the immovable property auction and 2,5% (two and a half percent) of the principal auction for movable property.

(b) Bank Tax as Foreclosed Collateral (AYDA) Buyer Through Auction

The seller tax that arises from the implementation of the auction consists of BPHTB in the amount of 5% (five percent), the auction fee as a buyer is 2% (two percent) of the principal auction for immovable property and 2,5% (two and a half percent) of the principal auction for movable property, and VAT of 10%.

(c) Bank Tax as a Seller After the Foreclosed Collateral (AYDA) Has Passed One Year

The consequences of AYDA passing the one year period will result in a new PPh burden of 2.5% (two and a half percent) to the Bank in addition to the Bank's tax as seller and buyer of AYDA through auction as explained above. The new tax arises from the Bank because the Bank is determined to be a permanent buyer of AYDA (definitive buyer) if the Bank is unable to appoint another party as a buyer within a period of one year based on Article 79 paragraph (3) PMK No.213/PMK.06/2020 and Article 110 paragraph (3) Permenag/Ka.BPN No. 3 of 1997.

The application of the provisions of Article 110 paragraph (3) Permenag/Ka.BPN No. 3 of 1997 had an impact on the Bank having to bear three times the tax in the implementation of the AYDA if the period of one year has passed. The Bank is required to transfer AYDA's name after a period of one year which results in the Bank having to pay PPh twice when acting as a seller and the Bank also having to pay BPHTB when the Bank is acting as a buyer. To simplify the amount of AYDA's fees and taxes after passing the one year period that is borne by the Bank

When compared to fees and taxes between AYDA who is still within one year and AYDA who has passed the one year period, the comparison of taxes and fees is relatively large. Based on the explanation above, if the Bank succeeds in appointing another party as a permanent buyer of AYDA within one year, the Bank will only bear fees and taxes as an AYDA seller, the amount of which is approximately 4.5% (four and a half percent) of the AYDA transaction value, whereas if AYDA has passed a period of one year, the Bank's tax burden will increase by bearing the buyer's tax and also bearing PPh as an AYDA seller after passing a period of one year, the amount of which is approximately 25% (twenty five percent) of the AYDA's transaction value as explained in on.

The comparison of taxes and fees between the two has a difference of 20.5% (twenty point five percent) of the value of AYDA's transactions carried out at the KPKNL or the Bank will bear tax three times as much, namely auction seller tax, auction buyer tax and seller tax AYDA after passing a period of one year in which the transfer of rights can only be made by transferring AYDA's name to the Bank's name first based on the auction minutes and then buying and selling to other parties based on the sale and purchase deed.

2) Obligations for the Establishment of Asset Quality Assessment Allowance by the Bank

The impact that must also be borne by the Bank if AYDA passes the one year period does not stop at fees and taxes which are tripled as explained above but the Bank is also required to establish an allowance for asset quality assessment. the obligation to establish allowance for asset quality assessment is listed in Financial Services Authority Regulation No. 40/POJK.03/2019 Concerning Asset Quality Assessment for Commercial Banks and Financial Services Authority Regulation No. 2/POJK.03/2022 Concerning Asset Quality Assessment of Sharia Commercial Banks and Sharia Business Units. The amount of the establishment of the provision for asset quality assessment that must be reserved by the Bank varies depending on the determination of the quality assessment and condition of AYDA, with the following explanation:

- (a) In Article 37POJKNo. 40/POJK.03/2019and Article 39POJKNo. 2/POJK.03/2022AYDA's quality assessment determination is qualified as follows:
- (i). "Current, if AYDA is owned for up to 1 (one) year;
 - (ii). Substandard, if AYDA is owned for more than 1 (one) year up to 3 (three) years;
 - (iii). Doubtful, if AYDA is owned for more than 3 (three) years up to 5 (five) years; or
 - (iv). Loss, if AYDA is owned for more than 5 (five) years".
- (b) After AYDA quality assessment is carried out by the Bank according to the qualifications above, then the Bank can calculate the amount allowance for AYDA's quality assessment based on Article 43 paragraph (3) POJKNo. 40/POJK.03/2019 and Article 46 paragraph (3) POJKNo. 2/POJK.03/2022with the following conditions:
- (i). "5% (five percent) of Assets with Special Mention quality after deducting the value of the collateral;
 - (ii). 15% (fifteen percent) of assets classified as Substandard after deducting the value of the collateral;
 - (iii). 50% (fifty percent) of assets with Doubtful quality after deducting the collateral value; or
 - (iv). 100% (one hundred percent) of assets with Loss quality after deducting the value of the collateral".

The application of "the establishment of allowance for assessment of asset quality as explained above is the same as the provisions classification of credit collectability which also has the consequence that the Bank is required to establish allowance for impairment losses" on bad loans, even though in the implementation of AYDA through an auction the Bank has made payment of auction payments through the KPKNL for the settlement of bad loans but the Bank is still burdened with establishment of provision for asset quality assessment in accordance with the percentage calculation above.

IV. CONCLUSION

Legal uncertainty concerning the settlement of bad debts via the AYDA mechanism through auction after one year forces the Bank to pay three times the tax, including fees and taxes as the auction applicant, tax as the auction buyer, and tax as the auction seller. Taxes and fees account for 25% of AYDA transactions. If AYDA reaches the one-year limit, the Bank must pay an asset quality assessment allowance in addition to fees and taxes. In contrast, if the Bank succeeds in appointing another party as a permanent buyer of AYDA within a year, the Bank only bears fees and taxes as an AYDA seller whose value is approximately 4,5% of the transaction value. If AYDA passes the

one-year period, the Bank must bear fees and taxes of approximately 25% of the transaction value. Taxes and fees differ by 20,5% of AYDA's transaction value. Recommendation to the Government to initiate the release of Government Regulations controlling the implementation of AYDA, as specified in the explanation of Article 12A of Law Number 10 of 1998 Concerning Changes to Law Number 7 of 1992 Concerning Banking, to offer legal certainty. As a form of cost and tax efficiency for the legal uncertainty regarding the implementation of AYDA through auction after a year has passed between the banking regulations and the auction and land regulations in force, the Bank can choose the AYDA method through auction to settle the bad credit as long as it has a permanent buyer for AYDA (definitive buyer) first before implementing AYDA.

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