

# Resolving the Non Performing Loans against Of State Civil Apparatus Who Dismissed With Disrespect (Study at PT. Jamkrida Riau)

*by Rembrandt -*

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## Resolving the Non Performing Loans against Of State Civil Apparatus Who Dismissed With Disrespect (Study at PT. Jamkrida Riau)

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**Abstract:** Credit is not something new anymore. Not only in big cities this term is known to the community, but to the remote area, the words credit have been so popular. Most people and companies in facing the lack of funds, the one way out that can be done is to owe to other parties. Basically, banks are also required to determine at any time that the loans extended have fulfilled banking regulations in accordance with the matters required by the person / entity and the collateral used by the person / entity. Based on the Minister Finance Regulation of Finance Decree Number: KEP-77 / KM.10 / 2009 dated 22 April 2009 which contains a business license of Jamkrindo as a Credit Assurance Company. According to the law in Indonesia, the decree of state civil apparatus is not included in the material guarantee or personal guarantee, but also includes a privilege which may consist of a diploma, decree, letter of appreciation and others. Based on this, the researcher is interested in studying it and put it in a thesis. Based on this, the researcher is then interested in conducting research on how the position of credit guarantees with the use of the decree of state civil apparatus which has been dishonorably discharged at PT. Jamkrida Riau and How is the legal protection for the parties in the settlement of non performing loans with a assurance of the decree of state civil apparatus to the State Civil Apparatus that was dismissed with such disrespect. The writing of this thesis uses an empirical juridical problem approach method that emphasizes the reality in the field associated with aspects of law or legislation in force with regard to the object of research. Insurance with a debtor withdrawn of state civil apparatus decree by state then guarantees there be a legally because borrowers show discharged not respectful as of state civil apparatus who performs and position of abuse, of the this therefore all rights and duties of state civil especially concerned. The problem in the customers resulting in discharged with disrespect as, of state civil apparatus and debt customers is fully the responsibility of PT. Jamkrida Riau, legal protection is a protection afforded to a subject law either it is preventive and repressive, legal protection against the parties must protect were PT. Bank Riau Kepri because at during the dismissal of with disrespect against a debtor so claims would be paid by PT. Jamkrida Riau was only 75 % therefore the conservation of laws against creditors did not function as intended , if there is no agreement between PT. Jamkrida Riau and PT. Bank Riau Kepri in credit agreement between the debtor and creditors.

**Key Words:** Non Performing Loans, Guarantee, State Civil Apparatus, Dual Citizenship, Children, Human Rights right civil son of father, Legal Protection, Outer Child Marriage, Birth Certificate.

### 1. INTRODUCTION:

The loan and borrowed money have been done long ago in society who had come to know. money as the means of payment In general it can be said that the lender, borrow money to the lender to fund their very relating to the daily needs or to meet needs fund to finance their business activities [1].

In society today , credit not constitute something stranger .Credit comes from the greek namely “credere” which means trust ( trust or faith ) .Therefore the basis of credits are trust , thus someone who credit is basically have confidence [2].

Article 1 Paragraph (11) Act Number 7 of 1992 concerning Banking in conjunction with Act Number 10 of 1998 concerning Amendment to Act Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Act), states that credit is the provision of money or bills that can be equalized based on an agreement or loan agreement between the bank and another party that requires the borrower to repay the debt after a certain period of time with interest.

Of this aspect juridical momentum for a legal relationship between bank and account holders debtors is konsensualisme, principle which is reflected in article 1320 paragraph (1), civil legal statute book an agreement that is one of the requirements for the birth of subjective, agreement while money or its equalized with act that is the object of the agreement must not be contrary to the statute, decency or public order and confirmed in article 1320 paragraph (4) in article 1337 book the act of civil law [3].

The provision of credits to of state civil apparatus homeless people has potential to performing loans have ceased to function and it is going to have a negative impact of the bank. This condition is influenced by several things, and among the companies were is because dismissal of by means of not in honor esteemed worthy precious of state civil apparatus who both a credit facility consumptive, so as to give a chance to debtors who not liable to defaults against the implementation of the the obligations upon them in as a debtor.

In 2018 at PT. Jamkrída Riau, there is a State Civil Apparatus working in the Public Spatial Planning Office of Kuantan Singingi Regency submitting a multifunctional loan to PT. Bank Riau Kepri which is a Regionally-Owned Enterprise owned by the government of Riau Province and Riau Islands which is headquartered in Pekanbaru City. However, in 2014 the person concerned faced legal issues of corruption and has permanent legal force and has served a sentence of imprisonment. Then on 11 February 2019 the submission of the claim of the State Civil Apparatus was granted and was disbursed by PT. Jamkrída Riau and on December 31, 2018 a Dismissal Decree was issued with disrespect to the State Civil Apparatus.

## 2. CONCEPTUAL FRAMEWORK:

Conceptual framework is a collection of various theories that are connected with each other to be able to provide a description of a phenomenon. The conceptual framework regarding this research can be explained as follows [4]:

### a. *Settlement*

According to the Big Indonesian Dictionary, settlement is a process, method, deed, complete (in various meanings such as ordering, solving) [5].

### b. *Credit*

In Article 1 Paragraph (11) of Act Number 10 of 1998 concerning amendment of Act Number 7 of 1992 concerning Banking, it states that credit is the provision of money or claims that can be equaled, based on loan agreement between the bank and the parties others that require the borrower to repay the debt after a certain period of time with interest.

### c. *Non Performing Loan*

Non-performing loans is a situation where a customer is unable to pay off credit to the bank on time. Bad credit is the highest characteristic of non-performing loans in Indonesia. Non-performing loans are classified as non-performing loans, which are classified as bad loans, doubtful loans and bad loans. The term non-performing loans has been used by the Indonesian banking world as a translation of problem laon which is a term that is commonly used internationally. The term in English that can be used also for non-performing loans is nonperforming loans [6].

### d. *Guarantee*

Collateral or collateral is the assets of the borrower promised to the lender if the borrower is unable to return the loan. If the borrower defaults, the lender can have the collateral. In credit rating, collateral is often an important factor to increase the credit score of individuals or companies. Even in a pawn loan agreement, collateral is the only factor assessed in determining the size of the loan.

### e. *State Civil Apparatus*

In Article 1 Paragraph (1) of Law Number 5 Year 2014 concerning State Civil Apparatuses states that the State Civil Apparatus, hereinafter abbreviated as State Civil Apparatus is a profession for civil servants and government employees with work agreements working for government agencies.

### f. *Dismissal with no Respect*

Article 9 letters a and b of Law Number 32 Year 1979 concerning Dismissal of Civil Servants states that Civil Servants can be dismissed with no respect as Civil Servants if imprisoned or imprisoned based on a court decision that has permanent legal force, because:

- a. Committing a criminal offense of office or a criminal offense related to the position; or
- b. Committing an offense as referred to in Article 104 to Article 161 of the Criminal Code.
- g. Credit Guarantee Institution

Credit Guarantee Institutions are credit guarantee companies in Indonesia which are State-Owned Enterprises. This institution takes the focus of the credit guarantee business in Micro, Small and Medium Enterprises and Cooperatives [7].

## 3. LITERATURE REVIEW:

Credit agreements are made and agreed upon by the parties that bound themselves to a credit agreement. Credit agreements can be made with notarial deeds (authentic deeds) or with underhand deeds which are often referred to as credit agreements. In practice, a credit agreement facilitated by the bank to its customers or customers is followed by interest or a nominal addition to the credit agreement. If related to the principles of agreement law, that is the principle of freedom of contracting credit agreements can be based on the agreement of the parties and based on the provisions

of the Civil Code set forth in the credit agreement, but not all forms and materials of the credit agreement between bank one and the bank the other is the same. So that in practice credit agreements are standardized and finally credit agreements are formed.

According to the legal provisions in Indonesia, the Decree of the State Civil Apparatus is not included in material guarantees or personal guarantees, but includes as privileges which can be in the form of diplomas, decrees, pensions and others [8]. So that in credit in Indonesia, the Decree of the State Civil Apparatus can be used as a credit guarantee, in the event of default, in this case Inter-Time Substitution which can occur due to death, resignation or dismissal by the relevant agency, automatically means the termination of membership as a State Civil Apparatus, the bank will be difficult to execute, because the Decree of the State Civil Apparatus is not objects that can be traded so that they cannot be executed directly.

Explanation of Bank Indonesia Regulation Number: 7/3 / PBI / 2005 concerning the Legal Lending Limit for Commercial Banks states that "In order to reduce the potential for bank business failure due to concentration of provision of funds for lending, banks must apply the precautionary principle". The legal basis for applying the precautionary principle in credit agreements with banks is regulated in Article 2 of the Banking Law which states that "Indonesian banks in conducting their business are based on economic democracy by using the precautionary principle". In order to obtain this belief, the bank must, before lending, provide a careful assessment of the character, abilities, capital, collateral and business prospects of the debtor. This form of assessment is known as 5C which consists of Character, Capital, Capacity, Collateral, Condition Of Economy [9].

#### 4. METHODS:

The approach to the problem used in this research is empirical juridical which emphasizes the reality in the field associated with applicable legal or regulatory aspects regarding the object of research discussed and looks at legal norms that apply and then relates them to reality or facts contained in society.

This research is descriptive in nature, research that provides data about a situation or social phenomena that develop in the midst of society so that the existence of this research is expected to obtain a comprehensive, complete and systematic picture of the object to be examined [10].

#### 5. DISCUSSION:

In the case of the customer / debtor of the State Civil Apparatus, the credit guarantee position using the Decree of the State Civil Apparatus has been dishonorably discharged for committing a criminal act of corruption, then the customer is dishonorably discharged from the State Civil Apparatus with a Dismissal Decree from the Regent of Kuantan Singingi, Riau Province Number: Kpts.888 / BKPP-04/1449 concerning Termination for Committing Criminal Acts or Criminal Acts with Relation to Position, decides and determines dismissal with disrespect as Civil Servants whose names are listed below: Name: Ariyadi, ST, NIP: 197406052006041005, Place / Date of Birth: Kuantan Bay / 05 June 1974, Rank / Gol. Room: Arrangement / III-c, Position: Head of Section for Development of Water Resources Improvement, Work Unit: Public Work Department and Spatial Planning, Institutions: Government District. Kuantan Singingi, starting from December 31, 2018.

With the issuance of the Decree of the Regent of Kuantan Singingi Regency regarding the revocation of the Decree of the State Civil Apparatus, the rights and obligations of the said person are listed in Article 21 of Law Number 5 of 2014 concerning State Civil Apparatus which starts from salary, benefits, facilities, leave, pension insurance, old age insurance, protection and competency development. In this case if it is associated with legal certainty theory. Certainty is a matter (condition) that is certain, provisions or provisions [11]. Legal certainty is one of the objectives of the law, in addition to the others namely the usefulness and justice for every human being as a plural member of society in their interactions with other human beings without distinguishing the origin of where they are [12].

Legal certainty is realized by the law by its nature which only makes a rule of law prove that the law does not aim to realize justice or expediency, but solely only for certainty [13]. If it is associated with the theory of legal certainty that the Decree of the State Civil Apparatus is a State product guaranteed by its legal certainty. However, customers who make credit loans whose collateral Decree of the State Civil Apparatus are dishonorably discharged for committing a criminal act of corruption. If this happens, the party responsible for the credit is the third party, namely the insurance party, in this case, PT. Jamkrida Riau.

Associated with the principles in the agreement, namely the principle of balance and good faith principles, the author can explain, that the bank as the creditor has a strong and dominant position to realize all its interests because it determines the terms and conditions contained in the terms of the credit agreement clauses. . This situation caused an imbalance in bargaining power to determine the rights and obligations of each party, as well as PT. Jamkrida Riau as a Regional Credit Guarantee Institute.

The position of the customer's loan at Bank Riau Kepri where the customer experiences bad credit is caused by a case that results in the customer being dishonorably discharged as a State Civil Apparatus whose guarantee is the

Decree of appointment of the State Civil Apparatus. Therefore all rights and obligations as the State Civil Apparatus disappear but do not eliminate the obligation as a customer in paying off credit.

Where previously the customer has entered into an engagement agreement with the bank. Where the PT. Bank Riau Kepri which gives credit to customers whose collateral is in the form of a Decree on Appointment of State Civil Apparatus, here PT. Bank Riau Kepri as the creditor is more careful of customers who collateralize the decree, because the bank is worried about the customer and is afraid of bad credit due to various things including the customer dying, physically handicapped, retiring and being dishonorably discharged from his position. In contrast to customers who pledge movable objects such as motor vehicles and immovable objects such as land and buildings. And if there is a bad credit the bank as the creditor is still able to auction the collateral to cover the rest of the customer's debt. On this basis, Bank Riau guarantees customer credit with collateral for Appointment Decree as a State Civil Apparatus to PT. Jamkrida Riau to anticipate the occurrence of bad loans, where if the customer is sanctioned discharged disrespectfully then all rights and obligations of that customer will be lost.

As a State Civil Apparatus, with this happening customers automatically no longer have the ability to pay the remaining debt. In connection with the occurrence of the above problems, all dependents will automatically be borne by PT. Jamkrida Riau as the Regional Credit Guarantee Institution for claims submitted by PT. Bank Riau Kepri as the creditor. However, in this case the customer benefits from the existence of PT. Jamkrida Riau, where the bank guarantees customer credit to PT. Jamkrida Riau, in connection with this problem, all dependents of the customer are automatically borne by PT. Jamkrida Riau for claims filed by the Riau bank.

Based on the results of interviews of the author with Mr. Hafid Akbar as Staff of the Claims and Subrogation Section at PT. Jamkrida Riau stated that the requirements for submitting insurance claims above can be submitted directly to PT. Jamkrida Riau by the bank, to be able to immediately payment to PT. Bank Riau Kepri, where the bank within 1 (one) month since the State Civil Apparatus was dismissed with no respect must oblige to inform PT. Jamkrida Riau over the customer's problems, if the bank exceeds the predetermined time period, PT. Jamkrida Riau as a regional credit guarantor institution claims cannot be paid according to the contents of the cooperation agreement. Then PT. Jamkrida Riau cannot fully provide protection to creditors because of the provision of 75% of the cooperation agreement between PT. Bank Riau Kepri with PT. Jamkrida Riau which they agreed to.

Related to the amount of claims paid 75% by PT. Jamkrida Riau to PT. Bank Riau Kepri, then based on the results of the author's interview with PT. Bank Riau Kepri, the number of claims paid is 37.52 0/00 (thirty seven point two permil) multiplied by the debtor ceiling. The amount 37.52 0/00 (thirty seven point two permil) arises because the creditor entered into a credit agreement within 15 (fifteen) years and because in the credit agreement between the debtor and creditor when the credit ceiling has been disbursed, the debtor must pay Provision fees Credit of 0.75% (zero point seventy-five percent) and an administration fee of 10/00 (one per mil) which is directly deducted from the debtor credit ceiling which is directly paid by the creditor to PT. Jamkrida Riau.

In the formulation of the problem the parties that obtain legal protection here are PT. Bank Riau Kepri as the creditor, because with the occurrence of problems with the customer which resulted in the customer being dismissed disrespectfully as a State Civil Apparatus, therefore there is no ability of the customer to repay his loan, with the revocation of the Decree on appointment of the State Civil Apparatus. PT. Jamkrida Riau as a credit guarantor institution at PT. Bank Riau Kepri, which insures its credit at PT. Jamkrida Riau. So, PT. Jamkrida Riau is obliged to pay claims for the customer's credit default on PT. Bank Riau Kepulauan which decree is used as collateral. PT. Jamkrida Riau because when the ceiling is under five hundred million rupiahs, it automatically covers, which means PT. Jamkrida Riau automatically follows all the rules from the bank, the position of PT. Jamkrida Riau here is a guarantor company that plays a role in resolving bad loans at banks, especially at PT. Bank Riau Kepulauan.

## **6. ANALYSIS:**

### **A. POSITION OF CREDIT GUARANTEE BY THE USE OF DECREE OF THE STATE CIVIL APPARATUS WHICH HAS BEEN DISHONORABLY DISCHARGED FROM PT. JAMKRIDA RIAU**

In this case the authors argue that if there is an inability by the debtor to pay credit to the creditor, this will lead to legal uncertainty because initially even though both parties have committed themselves to a clear agreement and bind their contents which are legally clear and certain according to the rules of the law regulations that apply, but in the journey are not in accordance with what is expected so this is where the third party in this case PT. Jamkrida Riau bears the risk of the debtor's inability.

The author is of the opinion that in a credit agreement between the bank and the State Civil Apparatus it is not only the Decree of the Civil Servant that can be requested as collateral by the creditor, in this case, PT. Bank Riau Kepri, but to be more binding on debtors, PT. Bank Riau Kepri can ask for additional collateral so that the risks that may occur can be minimized such as the occurrence of dismissal and termination of employment of the relevant Civil Servants so as not to harm creditors because basically creditors use the principle of prudence in granting credit to debtors. With the

dismissal of the customer as a State Civil Apparatus, due to disrespectful dismissal sanctions, the State Civil Apparatus Decree is revoked by the state and does not adhere to its rights and obligations as well as its position. Thus the position of the customer's guarantee becomes the responsibility of PT. Jamkrida Riau as the Regional Credit Guarantee Institution guaranteed by PT. Bank Riau Kepri in solving problems from the customer's bad credit as a debtor.

#### **B. THE POSITION OF THE LOAN ON BAD CREDIT AT PT. JAMKRIDA RIAU IN A CUSTOMER CREDIT AGREEMENT**

The position of the customer's loan at PT. Bank Riau Kepri where the customer experiences bad credit is caused by a case which results in the customer being dishonorably discharged as a State Civil Apparatus whose guarantee is the Decree of appointment of the State Civil Apparatus. Therefore all rights and obligations as the State Civil Apparatus disappear but do not eliminate the obligation as a customer in paying off credit.

Where previously the customer has entered into an engagement agreement with the bank. Where the PT. Bank Riau Kepri which gives credit to customers whose collateral is in the form of a Decree on Appointment of State Civil Apparatus, here PT. Bank Riau Kepri as a creditor is more careful of customers who collateralize the decree, because the bank is worried about the customer and is afraid of bad credit due to various things including the customer dying, physically handicapped, retiring and dishonorably dismissed from his position.

In contrast to customers who pledge movable objects such as motor vehicles and immovable objects such as land and buildings. And if there is a bad credit the bank as the creditor is still able to auction the collateral to cover the remainder of the customer's debt. On this basis, Bank Riau guarantees customer credit with collateral for Appointment Decree as a State Civil Apparatus to Riau Jamkrida to anticipate the occurrence of bad loans, where if the customer is imposed with respect discharged then all rights and obligations of that customer will be lost. As a State Civil Apparatus, with this happening customers automatically no longer have the ability to pay the remaining debt.

In connection with the occurrence of the above problems, all dependents will automatically be borne by PT. Jamkrida Riau as the Regional Credit Guarantee Institution for claims submitted by PT. Bank Riau Kepri as the creditor. However, in this case the customer benefits from the existence of PT. Jamkrida Riau, where the bank guarantees customer credit to PT. Jamkrida Riau, in connection with this problem, all dependents of the customer are automatically borne by PT. Jamkrida Riau for claims filed by the Riau bank.

#### **C. SETTLEMENT OF BAD DEBTS WITH A GUARANTEE OF A DECREE OF THE STATE CIVIL APPARATUS AGAINST A STATE CIVIL APPARATUS WHICH IS DISHONORABLY DISCHARGED.**

The author is of the opinion that legal protection is preventive, in which in this case the existence of a credit guarantee in the form of a Decree of the State Civil Apparatus guaranteed to give confidence to the bank in granting credit to the State Civil Apparatus in accordance with its designation. However, the credit agreement is not accompanied by additional collateral that can strengthen legal protection for the bank in the event of an unwanted event in the future such as the case of dismissal of the State Civil Service with disrespect for committing a crime. Even though the customer is bound by a credit agreement and must carry out his obligations, other alternative guarantees are the choice of preventive legal protection for a credit agreement.

Non-performing loans that occur because the State Civil Apparatus are dismissed disrespectfully are accounted for by PT. Jamkrida Riau in accordance with an agreement agreed with PT. Bank Riau Kepulauan. However, the amount of the claim is only 75% that can be paid by PT. Jamkrida Riau. Based on this it can be seen that although repressive legal protection is carried out but in reality it cannot fully overcome legal protection to PT. Bank Riau Kepri so that the purpose of legal protection in the case cannot be fulfilled as a whole because the real protection of the law is the embodiment of the applicable legal rules.

Based on the results of the study above the authors argue that PT. Jamkrida with PT. Bank Riau Kepri must enter into a new agreement which does not harm each other in the settlement of bad loans for customers involved in corruption cases that result in the dishonorable dismissal as a State Civil Apparatus and therefore all rights and obligations are lost. In entering into an agreement between PT. Jamkrida Riau with PT. Bank Riau Kepri should PT. Jamkrida Riau must make an exception to the clause made between the two parties, where PT. Jamkrida Riau does not guarantee that customers with the status of the State Civil Apparatus, the Indonesian Armed Forces / Republic of Indonesia Police, who are involved in the case of impacting the imposition of sanctions will be dishonorably discharged from office.

#### **7. CONCLUSION:**

a) The position of the debtor's guarantee with the revocation of the Decree of the State Civil Apparatus by the State, the position of the guarantee is no longer valid legally, because the debtor has been dishonorably discharged as a State Civil Apparatus from the institution where he works. With the dismissal with respect to the State Civil Apparatus, in this case the party responsible for the debtor's credit is PT. Jamkrida Riau based on a cooperation agreement made

with PT. Bank Riau Riau Islands. Then with the disrespectful dismissal, all rights and obligations of the State Civil Apparatus and obligations will be lost, and the guarantee will be returned to the debtor.

b) The position of the customer's loan at PT. Bank Riau Kepri which experiences bad credit is caused by a case which results in the customer being dishonorably discharged as a State Civil Apparatus whose guarantee is a Decree to appoint the State Civil Apparatus. Therefore all rights and obligations as the State Civil Apparatus disappear but do not eliminate the obligation as a customer in paying off credit. Previously the customer has entered into an engagement agreement with the bank. Where the PT. Bank Riau Kepri which gives credit to customers whose collateral is in the form of a Decree on Appointment of State Civil Apparatus, here PT. Bank Riau Kepri as the creditor is more careful of customers who collateralize the decree, because the bank is worried about the customer and is afraid of bad credit due to various things including the customer's death, physical disability, retirement and being dishonorably discharged from his position

c) Settlement of non performing loan between the debtor and the creditor is basically stated in the clause contained in the loan agreement between the two parties. The party that gets legal protection in this case is PT. PT. Bank Riau Kepri because at the time of dismissal disrespectfully towards the State Civil Apparatus concerned, the settlement was due to the State Civil Apparatus being dishonorably discharged so PT. Bank Riau Kepri filed a claim with PT. Jamkrida Riau as the person in charge of creditors' creditors. But in reality, PT. Jamkrida Riau can only disburse claims by 75% and this proves that legal protection has not been running as it should.

#### 8. SUGGESTIONS:

a) As a State Civil Apparatus in carrying out their positions, they must carry out their duties properly and comply with all applicable regulations so as not to get involved in cases of abuse of office as stipulated in Law Number 5 of 2014 concerning State Civil Apparatus.

b) PT. Jamkrida Riau as the Regional Credit Guarantee Agency must pay claims submitted by PT. Bank Riau Kepri if a bad credit occurs to the debtor in accordance with what was previously agreed, with the record PT. Bank Riau Kepri insuring its credit to PT. Jamkrida.

c) PT. Jamkrida Riau as a Regional Credit guarantee institution must be more careful in pouring clauses that will be set forth with PT. Bank Riau Kepri, which in the agreement the bank prefers the default agreement. Regarding customers who were dishonorably discharged as State Civil Apparatus, it would be better if PT. Jamkrida Riau made an exception in the cooperation agreement clause in this case.

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# Resolving the Non Performing Loans against Of State Civil Apparatus Who Dismissed With Disrespect (Study at PT. Jamkrida Riau)

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