



## RESEARCH ARTICLE

### THE CONCEPT ANALYSIS OF FORECLOSED COLLATERAL BASED ON THE PERSPECTIVE OF MORTGAGE RIGHT LAW

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#### ABSTRACT

This research aimed to analyze the concept of Foreclosed Collateral based on Law Number 4 of 1996 concerning Mortgage Rights over land and objects related to the land. This research used Normative legal research methods. The approach used was a conceptual approach and a statutory approach. This research showed that implementing Foreclosed Collateral is essential because it can help the Debtors and Creditors avoid losses. Furthermore, Foreclosed Collateral, as regulated in Article 12 A of Banking Law, is related to provisions of Article 12 of Mortgage rights law, as long as the foreclosure is carried out according to the procedures specified in Article 20 of Mortgage rights law. Therefore, aligning the norms by forming government regulations regarding Foreclosed Collateral by the provisions of Article 12 A Paragraph 2 of Banking Law is necessary.

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## INTRODUCTION

Banks, as financial institutions, have a fairly central role in supporting national economic development. One of the essential roles of banks is to distribute credit to the public to stimulate economic growth. The credit spread generally targets entrepreneurs as capital to develop their businesses. In this credit distribution process, banks apply the precautionary principle. For this reason, banking institutions need to project the risks that debtors may face through a comprehensive and in-depth analysis. The precautionary principle is related to the 5C principle, which is the basis for analyzing credit distribution to prospective debtors.

The 5C principle is an indicator that is a parameter for the suitability of prospective customers to receive credit. The indicators considered in the 5C principles are as follows:

- **Character:** The character possessed by prospective customers
- **Capacity:** The customers' capacity to manage business activities for credit
- **Capital:** The capital amount that the prospective debtor will obtain.

- **Collateral:** The condition and value of collateral the bank receives from prospective debtors.
- **Condition:** The projection of business opportunities for prospective debtors in the future (Hamonangan, 2020)

These five indicators are considerations used by the banks in determining the suitability of prospective debtors to obtain financing from the bank. It is hoped that the credit distributed can provide an appropriate return. These principles must be implemented carefully, as financing distributed by the bank through credit constitutes public savings funds entrusted to the bank (Maidin Simamora, Syawal Amry Siregar and Mhd. Yasid Nasution, 2022) Thus, implementing the precautionary principle in credit distribution is not only for the continuity benefits of the bank's business activities but also concerns the bank's responsibility towards customers who entrust their money to be deposited in the bank. This relationship also gives rise to indirect responsibilities that bank debtors have towards those who own the funds deposited in the bank. If debtors cannot fulfill their credit obligations to the bank and the problem of Non-Performing Loans cannot be adequately resolved, the customers will lose their savings or deposits. Even though the banks have implemented the precautionary principle, they must partially avoid the potential for problematic credit, namely non-performing loans. It happens because debtors are negligent in fulfilling their obligations to

pay credit. After all, the business received financing to go according to plan. However, non-performing loans occurred massively during the global crisis (Suharyono and Teguh Widodo, 2016). For example, during the COVID-19 pandemic, problems in the economy, namely non-performing loans, had a negative impact on the banking sector. The auction process for collateral debtors is one way to resolve Non-Performing Loans. However, the banks needed help in obtaining auction buyers. This causes the collateral not to be liquidated and the debtor's credit not to be settled.

The problems of non-performing loans can be overcome by implementing guarantees through various alternative efforts. Foreclosed Collateral is one of the efforts to solve the problem of non-performing loans and challenges faced by the banks (Grace Ayu Prabandari, Agus Nurdin and Mujiono Hafidh Prasetyo, 2021). Furthermore, foreclosed collateral is also a short-term effort by the bank to minimize the number of non-performing loans that can affect the bank's health (Bayu Rangga Warsito and Albertus Sentot Sudarwanto, 2019). Foreclosed Collateral is stated as a short-term effort because the banks need to make further efforts so that this process can genuinely overcome bank liquidity problems that arise due to non-performing loans.

The banks are given space to implement Foreclosed Collateral because they often experience various obstacles in implementing mortgage rights. Efforts to resolve non-performing loans are often faced with multiple barriers. One is the difficulty of obtaining auction buyers for an auction object, so the auction process can only be completed after some time. Apart from that, settlement of non-performing loans also tends to take a long time with other additional costs. Various additional costs arising from the auction process can also be detrimental to debtors because more cost components are charged to the auction results for collateral objects.

Foreclosed collateral is a short-term measure that banks can take to maintain the stability of the banking business. Nevertheless, Article 12 of Law Number 4 of 1996 concerning Mortgage Rights over land and land-related objects (from now on referred to as the Mortgage Rights Law) formulates an agreement that contains the provision of the transfer of ownership authority over the object of the mortgage right to the holder of the mortgage right at the time the debtor commits non-performance of the contract, declared null and void by law. Therefore, it is necessary to carry out an analysis to understand more about Foreclosed Collateral from the perspective of the Mortgage Rights Law.

In connection with the State of Art, several scientific articles are related to the above issues. Research by Fibrianti (2020) examined the implementation of Foreclosed Collateral by Creditors on Debtors on non-performing loans with Deed De Comand (Riska Fibrianti, 2020).

This research has comparison with Dilapanga, who also researched the Foreclosed Collateral procedure in overcoming credit problems (Nur Muhammad Dilapanga, 2021). This research focused on the analysis of the implementation of Foreclosed Collateral based on the perspective of Law Number 4 of 1996 concerning Mortgage Rights over land and objects related to land.

This article has a different study focus from previous research by discussing the research problems as follows:

- What is the importance of implementing Foreclosed Collateral as the effort of non-performing loans?
- What is the concept of Foreclosed Collateral based on the perspective of Law Number 4 of 1996 concerning Mortgage Right Law?

## MATERIALS AND METHOD

Research method is an essential factor that determines the quality of research results. As legal research, this article used normative legal research to investigate and analyze existing legal materials (Jonaedi Efendi and Johnny Ibrahim, 2018). This research used the Conceptual Approach and Legislative Approach, which were used to prove a lawful provision in this article to become primary legal material (Amiruddin and Asikin, 2004). The legal material obtained in this article was analyzed using the prescriptive analytical method, namely by carrying out data analysis within the scope of the problem, which is based on legal theory which is still general to be implemented as an effort to elaborate set of data to show comparisons of material related to other sets of data

## RESULTS

***The importance of implementing foreclosed collateral as an effort to solve non-performing loans:*** Financing through banks is an alternative source of financing for the community as a business entity or individual to fulfill consumption needs and capital loans to increase business production. Banks distribute financing services through various forms of credit such as KPR (Kredit Perumahan Rakyat) or People's Housing Credit, KUR (Kredit Usaha Rakyat) or People's Business Credit, etc. The banks are creditors willing to provide financing services to their debtors based on trust that the debtor can repay the credit according to the agreed terms and period (Nur Muhammad Dilapanga, 2021). This arises through assessing the banks' prospective debtors based on the 5C principle, which is carried out by the precautionary principle. The trust to the debtors is the main guarantee in a credit agreement (Dwi Tatak Subagio, 2018).

The credit agreement has essential collateral and additional collateral. In banking credit agreements, other collateral is also referred to as collateral or individual guarantees, whether or not directly related to objects, projects, or claim rights from bank financing (Yunita Hikmia, 2019). Collateral can be in the form of immovable objects or movable objects belonging to the debtor that have existed since the credit agreement was made or will exist. Collateral is charged explicitly for a particular debt, called an exceptional guarantee. Meanwhile, the debtor's assets that currently exist and will exist in the future, immediately become collateral for their debts, known as general collateral. The security rights held by creditors aim to provide the right to request fulfillment of receivables to debtors who are non-performing the contract. Thus, creditors have the right to cancel the collateral to obtain repayment of their receivables, by applicable legal provisions. The additional collateral is often used as land and buildings through a mortgage institution in a loan agreement.

The imposition of mortgage rights on land rights gives creditors special rights to obtain a preferred position to obtain repayment of their receivables (Trisa Mardeta Putri, Paramita Prananingtyas and Anggita Doramia Lumbanraja, 2020). Land and buildings as immovable objects are often used as collateral because economically, land has a high value and tends to continue to increase. Even though the debtors have been charged with a mortgage, they can still operate the land and building for business or residential activities. In several cases, land is used as collateral but the credit funds are used to build a boarding house or guest house. In this context, the precautionary principle is implemented using mortgage rights whose value does not exceed the land's and building's economic value.

Implementing the precautionary principle cannot fully protect the Banks from the risk of counterparty failure to fulfill the obligations, which can cause non-performing loans. Based on data published by the OJK (Otoritas Jasa Keuangan) or Financial Services Authority, until May 2023, the NPL (Non-Performing Loan) figure for Commercial Banks in Indonesia reached 2,52% (Otoritas Jasa Keuangan, 2023). A credit is categorized as NPL if the quality of the credit falls into the collectability level category of substandard, doubtful, or non-performing. This means that debtors are often late in fulfilling their obligations to pay credit or never pay it.

The efforts to overcome the NPL problem can be carried out through two different efforts: credit rescue or credit settlement. The rescue credit is carried out by renegotiating between creditors and debtors. The results of these negotiations can be implemented by restructuring, reconditioning, or rescheduling credit. Yet, these can only sometimes overcome the NPL problems faced in banking. Customers have received credit restructuring in several cases but still experience non-performing loans. This happened due to internal factors, namely debtor negligence, which was the cause of the unexpected global crisis. This causes efforts to settle credit to become an unavoidable action. Credit settlement can be achieved by involving various institutions that have been provided, such as PUPN (Panitia Urusan Piutang Negara) or Committee for State Receivables, DJPLN (Direktorat Jendral Piutang and Lelang Negara) or Directorate General of State Receivables and Auctions), Judicial Board, or through other Alternative Dispute Resolution Board (Fakhry Firmanto, 2019).

The monetary crisis in 1998 disrupted the stability of the national economy due to the high number of NPL (Non-Performing Loans). This requires the government to create a mechanism to solve the NPL problem quickly. The efforts to auction collateral at that time were tricky due to the difficulty of obtaining auction buyers and volatile political, social, and economic conditions. This makes efforts to solve NPL through a judicial board more impossible. Protracted NPL problems can cause critical conditions and national financial crises. Based on Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (from now on referred to as the Banking Law), the government provides space for Commercial Banks to take over collateral from NPL. This provision is regulated in Article 12 A of the Banking Law. After the monetary crisis 1998, a global crisis hit the world again at the end of 2019. The COVID-19 virus, which forced various outdoor activities, stuck due to its rapid spread. The economic cycle has almost stopped, and the number of non-performing loans has soared again.

At that time, not only commercial banks were facing the problem of NPL (Non-Performing Loans), but BPR (Bank Perkreditan Rakyat) or Rural Bank also experienced the same problem. As financial institutions centered on lending, rural banks tend to be chosen by the public because the conditions for applying for credit are more accessible than those determined by commercial banks. It is not uncommon for credit applications that do not pass at Commercial Banks to be approved at Rural Banks. This condition increases NPL problems, especially when the global crisis suddenly hits.

The banking law explicitly provides only space for commercial banks to carry out Foreclosed Collateral on non-performing loans. Meanwhile, BPR should be mentioned in the law articles and the explanation (Fakhry Firmanto, 2019). This gives rise to different interpretations which cause conflicts in the implementing regulations issued by the implementing agencies of the Banking Law, namely BI/OJK (Bank Indonesia/Otoritas Jasa Keuangan) or Bank of Indonesia/Financial Services Authority) with DJKN (Direktorat Jenderal Kekayaan Negara) or Directorate General of State Assets. This conflict can be seen from Bank of Indonesia's attitude in Bank of Indonesia Regulation Number 13/26/PBI/2011 concerning Amendments to Bank of Indonesia Regulation Number 8/19/PBI/2006 concerning the Quality of Productive Assets and the Establishment of Allowance for Losses on Productive Assets of rural banks, Article 1 number 10 determines that: "Foreclosed Collateral is an asset obtained by a BPR in the context of credit settlement, either through auction. Meanwhile, DJKN rejected auction participants from BPR who wanted to take over collateral from their debtors through the auction process.

BPR Lestari Bali, as a party that feels it needs legal legitimacy to carry out Foreclosed Collateral for non-performing loans, which increased during the COVID-19 pandemic, is conducting a judicial review at the Constitutional Court regarding Article 12 A paragraph 1 of Banking Law. At that time, BPR Lestari needed to carry out Foreclosed Collateral to overcome the problems it faced due to the high NPL (Non-Performing Loans), which had increased sharply then. The Constitutional Court, through Constitutional Court Decision Number 102/PUU-XVIII/2020, then stated that the phrase "Commercial Bank" in Article 12A Paragraph 1 of the Banking Law is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted. "Commercial Banks and Rural Banks". In this way, Commercial Banks and Rural Banks are considered to have the same interest in carrying out Foreclosed Collateral to maintain the Bank's health so that it does not deteriorate due to the occurrence of NPL. Furthermore, this provision is also present to protect debtors or mortgage providers. The Foreclosed Collateral will prevent the debtor's debt from doubling due to accumulating interest. When Foreclosed Collateral is executed, the credit agreement is considered complete. Regulations regarding foreclosed collateral also protect debtors from confiscating collateral, which creditors may carry out unfairly when the debtor is not performing the contract or cannot pay off his debt.

The description above shows that it is essential to implement Foreclosed Collateral to help Debtors and Creditors avoid losses. However, this goal can only be achieved if the implementation of Foreclosed Collateral on Mortgage Rights objects is carried out in the spirit of Article 12 A of the Banking Law and Article 12 of the Mortgage Rights Law.

The problem with implementing Foreclosed Collateral is that it is prone to causing losses to debtors, as parties with relatively lower bargaining positions than the Bank. Therefore, the Foreclosed Collateral procedure requires careful and precise implementation of the law.

***The Concept of Foreclosed Collateral Based on the Perspective of Law Number 4 of 1996 Concerning Mortgage Rights:***

Historically, the background to Foreclosed Collateral is a response to the monetary crisis that hit the banking world in 1998. Many banks experienced very high NPL (Non-Performing Loans), so banks needed regulations related to Foreclosed Collateral (Yunus Husein, 2023). The Foreclosed Collateral procedure aims to speed up the NPL problems. Based on Article 12 A paragraph 1 of the Banking Law is the legal basis for implementing Foreclosed Collateral by Banks, which regulates if:

"Commercial Banks can purchase part or all collateral, either through auction or outside of auction based on voluntary surrender by the collateral owner or based on the power of attorney to sell outside of auction from the collateral owner, the Debtor Customer does not fulfill its obligations to the bank, with the conditions of the collateral purchased must be disbursed as soon as possible."

This is the basis for banks to foreclose the collateral if the debtor does not perform the contract, causing the credit to become NPL (Non-Performing Loans). In this context, it can also be implemented to land and buildings that are the object of mortgage rights. The authority of Collateral Foreclosed is also accompanied by the obligation to carry out liquidation, which must be carried out as soon as possible.

The Foreclosed Collateral process can generally be carried out in 2 (two) stages. The first stage is an effort to obtain the Foreclosed Collateral, which is the Bank, as the creditor and the debtor make an agreement regarding the Foreclosed Collateral. In this agreement, it is agreed that legal action will be taken. Then, the Foreclosed Collateral process can be carried out and accompanied by credit set off. Thus, debtors do not need to bear additional interest on debts due to NPL. This is a favorable condition for the debtor because the value of the debt, which can continue to increase due to accumulating interest, can be stopped. The Foreclosed Collateral Agreement is generally accompanied by a Power of Attorney to Sell from the debtor to the Bank. So, the debtor authorizes the Bank to sell the collateral that has been foreclosed (Nur Muhammad Dilapanga, 2021).

The next stage is the completion stage, which focuses on how the Bank liquidates foreclosed collateral to obtain recovery. This stage should be carried out in line with the provisions of Article 1 Number 15 POJK Number 40/POJK.03/2019 concerning Asset Quality Assessment of Commercial Banks determines that:

"Commercial banks can purchase part or all collateral, either through auction or outside of auction, based on voluntary surrender by the collateral owner or based on the power of attorney to sell outside of auction from the collateral owner, the Debtor Customer does not fulfill its obligations to the bank, with the conditions of the collateral purchased must be disbursed as soon as possible."

This provision is often violated by creating an absolute power of sale without prior agreement on the sale and purchase. The absolute power of sale is an accessory agreement in which the making of a principal agreement must precede (Husnan Arief, Tetti Samosir, 2023). Absolute power of sale must be preceded by a main agreement because Absolute Power of Attorney is the transfer of a right to land followed by the granting of authority to the party receiving the power to use the land (control). Thus, the recipient of the power of attorney also has the right to carry out various legal actions that are legally valid to be carried out by the party holding the rights to the land. The absolute power of attorney cannot be revoked or withdrawn (Instruksi Menteri Dalam Negeri Nomor 14 Tahun 1982 tentang Larangan Penggunaan Kuasa Mutlak Sebagai Pemindahan Hak Atas Tanah). Therefore, the presence of a sale and purchase agreement in full as the main agreement is significant to prevent the debtor from "seizing" the collateral unfairly.

Implementing Foreclosed Collateral on Mortgage Rights objects must be based on the provisions in the Mortgage Rights Law. The existence of the power to sell in implementing Foreclosed collateral causes its provisions to be unrelated to the requirements of Article 12 of Mortgage Rights Law:

"The agreement that gives authority to the holder of the mortgage right to have the object of the mortgage right if the debtor's non-performance of the contract is null and void by law."

This is an effort to protect debtors or providers of mortgage rights from Foreclosed Collateral, which creditors may carry out when the debtors are non-performing the contract or cannot pay off their debt. Foreclosed Collateral is considered detrimental to the debtor, significantly when the Mortgage object's value exceeds the debt's value or the remaining debt is guaranteed. So, the creditor, as the party holding the mortgage rights, is not permitted to make the collateral to the owner immediately. However, based on Article 12 of the Mortgage Rights Law, creditors who hold mortgage rights are not prohibited from becoming buyers or auction participants for their collateral. However, the procedures for purchasing the collateral must comply with the provisions of Article 20 of the Mortgage Rights Law.

Arguments to the contrary, it can be understood that the foreclosed of the Mortgage Right object by the creditor as the party holding the Mortgage Right is permitted, as long as the foreclosed of the Mortgage Right object is carried out at a reasonable value/price so that the person giving the Mortgage Rights does not experience any loss. In this context, as the party holding the mortgage rights, the Bank can carry out efforts to the Foreclosed Collateral with the Mortgage Rights. However, this should be carried out based on the procedures specified in Article 20 of the Mortgage Rights Law, which provides two ways to carry out foreclosure/liquidation of Mortgage Rights objects, namely through:

- The public auction by the procedures specified in law
- The private sales efforts can benefit the parties involved if the highest price is obtained

Other Mortgage procedures that do not comply with these two procedures, moreover, are considered null and void by law.

The implementation of mortgage rights is considered crucial because land as the object of mortgage rights is seen not only as an object with economic value but also as an object with a social function and a crucial role in society.

Article 12 A paragraph 1 of the Banking Law shows that banks can foreclose the collateral by purchasing only part or all collateral in three ways, namely:

- **By Auction:** It is hoped that purchasing collateral by banks through auctions can help speed up resolving debtors' debts. The collateral foreclosed by the Bank through auction is carried out based on the legal provisions governing the auction of mortgage rights. Banks in this auction process are equal to other non-bank auction participants.
- Outside the auction based on voluntary surrender by the collateral owner: The foreclosure outside the auction means that the Bank can buy collateral outside the auction, known as private buying and selling. This effort also aims to speed up the debt settlement process of debtors.
- Based on the power of attorney outside the auction given by the collateral owner: The Banking Law does not regulate when and what conditions must be fulfilled for a bank to obtain the authority to sell from the collateral owner. This will be problematic if it is interpreted as the Bank can receive the power to sell from the collateral owner without the buying and selling process at a fair price for the mortgage object, which has been paid off before the power to sell is issued

The procedures of collateral foreclosure specified in Article 12 A of the Banking Law generally adopt the guidelines determined by Article 20 of the Mortgage Law. However, article 12 A of the Banking Law also provides another alternative in the form of object foreclosure of mortgage rights based on the power to sell. The collateral foreclosure through the power of sale is vulnerable to misuse, as further provisions regarding procedures for implementing Foreclosed Collateral according to Article 12 A Paragraph 1 of the Banking Law have yet to be regulated. Article 12 A paragraph 2 of the Banking Law requires the government to design and further regulate Foreclosed Collateral's purchase procedures and liquidation process. After more than 20 years, the government regulations have yet to be issued, which causes chaos in the procedure of Foreclosed Collateral towards NPL carried out by the banks.

The legislators have generally determined the outlines of the desired implementation of the Foreclosed Collateral by explaining Article 12 A of Banking Law. The principles for implementing Foreclosed Collateral are as follows:

- Banks can purchase collateral by auction or privately as an effort to speed up the settlement of debtors' debts;
- Banks have the same status as non-bank buyers in the process of purchasing collateral to be foreclosed;
- Banks may not use collateral that they foreclose as the owner. However, the collateral should be immediately liquidated so that the sale proceeds of the collateral can be returned to the Bank;
- Banks can only purchase collateral from credits that have been classified as NPL for a certain period;

- Banks can suspend various obligations related to transferring rights to collateral that is about to be foreclosed by applicable legal provisions. This suspension can be done within one year.

These principles are seen as an effort to provide a win-win solution to the problem of NPL. Through the foreclosed collateral, the Bank is expected to overcome the NPL problem immediately, which threatens the Bank's health. Furthermore, it can help debtors avoid higher losses due to their debts continuing to swell due to compound interest.

The government regulations referred to in Article 12 A paragraph 2 of the Banking Law have never been issued, which means Foreclosed Collateral has not been still partially and limitedly regulated in regulations issued by the Minister of Finance, BI (Bank of Indonesia) and OJK (Otoritas Jasa Keuangan) or Financial Services Authority. These regulations include:

- BI Regulation Number 14/15/PBI/2012 concerning Asset Quality Assessment of Commercial Banks;
- BI Regulation 13/13 /PBI/2011 Concerning Asset Quality Assessment for Sharia Commercial Banks and Sharia Business Units
- OJK Regulation Number 40/POJK.03/2019 concerning Asset Quality Assessment of Commercial Banks
- OJK Regulation Number 2 /POJK.03/2022 concerning Asset Quality Assessment of Sharia Commercial Banks and Sharia Business Units

These legal instruments contain the same provisions, namely the role of the Foreclosed Collateral as a non-productive asset and only regulating the obligation for the Bank to settle the Foreclosed Collateral objects and procedures for determining net realizable value. The settlement is a liquidation procedure after carrying out the Collateral Foreclosure process for NPL debtors. Apart from that, Article 78 Paragraph (1) of the Minister of Finance Regulation Number 27/PMK.06/2016 concerning Auction Implementation Guidelines regulates that banks as creditors can purchase collateral through the auction process. To be an auction participant, the Bank must submit a statement in the form of an authentic deed containing a statement that the purchase process is being carried out for another party who wants it. Thus, these regulations only regulate various technical and administrative matters, binding on banks if Foreclosed Collateral liquidation. The principles of protection and legal certainty for debtors in the Foreclosed Collateral process have not been regulated. So, the government regulation regulating Foreclosed Collateral procedures is a legal need that should be fulfilled immediately. No provision further regulates more detailed Foreclosed Collateral procedures, which means that Article 12 A paragraph 1 is vulnerable to misuse. The power of sale is from the person giving the mortgage rights to the Bank before the sale and purchase process is completed in full.

Based on Article 12 of the Mortgage Rights Law and Article 12 A paragraph 1 of the Banking Law also intend to protect the interests of legal subjects. Article 12 of the Mortgage Rights Law can provide legal protection for Mortgage Rights givers to avoid the confiscating Mortgage Rights objects, which has the potential to cause losses for the debtor as the Mortgage Rights giver if they are in non-performance of the contract because they are unable to pay the credit.

The sale of the collateral, the Mortgage Rights object, can get the highest price. From the sale proceeds, the creditor has the right to obtain repayment of the receivables. Meanwhile, if the sale proceeds of the mortgage right object exceed the value of the debtor's debt, then the excess sales proceeds are the rights of the debtor as the party providing the mortgage right.

Based on Article 12 A paragraph 1 of the Banking Law, this provision can provide legal protection for the Bank as a creditor from NPL (Non-Performing Loans) problems. The high number of NPLs results in banks experiencing losses, which can be in the form of no receipts from funds that have been disbursed (credit principal) or interest. NPL is the pressure on banks' income figures, causing banks to lose opportunities to earn interest and experience a decline in overall income (Andi Nursyahriana, Michael Hadjat and Irsan Tricahyadinata, 2017). This decrease in revenue has a significant impact on the stability and health of the Bank. Therefore, Collateral Foreclosed by the Bank must be liquidated immediately to improve the Bank's financial condition. Even though the liquidation process takes one year, it cannot be separated from the challenge of difficulty in finding buyers for the collateral. However, NPL can affect the health of the Bank because the Bank is an institution that carries out an intermediation function where the Bank is tasked with distributing funds to the community through various types of credit. Meanwhile, the funds allocated are savings deposits by customers or the public. So NPL should be solved as soon as possible to minimize problems faced by the Bank and the community.

Article 12 of Mortgage Rights Law and Article 12A of Banking Law have the same objective despite having quite different bases. Therefore, these do not need to be contradicted. However, through Foreclosed Collateral arrangements, collaboration should be carried out to balance legal protection efforts for debtors and creditors. Based on the provisions of Article 12 of Mortgage Rights Law and Article 12 A of Banking Law, there are several principles can be formulated in the Foreclosed Collateral procedure, as follows:

- Regulations on Foreclosed Collateral should aim to assist banks in accelerating the settlement of their debtor obligations.
- Banks can only foreclose collateral from loans that, within a certain period, have been classified as NPL;
- Procedures for implementing Foreclosed Collateral in the form of mortgage rights can only be carried out through auctions, outside auctions (private buying and selling), or other methods that do not conflict with the provisions of Article 20 of Mortgage Rights Law;
- The price determined in the Foreclosed Collateral process must be done at a reasonable price;
- Banks are not permitted to make the collateral purchased as the owner;
- The collateral should be immediately liquidated so that the proceeds from the collateral sale can be returned to the Bank for further use by the Bank;
- The Bank has the right to obtain repayment of its receivables from the liquidation of collateral that has been repossessed. Meanwhile, if the liquidation proceeds from the collateral exceed the value of the guaranteed debt, then the debtor is still entitled to obtain the excess from the liquidation proceeds.

The principles and procedures of Foreclosed Collateral should be immediately formulated in a government regulation. If there is no technical regulation regarding implementing a Foreclosed Collateral, it will open up opportunities for irresponsible parties to smuggle the law to gain personal gain. Therefore, this government regulation should detail the Foreclosed Collateral's terms and conditions and procedures. So that there is a legal instrument that becomes a clear and comprehensive reference. So, it can avoid misuse of Article 12 A of the Banking Law as a provision that legalizes attempts to take over collateral by creditors improperly and to the detriment of debtors.

## CONCLUSION

The Foreclosed Collateral is essential in helping Debtors and Creditors avoid losses. Banks have an interest in carrying out Foreclosed Collateral to maintain the Bank's health so that it does not deteriorate due to the occurrence of NPL (Non-Performance Loans). Apart from that, this provision can also protect the debtor or mortgage provider. Foreclosed Collateral can prevent the debtor's debt from doubling due to accumulating interest. The regulations of Foreclosed Collateral also protect debtors from confiscating collateral which may be carried out by creditors when the debtors do not perform the contract or cannot pay off their debt. Article 12 of the Mortgage Rights Law allows creditors to become buyers or auction participants for the mortgage objects, as long as the purchase is carried out by Article 20 of Mortgage Rights Law. The Foreclosed Collateral principle and Article 12 A of Banking Law are related to the provisions of Article 12 of Mortgage Law. Therefore, these two articles do not need to be contradicted. However, through the Foreclosed Collateral procedure, collaboration should be carried out to achieve a balance in legal protection efforts for both debtors and creditors. The government should immediately formulate government regulations regarding Foreclosed Collateral as mandated by the provisions of Article 12 A Paragraph 2 of Banking Law. So that Foreclosed Collateral and Article 12 A of Banking Law can be implemented properly.

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