The Nature of the Notary Settlement Deed in the Settlement of Foreign Collaterals (AYDA) between Creditors and Debtors

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Abstract

Banking in Indonesia currently tends to decrease its performance, due to the increasing number of non-performing loans (NPL) ratios. Juridical obstacles in the implementation of AYDA, due to the existence of vague norms in POJK No. 33/POJK.03/2018, in Article 27 paragraph (3). Problem Formulation: 1). How is the nature of the Notary Settlement Deed in settling bad loans by means of AYDA being able to fulfill the sense of justice of the Debtors and Creditors? 2). What are the requirements and elements of legal action that must be contained in the Notary Settlement Deed in the implementation of AYDA in order to be able to have legal force of proof, legal power of levering or transfer of rights to land collateral, and has binding legal force? 3). To what extent is the Notary Settlement Deed final, binding and meet the criteria as a modern legal product in the settlement of non-performing loans using Foreclosed Collateral (AYDA)? This type of research is normative legal research or legal research; One solution to the implementation of Foreclosed Collateral (AYDA) whose norms are blurred; is resolved by a Notary Settlement Deed because it contains elements: acknowledgment of debt, acknowledgment of default, statement of settlement by submitting collateral by voluntary auction, Deed of Juridische Levering and Faithtelijk Levering, evidence of Settlement, Roya's order, Emptying, and no legal remedies in the future. The results of the study show that the Notary Settlement Deed reflects a sense of justice, has legal power of proof, binding legal force and executive legal force, because it is like the Grosse Deed of Debt Recognition, Voluntary Submission of Collateral, Juridische Levering and Faithelijk Levering, and there is no legal remedy; with several conditions that must be met, namely: There is an agreement to end the dispute; written form/ deed; made by people in power. The Notary Settlement Deed reflects a legal product with modern characteristics. As for the novelty, the Notary Settlement Deed contains elements of Debt Recognition like the Groosse Debt Recognition Deed. The Novelty Peace Deed contains Juridische Levering and Faithelijk Levering and the Notary Settlement Deed Novelty is no legal remedy in the future. The implementation of the Peace Deed can be perfect if it meets the following requirements: Juridical Doctrine, Sociological Doctrine, and Philosophical Doctrine. The construction of article 27 paragraph (3) is: "The takeover of the collateral as referred to in paragraph (1) must be accompanied by a Notary Settlement Deed, a Sale and Purchase Agreement Deed (PPJB) and a Deed of Authorization to Sell from the Debtor to the Bank and a Certificate of Settlement from the Bank to the debtor". Conclusion: The nature of the Notary Settlement Deed is proven based on the Grand Theory of Justice, has executive legal force and is a modern legal product.

Keywords: *notary settlement of deed, AYDA, creditors and debtors, business law.*

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1. Introduction

Banking in Indonesia currently tends to decrease its performance, due to the increasing number of non-performing loans (NPL) ratios. Juridical obstacles in the implementation of AYDA, due to the existence of vague norms in POJK No. 33/03/2018, state: Article 27 paragraph (3) foreclosure of collateral as referred to in paragraph (1) must be accompanied by a statement of surrender of the collateral or power of attorney to sell from the Debtor, and a certificate of settlement from the RB to the Debtor. Based on this explanatory, the research problems are,

1. How is the nature of the Notary Settlement Deed in the settlement of bad loans by means of Foreclosed Collateral (AYDA) able to fulfill the sense of justice of the Debtor and Creditor?
2. What are the requirements and elements of legal action that must be contained in the Notary Settlement Deed in the implementation of Foreclosed Collateral (AYDA) in order to be able to have legal force of proof, legal force of levering or transfer of rights to land collateral, and have binding legal force?
3. To what extent is the Notary Settlement Deed final, binding and meet the criteria as a modern legal product in the settlement of non-performing loans using Foreclosed Collateral (AYDA)?

2. Research methodology

This type of research is normative legal research or literature which can be called legal research or "legal research instruction"[4], normative legal research.

3. Results and discussion

3.1. Notary settlement deed in the implementation of foreclosed collateral (AYDA) reflects the value of justice

One solution to the implementation of Foreclosed Collateral (AYDA) which is full of vague norms; so that it can be resolved with the Notary Settlement Deed which is a new legal product as a form of harmonization and reconstructing the concept of Foreclosed Collateral.

3.1.1. Doctrine of justice

According to John Rawls, regarding the concept of justice, that: the concept of justice is an attempt to synthesize a conceptual understanding of justice as fairness; and the concept of justice is considered as a "liberal-egalitarian of social justice" perspective,

[4] Soerjono Soekanto and Sri Mamaudji, 2015, *Normative Legal Research A brief actio*n, 17th edition, PT Raja Grafindo, Jakarta, p. 23.

arguing that justice is the main virtue of the presence of social institutions (social institutions).

3.1.2. Principle of proportionality or balance

According to Agus Yuda Hernoko[5] the principle of proportionality has reflected a combination of several principles, namely the principle of consensualism, the principle of freedom of contract, the principle of balance, the principle of legal equality, the principle of trust, the principle of morals, the principle of deliberation and consensus.

3.1.3. Peace and justice treaty theory

According to Apeldoorn[6]the purpose of the law is: "to regulate the peaceful association of life; and in relation to legal objectives, several theories have been developed, namely: 1). Ethical Theory, 2). Utility Theory, 3). Custody Theory. As for the legal reasons as the cause of the perfect application of the law, it must meet 3 (three) basic values, namely:[7]

1. *Juridical doctrine*,
2. *Sociology*,
3. *Philosophical doctrine*.

3.1.4. Doctrine of legal certainty

According to Utrecht, the Doctrine of Legal Certainty has two meanings:[8], namely first, the existence of general rules and second, in the form of legal security for individuals from government arbitrariness.

The Notary Settlement Deed was agreed through several stages and several meetings to discuss the problem-solving plan and legal construction techniques to be used or taken.

3.2. The notary settlement deed has executive legal power in the implementation of foreclosed collateral

The legal basis of the Notary Settlement Deed can be used to settle bad loans by means of Foreclosed Collateral (AYDA) because the contents of the Notary Settlement Deed contain several elements of legal actions, namely:

1. Deed of Debt Recognition of Debt
2. Deed of Default or Negligence (Mora)
3. Deed of Submission of Collateral by Voluntary Auction

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[5] Agus Yuda Hernoko, 2014, *Agreement Law on the Principle of Proportionality in Commercial Contracts*, Printing: 4, Division: Kencana, Type of Book: New, Surabaya, p. 19.

[6] Dudu Duswara Machmudin, 2003, *Introduction to Law*, A Sketch, Refika Aditama, Bandung, p. 24.

[7] I Gede Atmaja, 1993, *Legal Studies*, in Paper Patrika, No. 62-63, Year XOX March-June, Faculty of Law, Udayana University, p. 68.

[8] Rinduan Syahrani, 1999, *Summary of the Essence of Legal Studies*, Pen. Citra Aditya Bakti, Bandung, p. 23.

4. Deed of Sale and Purchase Agreement
5. Deed of Authorization to Sell
6. Employment Deed
7. Certificate of Settlement from Creditors
8. Letter of Approval for Dismissal of Encumbrance on Mortgage Rights
9. No Legal Efforts in the Future.

3.2.1. The Peace Deed Has Executive Power.

Based on the principles, theories and doctrines contained in the peace agreement which is the legal basis for making a Notary Settlement Deed, it is very clear and is supported by the following theories:

3.2.1.1. Principles

The principles that underlie the Notary Settlement Deed are:

1. Legal Principles of Notary Settlement Deed
2. The principle of consensualism (*consensualism*).
3. Principle of Pacta Sunt Servanda/The Power of Binding (verbindende karcht der overeenkomst)
4. Principle Freedom of Contract (contracts-vrijheid)
5. Principle Balance (evenwichtsbeginsel)
6. The Principle of Legal Equality
7. Principle of Trust (veetrouwensbeginsel)
8. Principle of Legal Certainty
9. Principle Moral
11. Principle Habit
12. Principle Deliberation
13. Principle Legitimate Presumption.

3.2.1.2. Doctrines

The doctrines that underlie the Notary Settlement Deed are:

1. Doctrine of Justice
2. Doctrine of Legal Certainty
3. The Doctrine of Expediency (Utilitarianism Doctrine)
4. The Doctrine of Good Faith.
5. Abuse of Authority Doctrine
6. The Doctrine of Exceptio Non Adimpleti Contactus (ENAC).

The theories that underlie the Notary Settlement Deed are:

1. Peace Act Legal Theory
2. Peace Treaty Theory
3. Authority Theory
4. Dispute Resolution Theory
5. Proof Theory
6. Legal Effectiveness Theory

7. Theory of the Force of Binding Law.

3.2.2. Interpretation of the fuzzy norms of the provisions on collateral taken away (AYDA)

Escape Norms in Article 27 paragraph (3) POJK No. 33/2018: the takeover of the collateral as referred to in paragraph (1) must be accompanied by:

a). Statement of Collateral Submission.
b). "or" Power of Attorney to Sell from the Debtor,
c). Certificate of Settlement from the BPR to the Debtor.
d). Made by hand.

3.2.3. Legal interpretation

The evaluation carried out in the fuzzy norm research is using various interpretations of interpretation and legal construction; interpretation can be:[9]

3.2.4. Grammatical interpretation

Statement of Collateral Submission The meaning of the word :

- "Statement Letter" means that it is only done or executed unilaterally by the Debtor.
- "Delivery of Collateral" is this delivery intended for the Bank to receive the collateral for sale, to repay the debtor's loan.

3.2.5. Systematic interpretation

In a systematic interpretation[10], then Article 27 paragraph (3) is very inspired and related to Article 27 paragraph (1) and Article 27 paragraph (2); the matters regulated in these articles are:

- Article 27 paragraph (1): "BPR may take over the collateral for the settlement of loans that have bad quality".
- Article 27 paragraph (2): "The take-over of the collateral as referred to in paragraph (1) is temporary.
- Article 27 paragraph (3) Foreclosure of collateral as referred to in paragraph (1) must be accompanied by a statement of surrender of the collateral or power of attorney to sell from the Debtor, and a certificate of settlement from the RB to the Debtor.

3.2.6. Historical interpretation

The juridical meaning of the legal basis contained in "Submission of Collateral by Voluntary Auction" and Power of Attorney to Sell must be authentically regulated in

[9] Purnadi Purbacaraka and Soerjono Sorkanto, 1989, *Legislation and Jurisprudence*, Pen. PT Citra Aditya Bakti, Bandung, p. 13.
[10] I Made Pasek Diantha, 2016, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Pen., Kencana. Jakarta, p. 154.

the form of "Deed", because it is related to the conditions for the transfer of rights and registration of land rights; all such legal actions can only be summarized by a Notary Settlement Deed.

3.2.7. Teleological interpretation

Whereas carrying out business activities must always pay attention to the principle of prudence and the principle of sound credit.

3.2.8. Extensive and restrictive interpretation

The legal act of "Submission of Collateral" by the owner of the collateral must be made based on an authentic deed. The Power of Attorney must be specifically regulated for its designation based on the Sale and Purchase Agreement (PPJB) which is based on the Notary Settlement Deed.

3.2.9. Legal construction or legal composition

Paul Scholten describes the construction method as follows:[11] analogy (argumentum per analogiam) is only one of the construction methods, beyond that there are legal refinements or legal refinements (rechtsverfijning).[12]

The elements contained in the legal construction of Article 27 paragraph (3) can be adopted by making a Notary Settlement Deed, because the contents of the Notary Settlement Deed contain the following elements:

1. Elements of Debt Recognition.
2. Default or traffic jam.
3. Submission of Collateral as compensation for Debt Payments.
4. Sale and Purchase Agreement (PPJB)
5. Selling Power
6. Clearance Certificate.
7. Letter of Elimination or deletion of Mortgage Rights.
8. Agree not to take legal action in the future.

The legal construction of Article 27 paragraph (3) should be as follows: the takeover of the collateral as referred to in paragraph (1) must be accompanied by a Notary Settlement Deed, a Sale Purchase Agreement Deed (PPJB) and a Deed of Authorization to Sell from the Debtor to the Bank and a Certificate of Settlement from the BPR to the Debtor.

[11] Paul Scholten, Scholten, Mr. C. Asser's, 1934, *Handleiding ot de Beoefening van het Nederlandsch burgerlijk Recht: Algemeen Deel,* WEJ Tjeenk Willink, Zwole, p. 63.
[12] Mochtar Kusumaatmadja, Arief Sidharta, 1999, *Introduction to Law,* Pen Alumni, Bandung, p. 111.

3.2.10. Executional power of notary settlement deed

The binding legal force of the Peace Deed is regulated based on: Based on Article 1851-1864 of the Civil Code, Article 130 HIR and Article 154 R.Bg a peace agreement or a peace deed will have legal force if it fulfills several conditions including:

- Agreement/deed of peace ends the case
- The peace agreement/deed is made in written form
- The party who makes the agreement is the person who has the power.

3.2.11. Novelty of notary settlement deed

The first novelty, There is an element of Debt Recognition which must be the legal basis or basis for the Notary Settlement Deed.

Novelty the second is the submission of collateral by the owner of the collateral or the Debtor. The concept is that the delivery of the collateral must be carried out by means of the Collateral Submission by "Voluntary Auction".

The third novelty, that the Notary Settlement Deed is one of the best ways or solutions because the parties agree not to take legal action in the future, it should be "final and binding".

The fourth novelty, that the Deed of Peace is the legal basis or basis for levering (Juridice Levering) or the transfer of land rights; and it has regulated the executive power in the form of a Deed of Authorization to Sell and a Deed of Employment Statement (Faitelijk Levering).

The fifth novelty, that the settlement with the Notary Settlement Deed reflects the values of Justice, which are based on the main principle that there is an agreement between the parties.

The sixth novelty, that the Notary Settlement Deed based on Pacta Sunt Servanda, the Exeptio Non Adempleti Contractus Doctrine and the Economic Analysis of Law concept, is very simple, cheap, fast and in accordance with the expectations of the parties, so that the principles of justice, expediency, and certainty the law is fulfilled.

The seventh Novelty, that the transfer of rights to the collateral when the Deed of Settlement, the Deed of Sale-Purchase Agreement and the Deed of Authorization to Sell has not yet been deducted from the Mortgage Rights or Roya can be anticipated by stating in the Deed of Sale and Purchase Agreement and the Deed of Power of Attorney that apply after the Roya .

The eighth novelty, that with the Deed of Settlement, Debtors and Creditors can choose how to settle bad loans according to the agreement, not based on court decisions or other institutions.

The ninth novelty, that the Notary Settlement Deed has the power of proof, and is stronger binding by being upgraded from the Dading Deed confirmed to the Vergelijk Deed at the District Court.

Some novelties are related to rhetoric, reconceptualization, and reclassification, namely:

1. The theory of surrender of collateral with the concept of Foreclosed Collateral (AYDA), especially as stated in article 27 paragraph (3), with the Notary Settlement

Deed is the concept of non-litigation settlement of problem loans which has the power of Juridiche Levering and Faithelijk Levering.

2. The conceptualization of settlement of bad loans with AYDA by way of settlement in the form of a Notary Settlement Deed is a Grosse Concept of Deed of Recognition of Debt; Concept of Economic Analysis of Law; where this concept has a close correlation with the Credit Agreement (PK) or Debt Recognition as a "Principal Agreement", and if it has been declared paid off, then the "Credit Agreement" engagement is canceled, then the "Credit Rights" which automatically burdens the collateral also delete.

3. Reclassification. The Deed of Peace should be made in an Authentic Deed; due to implementation such as Grosse Deed of Debt Recognition, AYDA is related to the theory of "Levering" which relates to collateral in the form of land and/or buildings; therefore if it is not made in the form of a Deed; then the legal force of proof. binding legal force and imperfect legal force.

3.3. The notary settlement deed is final, binding, and fulfills the prospect criteria for modern legal products in the settlement of bad loans

3.3.1. The peace deed is final and binding

The Notary Settlement Deed also has identical characteristics with the meaning of being final and binding; because the entire legality of a notarial deed contains elements of agreement from the parties which are considered valid, binding force, perfect proof power, and has executorial legal force known as the Dading Deed. The Dading Deed made by a Notary can be requested for confirmation to the Court so that it becomes a Vergelijk Deed whose legal force is at the same level as the Court's decision which has been signed or has permanent legal force and there are no legal remedies at a later date;

The binding legal force, the legal power of proof and the legal force of legal certainty will provide executive power because it has contained legal powers: Debt Recognition, "Yuridische Levering and Feithelijk Levering". The principle of Pacta Sunt Servanda which makes the parties a law for those who make it which is one of the legal considerations in the Notary Settlement Deed, then the legal effect is that the Peace Deed is final and binding.

3.3.2. Characteristics of modern law

The definition of the characteristics of a modern legal system according to the KBBI (Big Indonesian Dictionary) is an arrangement of various elements that are interconnected and orderly so that the characteristics of a modern legal system in general include:

- Productive, punctual, future oriented, honest and efficient.
- Composed by the diversity of implementation and content of the rules.
- In an agreement that contains a legal system of obligations, transactions and rights in it, usually regardless of gender, age, religion and social class.
- The implementation is general and has a universal nature.
- Has hierarchical assertiveness.

- The law is carried out in accordance with existing procedures.
- Rational.
- Run by experienced people.
- Each part is interconnected and specializes.
- In accordance with the development of society, the law can change easily.
- Has a state institution consisting of law enforcement and law enforcement agencies.
- Each state institution (judicial, executive and legislative) has a clear distinction.

3.3.3. Notary settlement deed as a modern legal product

In the future, in general, the characteristics of the modern legal system, which have been adopted in the Notary Settlement Deed, are:

1. Facilitative and Accommodative.
2. Adaptive.
3. Bottom up.
4. Futuristic.[13]

3.4. The applicability of pancasila in Indonesia's regulation of international investmentotary

Pancasila as the philosophical basis and ideology if the nation of indonesia, are not formed suddenly and not only created by a person as in the case of other ideologies in the world, but the formation of Pnacasila through a long process in Indonesia's history. Historically Pnacasila is intended as philosophiche grondslag, a philosophical basis, for the establishment of the state of Indonesia. The value of Pancasila as the basic philosophy of the Indonesia state i essence is a source of all source of law in the state Indonesia.

State economic development of Indonesia becomes one aspect of national life which is important for structured by applying the values of Pancasila. The basis and starting point in the economic development of Indonesia is summed up in Article 33 of the 1945 Constution of Indonesia ("UUD 1945"). The economic basis of Pancasila is summed up in Article 33, which is actually an Economic Democracy, since the economy is structured as a joint venture based on the principle of the family. This Article is important, because it is the basis and starting point in the economic development of Indonesia. The purpose of the national economy is the social welfare and prosperity for the people.

The importance of the values of Pancasila, becoming a liability to be relied on in all aspects in the context of Indonesia's economic development. The business activities become an important factor in the economic development of Indonesia. Implementation of the values of Pancasila in business activities excavated and built from the values espoused in Indonesian society, which can be derived from the values of religion, culture, customs, or norms, which forms the economic behavior of Indonesian society.

[13] Samuel Mermin, 1982, *Law and the Legal System - an Introduction*, second edition, Little Brown and Company, Toronto, 1982, p. 5-10.

For the implementation of the value of Pancasila in business activities in Indonesia, the academic papers and legislation that regulate and supervise the execution of business activities must make the values of Pancasila as the basic philosophical and sociological in their drafting.[14]

Pancasila values must also be applied in the global economy, regulating foreign investment that enters Indonesia. Since 1967, Indonesia has favored foreign investment as a means to realize national economic development. In that year, the Investment Law was adopted. In 2007, Law No. 25 of 2007 regarding Investment (the Investment Law) replaced the 1967 law in an effort to update and streamline capital investment. There are various conditions to foreign direct investment in Indonesia, whether set by regulation or policy, as the government of Indonesia (GOI) has sought to balance the development of Indonesia through large-scale foreign investment and the needs of micro, small and medium-scale businesses and cooperatives.

The GOI exercises control over foreign investment through an array of methods. Such control is mainly exercised under the supervision of the Capital Investment Coordinating Board (BKPM). The registration and application for business licensing for foreign direct investment must now be submitted through a new system introduced in mid-2018 – the online single submission (OSS) system operated by the OSS Institution. The OSS system was established by Government Regulation No. 24 of 2018 (GR24/2018). GR 24/2018 provides that the OSS Institution is a non-ministerial institution that implements government affairs in the sector of capital investment coordination. At present, the OSS Institution is under the auspices of the BKPM.

Most foreign investment licensing is now conducted through the OSS. However, based on article 4(2) of BKPM Regulation 6/2018, there are some business sectors and activities the licensing of which is still administered by the BKPM. An exemption also applies for financial services (banks, insurance companies, securities companies and the like), the foreign investment supervision of which is under the Financial Services Authority (OJK), and oil companies, the supervision of which is under the Special Task Force for Upstream Oil and Gas Business Activities and the Ministry of Energy and Mineral Resources.

The GOI also controls foreign investment through what is known as the negative investment list, or DNI. The first negative investment list was issued in 1987. The latest DNI is set forth in Presidential Regulation No. 44 of 2016 regarding the List of Business Fields that Are Closed and Business Fields that Are Conditionally Open for Investment (the 2016 DNI). The DNI sets forth restrictions on and conditions for both foreign and domestic investment. Some business sectors are closed to foreign investment altogether and others are subject to conditions, such as maximum foreign ownership and minimum capitalisation. If a business sector is not on the 2016 DNI, it is 100 per cent open for foreign investment.

Currently, the registration and licensing of foreign investment is centralised and integrated through the OSS system. Upon registration, the system will automatically refer to the General Law Online Administration (AHU), a public service platform that records all notarial deeds containing the information on the establishment of companies

[14] Susilowati, Ismail, N., Paripurna, Sulastriyono. *The Values of Pancasila in Business Activities in Indonesia*. Mimbar Hukum, vol. 28 no. 1, 2016, p. 111.

and any related changes. Additionally, there are various other ways the OSS and other government authorities regulate foreign investment activities. These may vary from laws and regulations to unwritten policies. Foreign investors need to be aware that these regulations and policies may be imposed by the OSS system and other governmental authorities regulating businesses in Indonesia.[15]

There are two key common forms of foreign investment in Indonesia,Direct Foreign Investment (where the investor invests capital in a new or existing company, in order to establish a business or business presence in Indonesia and participate in the management of the investee company) and Indirect Investment (where the investor invests through the purchase of securities in the capital markets, such as equity, debt or a combination of both, and is less interested in participating directly in the management or control of the investee company).

Foreign investment has previously been regulated in the Investment Law with the following provisions: (1) foreign investment and domestic investment have different requirements; (2) the application of prohibitions for foreign investors to carry out production in the business sector of machines, weapons, explosive devices, and war equipment, as well as matters which are then regulated by law; (3) the government is the provider of facilities to investors who will invest in Indonesia; (4) investment facilities provided by the government do not include the tourism sector; and (5) the owner agency may determine the investment company, unless otherwise stipulated by law. The latest government regulations on foreign investment are contained or updated in the following Employment Creation Law: (1) between foreign investment and domestic investment there is no requirement to distinguish them; (2) stipulation of prohibition for foreign investors to carry out activities in the cultivation sector and the first class of narcotics industry, all forms of casino and/or gambling activities, catching fish species classified in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, taking or utilizing dead coral or live coral and coral from nature as aquariums, jewelry or souvenirs, and building materials, industrial chemical production and chemicals that can damage the ozone layer, as well as chemical weapons production industry; (3) the central government is the only party that provides facilities to investors who will invest in Indonesia; (4) investment facilities that will be received by investors include the tourism sector; and (5) the central government determines the criteria, standards, procedures or procedures, and norms for investment companies.[16]

4. Conclusion

Whereas, the purpose of law is to regulate peaceful association of life, solely to realize justice as a Grand Theory which is based on ethical theory and utility theory whose goal is to be able to provide benefits and be effective so as to be able to realize the greatest happiness for the greatest number of people. happiness for the greatest number) as a teaching of eudaemonism or utilitarianism; which is able to base the Notary

[15] Darrel R. Johnson & Greita Anggraeni, *Indonesia Foreign Investment Review - Law and Policy*. SSEK: Indonesian Legal Consultants, 2020.

[16] Ayu Putri Rainah Petung Banjaransari, *Investment Effect on Wage System in Pancasila Industrial Relations based on Job Creation Law*. Jurnal Hukum Prasada, vo; 9 no. 1, March 2022, p. 48.

Settlement Deed. If the law applies perfectly, it must meet 3 (three) basic values, namely: 1). Juridical doctrine, 2). Sociological doctrine, 3). Philosophical doctrine.

The executive power of the Notary Settlement Deed is due to the fact that the Peace Deed already has perfect evidentiary power, and has a valid and binding legal force. The Notary Settlement Deed contains elements of Debt Acknowledgment, Debt Acknowledgment that the Debtor has defaulted or mora, Statement of surrender of collateral by voluntary auction by the Debtor, proof of credit has been paid off, and Deed of Leveraging in the form of Sale and Purchase Agreement, Deed of Authorization to Sell, Deed of Employment Statement, Letter of deletion of the imposition of Mortgage Rights, and there will be no legal remedies in the future by the Debtor and Creditor.

The Notary Settlement Deed is final and binding because it contains a statement that the parties will not take any legal remedies in the future; so that in the future the settlement of bad loans by means of Foreclosed Collateral (AYDA) with a Peace Deed is the best solution and at the same time has fulfilled the criteria as characteristics of Modern Law based on Pancasila, namely meeting the criteria for a facilitative, accommodating legal product, adaptive, bottom-up and futuristic.

5. Suggestions

In the harmonization and reconstruction of Article 27 paragraph (3), the researchers suggest several things as follows:

For legal actions, a letter of surrender of collateral or a power of attorney to sell should be made in the form of an authentic deed of notarial peace deed.

Whereas, the settlement of bad or non-performing loans should be carried out based on non-litigation settlement on the basis of the Notary Settlement Deed Law, Financial Services Authority Regulation (POJK) No. 33/2018 in particular Article 27 paragraph (3) should be refined or harmonized, so that it can provide legal force of proof, binding legal force and executive legal force; and the elements contained in the provisions of POJK No. 33/2018 can be adopted and even more refined based on the legal basis of the Notary Settlement Deed.

Notary Settlement Deed is a deed that is final and binding because there is no legal action in the future.

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