

Perlindungan hukum terhadap debitur dalam perjanjian kredit : studi kasus perjanjian kredit antara PT. Bukit Pembangkit Innovative dan Bank Negara Indonesia = Legal protection for the debtor in the loan facility agreement : case study of the loan facility between PT. Bukit Pembangkit Innovative and Bank Negara Indonesia

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Abstrak

PT Bukit Pembangkit Innovative PT BPI merupakan sebuah Independent Power Producer IPP yang mendapatkan Power Purchase Agreement PPA ,dari PLN pada tahun 2011. PPA adalah perjanjian jual beli tenaga listrik antara IPP dan PLN selama 30 tahun. Untuk pendanaan pembangunan PLTU Mulut Tambang Banjarsari, PT BPI mengeluarkan ekuitas sebesar 30 dan BNI sebesar 70 dari biaya pembangunan PLTU. Kebutuhan pembiayaan pada proyek PLTU diberikan dalam bentuk kredit investasi secara sindikasi. Sejak dimulainya operasi komersial, timbul permasalahan dalam hal ketersediaan PLTU dan juga jaringan transmisi yang menyebabkan munculnya masalah keuangan. PT BPI mendapatkan kendala yang serius dalam pemenuhan kewajibannya mengembalikan pinjaman baik pinjaman pokok maupun bunga dari pinjaman sesuai yang telah diperjanjikan dalam perjanjian kredit antara PT BPI dan BNI. Sehingga terjadi potensi default atau kegagalan dalam pelunasan utang baik besaran maupun waktu pelunasan pinjaman oleh PT BPI. Dalam tesis ini, telah dilakukan penelitian yang bertujuan untuk menganalisa mengenai kesesuaian perjanjian kredit antara PT BPI dan BNI dengan ketentuan yang berlaku, menganalisa mengenai perlindungan hukum yang diberikan kepada debitur dalam klausula-klausula pada perjanjian kredit serta menganalisa mengenai perlindungan hukum bagi debitur jika terjadi resiko default yang timbul dari luar perjanjian kredit. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan kasus dan pendekatan peraturan perundang-undangan yang dilakukan melalui studi kepustakaan dengan studi dokumen atas bahan hukum primer, sekunder, dan tersier. Hasil penelitian dan pembahasan menunjukkan bahwa perjanjian kredit antara PT BPI dan BNI telah sesuai dengan ketentuan yang berlaku, Namun, Klausula-klausula pada perjanjian kredit PT BPI dan BNI tidak sepenuhnya memberikan perlindungan hukum kepada debitur karena BNI masih mencantumkan klausula yang dilarang oleh Undang-Undang No.8/1999 tentang Perlindungan Konsumen dan POJK Nomor 1/POJK.07/2013 tentang Perlindungan Konsumen Sektor Jasa Keuangan, mengenai resiko default yang timbul dari luar perjanjian kredit dalam hal ini disebabkan oleh pihak PLN, yaitu pada saat PLN tidak dapat mengambil seluruh energy yang dihasilkan PLTU karena kesalahan PLN walaupun ada perlindungan "take or pay" tapi tidak melindungi potensi kerugian karena adanya kehilangan kesempatan untuk mendapatkan keuntungan. Klausul "take or pay" menyatakan bahwa jika PLN tidak dapat membeli listrik sesuai dengan jumlah yang disediakan oleh IPP maka PLN diharuskan untuk membayar minimal 80 dari listrik yang diproduksi.

PT Bukit Pembangkit Innovative PT BPI is an Independent Power Producer IPP which has been awarded a Power Purchase Agreement PPA by PLN on 2011. The PPA is a contract or agreement between an IPP and PLN to sell the electricity power for the period of 30 years. To finance the development of Mine Mouth Power Plant of PLTU Banjarsari 2 x 110 MW, PT BPI uses the structure of Debt to Equity ratios of 75 to 25 . It means that PT BPI has to put the equity as much as 30 of the total project cost and the 70 of

project cost was financed by the loan from lender. This loan needed to finance the project is given by a syndication bank as stated in the loan agreement. Started from the commercial operation there is a problem of the availability of the power plant and also the performance of the transmission line which has resulted the financial problem. PT BPI has faced a serious problem in the process of repayment of the loan including the interest of the loan. This problem lead to a potential default or the failure in returning the money that has been borrowed by PT BPI. In this thesis, a thoroughly study has been executed, in order to analyse in depth concerning the compliance of the loan agreement to the valid law and regulation related to such agreement. Also it has been studied all the clauses in accordance with the legal protection for the debtor if there is a default that arisen outside of the loan agreement. This study is a normative study with the case to case approaches and also by the valid regulation approach which is done through the literature study, with the study through all of the legally related documents which can be categorized as primary, secondary and tertiary documents. The results of the study and research has shown that the loan facility agreement between PT BPI and BNI is in compliance with the valid law and regulation however its clauses of the loan agreement has not given all the complete legal protection to the debtor, because BNI still incorporated a clause that is prohibited by the Law Number 8 1999 concerning Consumer Protection and POJK Number 1 POJK.07 2013 concerning Consumer Protection in Financial Services Authority, concerning the default risks that arise from the outside of the loan agreement. In this case because of the default caused by PLN whenever PLN can not take the whole energy because their fault, there will be an opportunity lose for IPP. Even though there is the so called "take or pay" clause in which whenever PLN could not take the power as stated in the contract, PLN must pay the amount of 80 from the availability of the power plant to ensure the IPP will still pay the loan to the bank. So the "take or pay" clause is a kind of protection for the Bank. Also for the Bank itself there is a protection in which as stated in the loan agreement ie. the pledge of shares agreement in which the Share Holders of IPP will pledge all of their share in the IPP.