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Implementation of Syndicated Credit Agreements by Conventional Commercial Banks during the COVID-19 Pandemic

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Abstract

The global spread of COVID-19 in 2020 has led to a decrease in lending and an increase in bank credit risk due to a decline in debtor performance. As an effort to mitigate this impact, banking authorities in various countries have issued guidelines related to easing loan terms and conditions for debtors affected by COVID-19. The Indonesian government through the OJK has issued several national economic stimulus policies that provide concessions to debtors affected by COVID-19. This study will focus on discussing the concept of syndicated credit agreements in Indonesia and the syndicated loan restructuring policies that are enforced in normal times and during the COVID-19 pandemic. As for the discussion, a comparison of rules and policies in other countries will also be presented, as comparison material for review. This study found that there are similarities in the legal construction of ordinary credit agreements and syndicated loans so that the OJK Regulation No.11/POJK.03/2020 and its amendments can be applied to syndicated loans as well. The leniency given to debtors in terms of restructuring during the pandemic includes the quality of restructured loans, approval mechanisms, ceilings, restructuring period.

Keywords: Syndicated Credit, Credit Restructuritation, COVID-19

1. Introduction

1.1 Introduce the Problem

In general, the existence of the COVID-19 pandemic has prompted various countries in the world to implement quarantine policies and movement restrictions to prevent the spread of the disease (Goolsbee & Syverson, 2021). This certainly affects various aspects of life in society, including the world of finance and banking. The COVID-

19 pandemic has played a role in pushing many business actors and consumers into a solvency and liquidity crisis (Bartik et al., 2020). This certainly affects the number of credit requests by business actors and consumers. On the other hand, the pandemic has also reduced the confidence level of banks in providing credit, as well as the number of loans issued (Çolak & ztekin, 2019). This is inseparable from the theory that uncertainty and risk are the main factors in the willingness of banks to provide capital (Pástor & Veronesi, 2013). Therefore, in general, external financing such as credit financing experienced a decline during periods of higher uncertainty (Gungoraydinoglu et al., 2017).

In Indonesia, the decline in lending by banks was generally due to a decline in credit demand (Siregar et al., 2021). This decline does not only occur in ordinary lending, but also in syndicated loans. In 2019, the total value of recorded syndicated credit agreements was US\$26.98 billion. This achievement is much lower than 2018 which was able to reach US\$31.83 billion (Richard, 2021). This trend has finally decreased with the presence of the COVID-19 pandemic. In 2020, loans disbursed through syndicated loan agreements amounted to only US\$23.9 billion or equivalent to Rp334.56 trillion. Moreover, this figure will continue to decline in 2021 with lending through syndicated credit agreements only reaching US\$21.55 billion or equivalent to Rp306.91 trillion from a total of 69 transactions (Damaran, 2022).

In addition to the declining demand for syndicated loans, another problem faced by the banking sector in Indonesia is the occurrence of bad syndicated loans (Siregar et al., 2021). The bad loans eventually led to a request for syndicated loan restructuring by business actors. For example, PT Pejagan Pematang Tol Road (PPTR), a subsidiary of PT Waskita Toll Road (WTR) has signed a syndicated loan restructuring of Rp. 4,553,696,691,000 due to the COVID-19 pandemic which resulted in a decrease in toll revenue receipts (Bahfein, 2021). There are three nominal loans that were restructured through the Deed of Amendment III of the Syndicated Credit Agreement Number 15 dated 31 May 202. The total loan amounting to Rp. 2.62 trillion which matured on 24 May 2021 was extended to end in 2035. The loan period of Rp 987.07 billion which matured on May 24, 2021 was also restructured for a loan term of up to 2035. Meanwhile, the loan period of Rp. 950.31 billion which matured on May 24, 2021 was restructured for a loan term of 2036 (Prima, 2021).

To deal with these problems, an appropriate policy framework and legal rules must be put in place. The rule of law in ordinary circumstances needs to be adjusted to the development of the situation, considering that the COVID-19 pandemic is an extraordinary situation that really has an impact on various aspects of life (Bourdas et al., 2021). In general, there are two policies that can be implemented to support credit flows, namely by increasing the lending capacity of banks and by providing incentives for banks to extend credit (Casanova et al., 2021).

In this regard, in response to the COVID-19 pandemic, the Government of Indonesia issued Government Regulation Number 23 of 2020 concerning Implementation of the National Economic Recovery Program in Support of State Financial Policy for Handling the 2019 Coronavirus Disease (COVID-19) Pandemic and/or Facing Threats. that endanger the National Economy and/or Financial System Stability and National Economic Rescue, which has been amended by Government Regulation Number 43 of 2020. One of the provisions in the Government Regulation stipulates that in the context of implementing the national economic recovery program, the Government may place funds aimed at providing liquidity support to banks conducting credit/financing restructuring and/or providing additional credit/working capital financing. Not only that, based on the Government Regulation, the Indonesian government has also implemented a government guarantee policy for certain business actors, including to obtain syndicated loans.

In addition, the government through the Financial Services Authority (hereinafter referred to as OJK) has also issued OJK Regulation No.11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Coronavirus Disease 2019 which regulates efforts to overcome the effects of the COVID-19 pandemic. This provision is intended for conventional commercial banks, as well as customers affected by the spread of COVID-19, including micro, small and medium enterprises. The provisions regulate changes to the mechanism for determining credit quality, risk management policies, reporting obligations, and credit restructuring, which apply specifically during the COVID-19 pandemic.

Based on the above background, it can be understood that the COVID-19 pandemic has resulted in a decline in lending, including syndicated loan disbursement. The COVID-19 pandemic has also been one of the factors that have increased credit risk, thereby affecting credit restructuring and the performance of conventional commercial banks in carrying out their functions as credit distribution institutions. However, to deal with these problems, the Indonesian government has issued several regulations to facilitate traffic in the distribution and restructuring of syndicated loans. Therefore, this study will focus on discussing the concept of syndicated credit agreements in Indonesia, as well as comparing the rules for disbursing syndicated loans in normal times and during the COVID-19 pandemic. In addition, this study will also discuss the concept and comparison of syndicated loan restructuring rules in normal times and during the COVID-19 pandemic. As for the discussion, a comparison of rules and policies in other countries will also be presented, as a comparison material for review.

1.2 Explore Importance of the Problem

Until now, there has been no legal research that discusses financing and restructuring of syndicated loans during the COVID-19 pandemic. In the article entitled "Study of Syndicated Loans Under Contract Law," Aristo Djaman is only limited to discussing the legal construction and position of the parties in Syndicated Loans. However, this research has not discussed more specifically regarding financing and restructuring of syndicated loans during the COVID-19 pandemic (Djaman, 2019). In addition, in an article entitled "Impact of the COVID-19 Shock on Banking and Corporate Sector Vulnerabilities in Indonesia", Reza Y. Siregar and his new friends discussed the impact of the COVID-19 pandemic in the banking and general lending (Siregar et al., 2021). Similarly, in the article entitled "Legal Analysis of Credit Relaxation During the Corona Pandemic with Loan Allowances Based on OJK Regulation Number 11/POJK.03/2020", Dhevi Nayasari Sastradinata and Bambang Eko Muljono have discussed there is a policy of leniency in financing and credit restructuring in general during the COVID-19 pandemic. However, this research has not discussed this policy further if it is related to a special credit context, namely syndicated loans with parties that are more complex than ordinary credit agreements (Sastradinata & Muljono, 2020).

2. Method

The method used in this paper is a normative legal research method (doctrinal research). This method is carried out to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Marzuki, 2010). The approach used in this research is a legal approach by examining the laws and regulations governing the law, a comparative approach by comparing credit restructuring arrangements in Indonesia with other countries, and a conceptual approach by analyzing legal concepts related to credit syndication. The data collection technique used is literature study, which is done by reading, reviewing, and making notes from books, laws and regulations, documents and writings related to syndicated credit arrangements.

3. Results

Article 1 point 11 of Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 states that credit is the provision of money or claims that can be equated with it, based on an agreement or loan agreement between a bank and a third party. others that require the borrower to repay the debt after a certain period of time with interest. According to Article 6 letter b of the same Act stipulates that one of the businesses of commercial banks is to provide credit. Furthermore, Article 5 paragraph (1) letter e of OJK Regulation Number 40/POJK.03/2019 concerning Assessment of Commercial Bank Asset Quality states that Credit is one of the Bank's Productive Assets, namely the provision of Bank funds to earn income (Article 1 point 3 of the Regulation OJK Number 40/POJK.03/2019 concerning Asset Quality Assessment for Commercial Banks).

With regard to credit, Article 11 paragraphs (1) and (2) of Act Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 stipulates that Bank Indonesia is authorized to stipulate provisions regarding the maximum limit for granting credit or financing based on Sharia principles, providing guarantees, placing investment in securities or other similar things, which can be made by a bank to a borrower or a group of related borrowers, including to companies in the same group as the bank concerned. The maximum limit may

not exceed 30% (thirty percent) of the bank's capital in accordance with the provisions stipulated by Bank Indonesia.

With the mandate of Article 34 of Law Number 23 of 1999 concerning Bank Indonesia as amended by Act Number 3 of 2004, as well as the establishment of the OJK based on Law Number 21 of 2011 concerning the Financial Services Authority, the authority now rests with the OJK. Therefore, in relation to the maximum limit for lending by commercial banks, OJK issued OJK Regulation Number 32/POJK.03/2018 concerning the Maximum Limit for Loans and Provision of Large Funds for Commercial Banks. Thus, there is a limit for each commercial bank in providing credit which is determined based on the bank's capital.

Furthermore, Article 3 of OJK Regulation Number 32/POJK.03/2018 concerning the Maximum Limit for Loans and Provision of Large Funds for Commercial Banks stipulates that Banks are required to apply prudential principles and risk management in providing Provision of Funds, including Provision of Funds to Parties Related, Provision of Large Funds, and Provision of Funds to other parties who have an interest in the Bank. One of the steps that can be taken is to determine control measures to overcome the concentration of provision of funds. In the explanation section, it is also explained that one of the forms of control measures is syndication.

Syndicated credit is an agreement to provide loans to borrowers by one or more parties, and the risk of meeting or not fulfilling credit obligations by the debtor in the agreement is borne jointly by two or more syndicated participants who are creditors at the same time (Inshakova et al., 2018). Syndicated loans allow banks to accumulate large credit resources by simultaneously spreading credit risk among several banks. In the execution of syndicated transactions, credit risk is shared among syndicated members in proportion to the portion of the funds lent (Inshakova, 2017). Although syndicated loans consist of several syndicated creditors, one of the characteristics of syndicated loans is that there is only one syndicated loan agreement document, and this document is a general guideline for all syndicated participating banks (Priady, 2021).

In the Indonesian context, the basis of the legal relationship between creditors and debtors of all forms of credit agreements is a loan agreement as regulated in Article 1754 – Article 1756 Burgerlijk Wetboek (Subekti, 1982). However, other opinions also state that the credit agreement is not a loan agreement, but a reciprocal agreement. This means that if the bank and debtor do not fulfill the contents of the agreement, then one party can sue the other party according to the type of achievement (Usanti & Shomad, 2017). In addition, according to this opinion, there are three differences between credit agreements and lending and borrowing agreements in general. First, lending and borrowing agreements are real, while credit agreements are consensual or born with an agreement. Second, the purpose of using the credit given is strictly regulated, so that the credit given cannot be used for purposes that are not regulated. Third, bank credit can generally only be granted in a certain way, such as by using a check or a book-entry order. Although there are different views, it can be concluded that the legal construction of ordinary credit agreements and syndicated loans departs from the same legal basis (Usanti & Shomad, 2017).

In addition, both ordinary credit agreements and syndicated credit agreements are still subject to the provisions of Article 1320 Burgerlijk Wetboek which regulates the legal terms of an agreement, as well as to the provisions of Article 1338 Burgerlijk Wetboek which regulates the freedom of contract for the parties to an agreement (Purborini et al., 2020). However, in addition to these regulations, there are also several rules and circulars issued by Bank Indonesia which are generally used as guidelines for the implementation of syndicated credit agreements, including, a) Bank Indonesia Regulation No. 7/3/2005 concerning the Maximum Limit for Lending; b). Bank Indonesia Circular Letter No. 6/33/UPK dated October 3, 1973 concerning Joint Financing by State Banks; c). Bank Indonesia Circular Letter No.11/26/UPK dated January 12, 1979 concerning Consortium Financing by State Banks; and d) Bank Indonesia Circular Letter No. 16/1/UKU dated June 1, 1983 concerning Financing to Syndicated Banks. Not only that, syndicated credit agreements by commercial banks are also mentioned in OJK Regulation Number 32/POJK.03/2018 concerning the Maximum Limit for Loans and Provision of Large Funds for Commercial Banks.

To be able to obtain financing through a syndicated credit agreement, there are several steps that need to be taken

by the parties (Djaman, 2019). First, parties who need financing through syndicated loans submit an application to the bank. Second, if the bank has received the credit application, the prospective credit recipient gives the mandate to the bank to carry out syndicated financing. Mandate is the authority given by prospective credit recipients to arrangers (lead managers) or to arrangers (managing groups) to form a credit syndicate consisting of banks that will provide financing for prospective credit recipients. Third, the Arranger then makes an offer letter to another bank to finance the prospective credit recipient, accompanied by the documents required by the bank to conduct credit analysis. Fourth, after the existing banks receive the offer from the arranger, negotiations will then be held to reach an agreement on the financing portion and the terms and conditions that will be included in the syndicated loan agreement. Fifth, after the agreement has been reached, the draft agreement is ready, then a syndicated credit agreement is signed. Each bank that is a participant in the syndicated loan also signs the agreement. The signing of the agreement is generally followed by the publication of the syndicated loan operation.

After the syndicated credit agreement is signed by the parties, the administration and operations of the disbursement and use of syndicated credit financing are carried out by one of the banks referred to as the facility agent. The bank that acts as the facility agent must be appointed and appointed by the creditor participating in the syndicated credit before the syndicated credit agreement is signed, and the results of the appointment need to be included in the syndicated credit agreement (Umarani, 2016). In theory, the facility agent and the arranger are generally two different institutions, but in practice the arranger is usually the facility agent (Priady, 2021). The role of the facility agent is important, because only the facility agent is authorized to represent all creditors participating in the syndicated loan, including to file or face lawsuits related to syndicated credit agreements in court. Thus, the legal relationship created between the agent and the creditors participating in the syndicated loan is based on the relationship of the power of attorney agreement is regulated in Article 1792 of Burgerlijk Wetboek (Umarani, 2016).

In addition to appointing a facility agent, the creditors in the syndicated credit agreement also appoint one of them as the creditor's representative on behalf of the "guarantee agent." The agent is tasked with managing and implementing the rights and authority of the creditor on the collateral. Then, the creditors jointly or individually authorize the guarantee agent to grant substitution rights, to represent the creditor in the management and implementation of the creditor's rights and authority over the mortgage and mortgage documents relating to the credit agreement or based on this agreement between creditors, whether existing or future guarantees submitted by the debtor (Cita et al., 2018).

In addition, it should be noted that a syndicated credit agreement is an agreement consisting of several creditors in it. In this regard, the syndicated loan participants have an equal legal relationship between them. Each participant is not responsible for the fulfillment of other participants' achievements. The syndicated participants are only bound together to provide a certain number of credits that are agreed upon according to the part of the commitment of each participant (Priady, 2021). Thus, if there is a syndicated loan participant who defaults, then the other participants are not burdened with liability for the default by that participant.

Furthermore, in channeling all forms of credit, including syndicated loans, banks must pay attention to the principles of good credit. First, for legal certainty, banks must provide credit in the form of a written agreement. This is as regulated in the Attachment to OJK Regulation Number 42/POJK.03/2017 concerning Obligations to Prepare and Implement Credit or Bank Financing Policies for Commercial Banks. Second, banks are not allowed to extend credit to businesses that have been calculated to be unhealthy from the start and will cause losses. Third, banks are not allowed to provide credit for the purchase of shares and working capital in the sale and purchase of shares. Fourth, banks may not extend credit beyond the maximum credit limit (Mulyati & Dwiputri, 2018). On the other hand, although the principle of freedom of contract applies, banks wishing to enter into a syndicated credit agreement must also pay attention to the terms and conditions for providing credit as stipulated in the laws and regulations.

Article 8 paragraph (1) of Law 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 stipulates that in providing credit, Commercial Banks are required to have confidence based on an in-depth analysis of the

intention and ability and ability of the debtor customer to repay the debt or return the said financing in accordance with the agreement. To obtain such confidence, the bank must conduct a careful assessment of the character, ability, capital, collateral, and business prospects of the Debtor Customer before granting credit. These principles are also stated in the Attachment to OJK Regulation Number 42/POJK.03/2017 concerning Obligations to Prepare and Implement Credit or Bank Financing Policies for Commercial Banks with the term 5C Principles.

The 5C principle is the basis for the assessment consisting of the principles of Character, Capacity, Capital, Collateral, and Condition (Tajidan et al., 2021). First, the principle of Character which means the character, nature, habit of the debtor greatly influences the provision of credit, so it needs to be carefully studied and assessed by the bank that will provide the credit. Second, the principle of Capacity which relates to the assessment of a debtor's ability to repay a loan. Third, the principle of Capital, which means the need to examine the amount of capital owned by the debtor or see how much capital the debtor has invested in his business. The more capital invested, the debtor will be seen as more serious in running his business. Fourth, the collateral principle which relates to collateral to be used in case the debtor cannot repay the loan. Usually the value of the collateral is higher than the amount of the credit. Fifth, the principle of Condition, which means that the economic conditions around the residence of the prospective debtor must also be considered to take into account economic conditions that will occur in the future (Lailiyah, 2014).

In addition to the 5C principles, in the banking world there is also a valuation method based on the 7P principles consisting of Personality, Party, Purpose, Prospect, Payment, Profitability, and Protection. First, the principle of Personality means judging customers from their personality or daily behavior as well as their past. Second, the Party principle means classifying customers into certain classifications or groups based on their capital, loyalty, and character. Third, the Purpose principle means knowing the purpose of the customer in taking credit, including the type of credit that the customer wants. Fourth, the Prospect principle is used to assess the customer's business prospects in the future. Fifth, the principle of Payment, namely assessing the ability to pay customers. Sixth, the principle of Profitability as a tool to analyze how the customer's ability to seek profit or profit. Lastly, the principle of Protection which aims to formulate how to keep businesses and guarantees protected (Kasmir, 2012).

Based on the principles of good credit, as well as the principles of assessment in providing credit, the OJK has set standards for determining asset quality that must be applied by banks in providing credit. Article 10 of OJK Regulation Number 40/POJK.03/2019 Concerning Asset Quality Assessment for Commercial Banks stipulates that credit quality is determined based on at least 3 (three) assessment factors, including business prospects, debtor performance, and ability to pay. In this regard, Article 11 paragraph (1) of the regulation stipulates that the assessment of business prospects includes an assessment of the components of business growth potential, market conditions and debtor position in competition, management quality and labor problems, support from business groups or affiliates, and the efforts made by the debtor to protect the environment. Then, Article 11 paragraph (2) of the same regulation also stipulates that the assessment of debtor performance includes an assessment of the components of profitability, capital structure, cash flow, and sensitivity to market risk. Furthermore, Article 11 paragraph (3) of the same regulation also stipulates that an assessment of the ability to pay includes an assessment of the components of the accuracy of principal and interest payments, the availability and accuracy of debtor financial information, completeness of credit documentation, and compliance with credit agreements, suitability of the use of funds and the reasonableness of the source of payment of obligations.

In particular, for determining the quality of syndicated loans, Article 6 paragraph (1) of OJK Regulation Number 40/POJK.03/2019 concerning Assessment of Commercial Bank Asset Quality stipulates that banks are required to determine the same quality for productive assets provided by more than 1 (one) Bank used to finance 1 (one) debtor or 1 (one) same project. Furthermore, in paragraph (2) of the article it is emphasized that this provision applies to productive assets granted under a joint credit agreement to 1 (one) debtor or 1 (one) same project. The explanation part of the provision explains that the productive assets provided are based on a joint credit agreement, namely a credit structure such as a syndicate. In determining the same quality for loans granted under a joint credit agreement, there is no minimum amount limit. Thus, credit extended to 1 (one) debtor or 1

(one) same project based on a joint credit agreement must be determined with the same quality standard even though the credit granted by each Bank is less than or equal to Rp. 10,000,000,000.00 (ten billion rupiah. Article 6 paragraph (3) of the regulation also emphasizes that if there is a difference in the determination of credit quality by the banks involved, the quality determination follows the lowest quality standard of the existing banks.

Furthermore, in addition to banks having to assess and determine credit quality before deciding to join and become a syndicated loan participant, other provisions that need to be considered by banks are regarding the application of credit risk management. Article 1 point 4 OJK Regulation No. 18/POJK.03/2016 Year 2016 concerning the Implementation of Risk Management for Commercial Banks states that credit risk is the potential loss due to the failure of other parties to fulfill obligations to the Bank, including due to debtor failure, credit concentration, counterparty credit risk, and settlement risk. Based on the Elucidation of Article 4 paragraph (1) letter a of the same OJK Regulation, credit concentration risk means the risk arising from the concentration of provision of funds to 1 (one) party or a group of parties, industry, sector, and/or certain geographic areas that have the potential to cause losses are quite large which can threaten the continuity of the Bank's business. Meanwhile, counterparty credit risk is the risk that arises due to the failure of the counterparty to fulfill its obligations and arises from types of transactions that have certain characteristics, for example transactions that are affected by movements in fair value or market value. In addition, settlement risk is the risk arising from the failure to deliver cash and/or financial instruments on the agreed settlement date from the sale and/or purchase of financial instruments.

To prevent these risks, commercial banks are required to implement credit risk management. As for Article 2 paragraph (2) OJK Regulation No. 18/POJK.03/2016 of 2016 concerning the Implementation of Risk Management for Commercial Banks stipulates that the implementation of risk management shall at least include: 1) active supervision of the Board of Directors and the Board of Commissioners, 2) the adequacy of risk management policies and procedures and the determination of risk limits, 3) adequacy of risk identification, measurement, monitoring, and control processes, and 4) risk management information system; and a comprehensive internal control system.

Unlike the standard for determining credit quality under normal circumstances, OJK has issued special regulations that apply during the COVID-19 pandemic. In order to encourage optimization of banking performance, especially the intermediation function, maintain financial system stability, and support economic growth during the COVID-19 pandemic, the OJK issued OJK Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of the Coronavirus Disease 2019, as last amended by OJK Regulation of the Republic of Indonesia 17/POJK.03/2021. Article 2 paragraph (1) of the regulation stipulates that banks can implement policies that support economic growth stimulus for debtors affected by the spread of COVID-19, including micro, small and medium business debtors. The stimulus policies referred to include policies for determining asset quality and restructuring credit or financing. In this case, the regulation does not limit the forms of credit included in the stimulus policy, so the regulation applies to all forms of credit provided by banks, including syndicated loans.

With regard to the policy for determining asset quality in lending, there are slight differences from the regulation under normal circumstances. Article 7 paragraph (1) OJK Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Coronavirus Disease 2019, as last amended by OJK Regulation of the Republic of Indonesia 17/POJK.03/2021 stipulates that banks can still provide new loans to debtors affected by the spread of COVID-19, including micro, small and medium business debtors. Furthermore, paragraph (2) of the same article requires that it be necessary to determine credit quality before the debtor can be granted credit, and the credit assessment is carried out separately from the credit quality previously granted.

As for determining credit quality, Article 7 paragraph (3) of the OJK regulation stipulates that there are 2 (two) mechanisms that can be used. First, for loans with a maximum ceiling of Rp. 10,000,000.00 (ten billion rupiah), the determination of credit quality by conventional commercial banks is carried out in accordance with the

provisions of Article 3 paragraph (1) of OJK Regulation Number 11/POJK.03/2020 Concerning Stimulus. The National Economy as a Countercyclical Policy for the Impact of the Spread of the 2019 Coronavirus Disease, as last amended by the Regulation of the OJK Number 17/POJK.03/2021. Second, for loans with a ceiling of more than Rp. 10,000,000.00 (ten billion rupiah), the determination of credit quality by conventional commercial banks is carried out in accordance with the provisions of OJK regulations regarding asset quality assessment, namely OJK Regulation Number 40/POJK.03/2019 Regarding Asset Quality Assessment of Commercial Banks.

In relation to the first mechanism, Article 3 paragraph (1) of OJK Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Coronavirus Disease 2019, as last amended by OJK Regulation of the Republic of Indonesia 17/POJK.03/2021 stipulates that the determination of asset quality in the form of credit at conventional commercial banks for debtors affected by the spread of COVID-19 including micro, small and medium business debtors can be based on the accuracy of principal and/or interest payments. The ceiling is calculated and applies to 1 (one) debtor or 1 (one) same project. Furthermore, in implementing the first mechanism, Article 8 paragraphs (1) and (4) of the OJK regulations require banks to submit Credit Stimulus Reports or Financing and/or Provision of Other Funds Assessed Based on Accuracy of Payments in the Financial Information Service System by adding information "COVID19".

Furthermore, apart from differences in terms of credit quality determination, there are also differences in terms of credit risk management that need to be determined by banks. Basically, Article 2 paragraph (3) of OJK Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the 2019 Coronavirus Disease Spread, as last amended by OJK Regulation of the Republic of Indonesia 17/POJK.03/2021 does state, that the provisions for the application of risk management as regulated in the OJK regulations regarding the implementation of bank risk management remain in effect and need to be observed. However, in paragraph (4) of the article adds several additional risk management policies that banks need to have during the COVID-19 pandemic. First, banks need to have guidelines for determining debtors who are affected by the spread of COVID-19. Second, assessing debtors who are able to survive the impact of COVID-19 and still have business prospects. Third, to form reserves for debtors who are considered no longer able to survive. Fourth, consider capital resilience and take into account additional reserve formation to anticipate potential declines in credit quality. Fifth, conduct periodic endurance tests.

In this case, there are at least 3 (three) things that distinguish the regulations regarding the provision of syndicated loans in normal times and during the pandemic. These differences can be seen in terms of the mechanism for determining credit quality, risk management policies, and reporting obligations. The comparison of these settings can be described as follows:

Table 2: Comparison of the Regulation of Syndicated Loans in Indonesia

COMPARISON	IN NORMAL CONDITION	IN PANDEMIC
Credit Quality Determination	Credit quality is determined based on at least 3 (three) assessment factors, including business prospects, debtor performance, and ability to pay.	For credit with a maximum of Rp.10,000,000,000.00 (ten billion rupiah), the determination of credit quality can be based on the accuracy of payment of principal and/or interest.

Risk Management	Whereas what is meant by the implementation of risk management shall at least include: 1) active supervision of the Board of Directors and the Board of Commissioners, 2) the adequacy of risk management policies and procedures as well as the determination of risk limits, 3) the adequacy of the process of identification, measurement, monitoring, and risk control, and 4) the risk management system. risk management information; and a comprehensive internal control system.	There is an additional obligation to: 1) have guidelines for determining debtors who are affected by the spread of COVID-19; 2) assessing debtors who are able to survive the impact of COVID-19 and still have business prospects; 3) establish reserves for debtors who are judged to be no longer able to survive; 4) consider capital resilience and take into account additional reserve formation to anticipate potential declines in credit quality; 5) perform periodic endurance tests.
Special Reporting Obligations	None	OJK requires banks to submit Credit Stimulus Reports or Financing and/or Provision of Other Funds Assessed Based on Accuracy of Payments in the Financial Information Service System by adding the statement "COVID19".

In addition to changes to facilitate procedural syndicated loan disbursement, the Indonesian government has also implemented a government guarantee policy for certain business actors affected by the COVID-19 pandemic. Article 16 paragraph (1) Government Regulation Number 23 of 2020 Implementation of the National Economic Recovery Program in the Framework of Supporting State Financial Policies for Handling the 2019 Corona Virus Disease (COVID-19) Pandemic and/or Facing Threats That Endanger the National Economy and/or Financial System Stability and National Economic Recovery, as amended by Government Regulation Number 43 of 2020 stating that in order to carry out the National Economic Recovery Program, the government can provide guarantees. This policy was then followed up in Minister of Finance Regulation Number 98/PMK.08/2020 concerning Procedures for Government Guarantees for Corporate Business Actors through Guaranteed Business Entities Designated for the Implementation of the National Economic Recovery Program, as last amended by Minister of Finance Regulation Number 27/PMK.08/2022. According to Article 1 point 3 of the regulation, government guarantee means a guarantee provided for and on behalf of the Government by the Minister through a guarantee business entity appointed as a guarantor for the fulfillment of guaranteed financial obligations to the recipient of the guarantee in the context of implementing the PEN Guarantee Program. In this case, based on Article 6 paragraphs (1) and (2) of the same regulation, the government has assigned the Indonesian Export Financing Agency (LPEI) and PT Penjaminan Infrastruktur Indonesia (Persero) (PT. PII) as guarantors.

In addition, the attachment to the regulation of the minister of finance further stipulates that in the government guarantee scheme, the portion of the guarantee provided is 60 percent of the credit. However, for priority sectors, the guaranteed portion is up to 80 percent of the credit. These priority sectors include: tourism, automotive, textile and textile products and footwear, electronics, processed wood, furniture, paper products, and other business sectors that meet the criteria for being affected by COVID-19, which is very heavy, labor intensive and/or has a high multiplier impact. future economic growth (Puspasari, 2020).

Furthermore, according to Article 7 of the Minister of Finance Regulation, the government guarantee program is provided for financial obligations for new working capital loans or additional working capital loans obtained during the COVID-19 pandemic. The financial obligations referred to include arrears of loan principal and/or interest/yield in connection with the working capital loan. In this case, Article 1 point 4 of the regulation confirms that what is meant by a loan is any conventional or sharia financing from a certain creditor in the form of a sum of money or a bill which essentially creates a financial obligation to repay based on a loan agreement or

financing agreement. In addition, the Attachment to the Regulation of the Minister of Finance also stipulates that loans that can be guaranteed by new working capital loans or new additional working capital loans are at least Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 1,000,000,000,000.00 (one trillion rupiah) for all affiliated parties, which is given to one guarantee recipient to one guarantor; or multiple collateral recipients joined in a syndicated loan or club deal to a guaranteed one. Thus, loans in the regulation also include syndicated loans as a form of financing.

It should be noted that not all business actors can obtain government guarantees. Only business actors who meet the criteria in the Regulation of the Minister of Finance Number 98/PMK.08/2020 concerning Procedures for Government Guarantees for Corporate Business Actors through Guaranteed Business Entities are Designated for the Implementation of the National Economic Recovery Program, as last amended by Regulation of the Minister of Finance Number 27/PMK.08/2022 that can obtain government guarantees. First, Article 1 number 5 of the regulation stipulates that business actors who can be guaranteed are business actors in the real sector and financial sector whose net assets are above Rp. 10,000,000,000.00 (ten billion rupiah) or annual turnover is above Rp. 50,000,000.0000.00 (fifty billion rupiah). Second, Article 7 paragraph (4) and (4a) of the regulation stipulates that business actors must employ a minimum workforce of 100 (one hundred) people. However, the minister of finance can also grant an exception to the minimum number of workers to 50 people for certain sectors as stipulated in the ministerial letter. Third, affected by COVID-19, including: the value of sales and profits of business actors has decreased; the industrial sector of affected business actors; the business location of the business actor includes a risky area; the business turnover of business actors is disrupted; and/or working capital credit is difficult for business actors to access. Fourth, in the form of a business entity other than BUMN. Fifth, are existing debtors and/or new debtors from guarantee recipients. Sixth, having a current performing loan at the time of application for guarantee. Seventh, are not Business Actors who have obtained Government guarantee facilities prior to the enactment of this Ministerial Regulation who still have outstanding financing/loans at the time the guarantee certificate is issued.

The credit guarantee policy by the government is not only carried out by the Indonesian government. There are several other countries that also implement policies that are almost similar to Indonesia, including (Organization for Economic Co-operation and Development, 2021):

1. Italy

In Italy, there are 2 (two) government guarantee programs, namely the special government guarantee for SMEs (MSMEs) and the Italian guarantee (SACE), which can be submitted by all business actors. The government guarantee specifically for MSMEs applies to companies with a maximum of 499 employees, self-employed and freelance professionals. Basically, the guarantee provided covers 90% of the loan amount, with a maximum guaranteed amount of EUR 5 million. However, if the maximum loan amount is only EUR 30 thousand, then a 100% guarantee is given. The guaranteed loan period cannot be more than 6 years. On the other hand, the Italian Garanzia (SACE) program applies to all types of companies, but SMEs can only apply for guarantees through the program if the amount of guarantee from the government guarantee specifically for SMEs is not sufficient. Through the program, the guarantee provided covers 90% of loans for companies with a maximum of 5 thousand employees based in Italy and having a turnover of up to EUR 1.5 billion. For companies with a turnover between EUR 1.5 and 5 billion or companies with more than 5 thousand employees based in Italy, the guarantee provided covers 80% of the loan. For companies with a turnover of more than EUR 5 billion, the guarantee provided covers 70% of the loan.

2. Switzerland

In Switzerland, companies affected by the COVID-19 pandemic can apply for credit to a bank under a credit bridging facility which amounts to a maximum of 10% of their annual turnover and no more than CHF 20 million. Credit applications up to CHF 500,000 can be fully guaranteed by the government. On the other hand, credit applications exceeding CHF 500,000 can only be guaranteed by the government for 85% of its value, and the lending bank will bear the risk of the remaining 15%.

3. Austria

Prior to the COVID-19 pandemic, Austria had implemented a government guarantee scheme policy for the SME and tourism sectors, with a guarantee value of 80% of the total loan. With the COVID-19

pandemic, the policy was changed to a government guarantee scheme to deal with COVID-19 which includes all business actors. As for loans with a maximum value of 500,000 EUR and a maximum term of 5 years, a guarantee of up to 100% of the total credit can be provided. However, if the credit value is higher up to a maximum of 26 million EUR, then the guarantee provided is a maximum of 90% of the total credit.

4. Discussion

Credit as a productive asset of banks is one of the main sources of income for banks to carry out their functions as collectors and distributors of public funds. Therefore, the spread of COVID-19 which affects the performance and capacity of debtors in fulfilling credit payment obligations will certainly have a domino effect on the decline in banking performance because it affects the income received by banks. This condition was motivated by the increase in non-performing loans in banks. The definition of non-performing loans includes loans that have difficulty in settling their obligations to the bank, either in the form of repayment of principal, payment of interest, payment of bank fees which are the burden of the customers concerned (Veithzal Rivai et al, 2006). The term non-performing loans is also used to indicate the classification of credit collectibility which describes the quality of the credit itself (Djumhana, 2003). Credit quality is classified into five collectibility categories, namely current credit, special mention credit, substandard credit, doubtful credit, and bad credit. The quality of credit included in non-performing loans is credit that is classified as substandard credit, doubtful credit, and bad credit (Hariyani, 2010).

In essence, banks in conducting business activities are required to be guided by the principle of prudence. This principle is manifested, among other things, through analysis conducted by banks in providing credit to gain confidence in the good faith and ability and ability of debtor customers to pay off their debts (Hermansyah, 2014). However, despite having conducted an in-depth analysis before approving or refusing credit, it does not necessarily eliminate the risk of non-performing loans. This is clearly seen from the ratio of non-performing loans which has increased due to the pandemic. Referring to data released by Bank Indonesia and the Financial Services Authority (OJK), there has been an increase in the value of non-performing loans in national banks due to large-scale social restriction policies. (Indonesian Economic and Business Data Center, 2021) In April 2021, the value of non-performing loans reached Rp. 176.48 trillion or a ratio of 3.22% of the total loans disbursed, which was worth 5,482.17 trillion. The number will increase in 2022, reaching Rp. 176.93 trillion (Indonesian Economic and Business Data Center, 2022). This value is far from the value of non-performing loans in January 2020 before the pandemic with a total increase of Rp. 24.78 trillion (Indonesian Economic and Business Data Center, 2021).

To maintain asset quality and minimize potential losses due to non-performing debtors, one of the efforts made by banks is to restructure credit. Credit Restructuring is an improvement effort carried out by the Bank in credit activities for debtors who have difficulty fulfilling their obligations. The methods used to restructure loans are by lowering loan interest rates, extending credit terms, reducing loan principal arrears, reducing loan interest arrears, adding credit facilities; and/or credit conversion into temporary equity participation. Referring to article 57 of POJK 40/2019, all banks are required to have written policies and procedures regarding credit restructuring. Therefore, basically each bank has its own policies and procedures regarding credit restructuring schemes. However, because these policies and procedures are an integral part of the bank's risk management policy as regulated in the POJK for the application of commercial bank risk management, the policy must still be in line with the POJK for the implementation of risk management. Prior to granting approval for credit restructuring, loans to be restructured must be analyzed based on the debtor's business prospects and ability to pay according to cash flow projections. In the event that the restructuring to be carried out is a loan to a related party, the credit restructuring must be analyzed by an independent financial consultant who has a business license and a good reputation, each stage of which must be fully and clearly documented. As for referring to POJK 40/2019, credit restructuring decisions must be made by a party higher than the party that decides to grant credit. If the granting of credit is carried out by a party having the highest authority in accordance with the articles of association of the bank, the decision on credit restructuring shall be made by a party at the same level as the party who decided to grant credit. To maintain objectivity, credit restructuring must be carried out by

officials or employees who are not involved in providing restructured loans.

In response to the impact of the spread of COVID-19 on increasing bank credit risk and decreasing debtor performance and capacity in fulfilling credit payment obligations, OJK has issued OJK Regulation of the Republic of Indonesia Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy Impact. The spread of Coronavirus Disease 2019 in March 2020. The regulations have then been amended twice, namely in December 2020 and the latest in September 2021. Through the second amendment, namely the Regulation of the OJK Number 17 /POJK.03/2021, the policy the stimulus was extended until March 31, 2023. The background for the second change in the POJK Stimulus was to prepare banks and debtors for a soft landing when the stimulus ended so as to avoid potential turmoil or cliff effects (Financial Services Authority, 2021).

As explained in the previous sub-chapter, although this policy does not specifically mention syndicated loans, the policy also applies to syndicated loans because there are no limitations regarding the legal definition of debtors or types of credit. The discussion will then continue on the differences between normal syndicated loan restructuring policies and restructurings carried out due to the COVID-19 pandemic. The policies that will be compared are POJK 11/2020 and its amendments and POJK 40/2019 specifically related to credit restructuring. The first difference is related to the subject of credit restructuring. The previous credit restructuring can only be applied to debtors who meet the criteria as specified in article 53 of POJK 40/2019, namely the debtor has difficulty paying the principal and/or interest on the loan and the debtor still has good business prospects and is considered capable of fulfilling obligations after the loan is restructured. The conditions for these criteria are cumulative so that all of them must be met. On the other hand, POJK 11/2020 which is the basis for granting leniency in credit restructuring cannot be applied to all debtors but only debtors who have difficulty fulfilling obligations to the Bank because the debtor or debtor's business is affected by the spread of COVID-19 either directly or indirectly. In this case, the Bank is given the authority to make guidelines to determine the debtor who is the subject of credit restructuring to support the economic growth stimulus. Banks are still required to observe the precautionary principle in implementing this policy to prevent abuse in the application of provisions.

The next differentiator is related to the determination of the quality of restructured loans. Article 5 number (1) of POJK 11/2020 clarifies that the quality of loans or financing restructured since restructuring is classified as smooth. This is different when compared to POJK 40/2019 which has two provisions related to determining the quality of restructured assets. The first is the highest quality equal to the credit quality prior to credit restructuring as long as the debtor has not fulfilled the obligation to pay installments of principal and/or interest in a row for three periods according to the agreed time. Then, credit quality can increase by a maximum of one level from before the Credit Restructuring if the debtor has fulfilled his payment obligations. POJK 11/2020 also provides concessions regarding the basis for assessing credit quality. If in POJK 40/2019 credit quality is determined based on the assessment factors of business prospects, debtor performance, and ability to pay, in POJK 11/2020 it only depends on timely payment of principal and/or interest on the loan as specified in article 8 paragraph (1).

Regarding the implementation or credit restructuring schemes for debtors affected by COVID-19, it is completely left to the bank so that its implementation will depend on the results of the bank's identification of the debtor's financial performance as well as an assessment of business prospects and capacity to pay debtors affected by COVID-19. In addition, the restructuring period varies greatly depending on the bank's assessment of the debtor with a maximum period of one year. The following table compares the restructuring regulations that apply before and after the COVID-19 pandemic:

Table 2: Comparison of the Regulation of Credit Restructuring in Indonesia

No	Comparison	Restructuring under Normal Conditions (POJK 40/POJK.03/2019)	Restructuring of Debtors affected by COVID-19 by Banking Institutions (POJK Number 11/POJK.03.2020 and its amendments)
1.	Debtors criteria	<ul style="list-style-type: none"> Debtors have difficulty paying 	<ul style="list-style-type: none"> Applied to debtors who are

		<p>credit principal and/or interest;</p> <ul style="list-style-type: none"> The debtor still has good business prospects and is considered capable of fulfilling obligations after the loan is restructured. <p>These two criteria are cumulative as stated in article 53 of the POJK.</p>	<p>directly or indirectly affected by the spread of COVID-19 including micro, small and medium business debtors</p> <ul style="list-style-type: none"> Each bank has its own guidelines for determining debtors who are affected by the spread of COVID-19
2.	Restructured credit quality	<ul style="list-style-type: none"> The highest is the same as the quality of Credit prior to Credit Restructuring, as long as the debtor has not fulfilled the obligation to pay installments of principal and/or interest consecutively for 3 (three) times the period according to the agreed time May increase by a maximum of 1 (one) level of Credit quality prior to Credit Restructuring, if the debtor has fulfilled the payment obligations as referred to in number 1 Credit quality is determined based on the assessment factors of business prospects, debtor performance, and ability to pay 	The quality of the restructured credit or financing is determined to be current since the restructuring.
3.	Approval mechanism	Credit Restructuring decisions must be made by a party higher than the party that decides to grant credit	Banks are given leeway to adjust the credit restructuring approval mechanism. For example, approval is still carried out by a party higher than the creditor or financing lender, but can be done collectively after determining the criteria for debtors who are eligible for restructuring.
4.	Restructuring period	Based on the agreement between creditor and debtor	There is no limitation on the term of the loan restructuring agreement as a result of COVID-19. The term of the restructuring agreement is allowed to be less than or past March 31, 2023

As an example of a credit restructuring scheme for debtors affected by COVID-19 at Bank Rakyat Indonesia (BRI) conventional banks, debtors affected by the corona pandemic can apply for credit restructuring due to decreased turnover caused by COVID-19. There are four restructuring schemes provided by BRI for the micro segment, namely reduction of principal and interest installments with an extension of time, postponement of payment of principal installments with a choice of three to twelve months, postponement of principal and interest installments for a maximum of six months and extension of the term. Ni Putu Eka Wiratmini, 2020). The debtor can choose the desired restructuring scheme when submitting the application, but the approval for the type of restructuring is still left to the bank according to the bank's assessment. Meanwhile, at Bank Buana Finance, there are two credit restructuring schemes provided for debtors affected by COVID-19, namely decreasing the installment value by extending the financing period or decreasing the installment value (maximum installment reduction is 2/3 of the current installment). Cumulative installments will be credited to the principal in the remaining term (Buana Finance, 2020). For the period itself, there are only two choices, namely three months or six months.

The COVID-19 pandemic has consequences for the economy and the accumulation of bank non-performing loans is higher in bank balance reports so that it can disrupt the performance of banks as intermediary institutions (OECD, 2021). This has become the background for banks in various countries to implement policies

as a measure to mitigate the impact of COVID-19, one of which is through credit restructuring. Moving on from this, the next discussion will focus on the restructuring policies implemented by banks in Nigeria and the United Arab Emirates in response to the COVID-19 pandemic.

On March 16, 2020, the Central Bank of Nigeria issued Circular Letter Number FPR/DIR/GEN/CIR/07/049 regarding the 'Central Bank of Nigeria policy measures in response to covid outbreak and spillovers'. These policies include extending the loan moratorium, reducing loan interest rates, as well as regulatory forbearance related to credit restructuring. Through this policy, the Central Bank of Nigeria provides space for Deposit Money Banks (hereinafter referred to as DMB) to restructure loans for businesses and households most affected by the COVID-19 outbreak, particularly oil and gas, agriculture and manufacturing (Central Bank of Nigeria, 2020).

Meanwhile in the United Arab Emirates, the Central Bank of the United Arab Emirates (CBUAE) issued an economic stimulus package called the Targeted Economic Support Scheme (TESS) in March 2020 to support the UAE economy during the COVID-19 pandemic through a series of assistance to the banking sector related to funding, liquidity, loans and capital (Zainab Masoor, 2020). CBUAE is the independent UAE monetary authority. The targets for the TESS scheme include private sector companies, small and medium-sized units (SMEs), and individuals affected by COVID-19. Through the TESS scheme, CBUAE directs every bank and financial company in the United Arab Emirates to offer relief from delays in payment of loan installments or financing. Banks are given discretion to determine policies related to loan maturity extensions, financing to customers and restructuring (Central Bank of The U.A.E., 2021).

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