



**CONSTITUTIONAL COURT
REPUBLIC OF INDONESIA**

**JUDGMENT SUMMARY OF
CASE NUMBER 102/PUU-XVIII/2020**

Regarding

Legal Certainty of Rural Bank Participation in Collateral Auction

- Applicant** : **PT. Bank Perkreditan Rakyat Lestari Bali**
- Case Type** : Judicial Review of Law Number 10 of 1998 on Amendments to Law Number 7 of 1992 on Banking (UU 10/1998) to the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Merits of Case** : The phrase “Commercial Bank” in Article 12A paragraph (1) of Law 10/1998 is contrary to the principle of legal certainty and the right to obtain the same opportunities and benefits as guaranteed by Article 28D paragraph (1), Article 28H paragraph (2), and Article 33 paragraph (4) of the 1945 Constitution.
- Judgment** : 1. Granting the Applicant's Request;
2. Declaring the phrase “Commercial Bank” in Article 12A paragraph (1) of Law Number 10 of 1998 on Amendments to Law Number 7

of 1992 on Banking (State Gazette of the Republic of Indonesia of 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as "Commercial Banks and Rural Banks". Thus, Article 12A paragraph (1) of Law Number 10 of 1998 on Amendments to Law Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia of 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790) which originally read, "Commercial Banks may purchase part or all of the collateral, either through auction or outside the auction based on voluntary submission by the owner of the collateral or based on the power to sell outside the auction from the owner of the collateral in the event that the Debtor Customer does not fulfill his/her obligations to the bank, provided that the purchased collateral should be disbursed as soon as possible", reads in full "Commercial Banks **and Rural Banks** may purchase part or all of the collateral, either through auction or outside the auction based on voluntary submission by the owner of the collateral or based on the power to sell outside the auction from the owner of the collateral in the event that the Debtor Customer does not fulfill his/her obligations to the bank, provided that the purchased collateral should be disbursed as soon as possible";

3. Ordering the loading of this judgment in the State Gazette of the Republic of Indonesia as appropriate.

Judgment Date : Wednesday, September 29th, 2021

Judgment Summary :

The applicant is a legal entity that describes itself as a legal entity in the form of a Limited Liability Company, namely the Rural Bank (BPR) Lestari Bali. In its request, the Applicant requested that the Constitutional Court declare Article 12A paragraph (1) of Law 10/1998 contrary to the 1945 Constitution and not having binding legal force as long as the phrase "Commercial Bank" is not interpreted by Commercial Banks or Rural Banks.

Whereas according to the Court, because the *a quo* request filed is a review of the constitutionality of legal norms, in this case Article 12A paragraph (1) of Law 10/1998 to the 1945 Constitution, the Court has the authority to hear the *a quo* request.

Whereas with regard to the legal standing of the Applicant, according to the Court, the Applicant has been able to explain its constitutional rights and also the perceived loss due to the request of the norms of the law being requested for review. The assumption that the loss is specific and actual, according to the Applicant, is due to the enactment of Article 12A paragraph (1) of Law 10/1998 which, according to the Applicant, has caused multiple interpretations by BI, OJK, and DJKN in making regulations regarding the auction of credit collateral, thus causing the Applicant as a Rural Bank unable to participate in the auction in resolving their customers' bad credit. The assumption that the loss referred to by the Applicant has a *causal verband* (causality) with the enactment of the norms of the law requested for review, which if the Applicant's request is granted, will not result in the constitutional loss as described. According to the Applicant, if the Applicant' request is granted by the Constitutional Court, there will be no multiple interpretations of Article 12A paragraph (1) of Law 10/1998 so that Commercial Banks and Rural Banks will have the right to the same treatment. Therefore, regardless of whether or not there is a question of the

constitutionality of the norms argued by the Applicant, according to the Court, the Applicant has the legal position to act as the Applicant in the *a quo* Request.

Whereas according to the Applicant, Article 12A paragraph (1) of Law 10/1998 contradicts the legal certainty guaranteed in Article 28D paragraph (1) of the 1945 Constitution because Article 12A paragraph (1) of Law 10/1998 gives rise to different interpretations by BI-OJK and DJKN. In addition, according to the Applicant, Article 12A paragraph (1) of Law 10/1998 contradicts the right of convenience to obtain equal opportunities and benefits in order to achieve equality and justice as guaranteed by Article 28H paragraph (2) of the 1945 Constitution because Article 12A paragraph (1) Law 10/1998 eliminates the right of the Applicant to obtain the same opportunity to participate as a participant in the auction of collateral for his customer's bad credits, and to obtain benefits from the takeover of the collateral through the auction of his customer's collateral. According to the Applicant, as fellow banks, the state should treat the same thing to Commercial Banks and Rural Banks.

Whereas according to the Court, Law Number 7 of 1992 on Banking [Law 7/1992] has determined the types and businesses of banks including Commercial Banks and Rural Banks (BPR) [see Article 5 paragraph (1) of Law 7/1992]. Along with the development of the national economy, which moves fast, competitive and is integrated with increasingly complex challenges as well as the changing financial system, the amendment of Law 7/1992 to Law 10/1998 accommodated the general regulation of the implementation of banking business activities based on sharia principles, even give opportunity for commercial banks to open branch offices that specifically carry out activities based on sharia principles. With these developments, Law 10/1998 determined changes to the nomenclature of Commercial Banks, namely banks that carry out business activities conventionally and or based on sharia principles which in their activities provide services in payment traffic. As for the

nomenclature of Rural Bank, it is a bank that carries out business activities conventionally or based on sharia principles which in its activities does not provide services in payment traffic [see Article 1 point 3 and number 4 of Law 10/1998]. Thus, based on Law 10/1998 as an amendment to Law 7/1992, there are conventional banks and sharia banks. Meanwhile, the difference in the nomenclature of Commercial Banks and Rural Banks lies in Rural Bank that do not provide services in payment traffic because this is only intended for Commercial Banks.

Whereas according to the Court, in relation to the systematic regulation of the type of bank business in Law 10/1998, it turns out that it is still the same as the previous law, namely Law 7/1992 which is stipulated in Chapter III with content consisting of three parts, namely Type of Bank, Commercial Bank Business, and Rural Bank business. This means that the regulation of Commercial Bank Business and Rural Bank Business is carried out in separate systematics (in Part Two and Part Three). Even though it is formulated in a separate section, it does not mean that the regulation between Commercial Bank Business and Rural Bank Business is completely separate because in the provisions of Article 15 of Law 7/1992 which is part of the Rural Bank Business regulation which until now remains in effect and no amendment have been made to determine that “The provisions as referred to in Article 8 and Article 11 shall also apply to Rural Banks”. This means that, because there are no amendment to Article 15 of Law 7/1992, the provisions relating to Commercial Bank Business contained in Article 8 and Article 11 which have been amended in Law 10/1998 will still apply to Rural Bank businesses.

Whereas according to the Court, in Law 10/1998, a new norm was also inserted by adding a norm between Article 12 and Article 13 of Law 7/1992, namely the norm of Article 12A of Law 10/1998, in which the provisions in paragraph (1) of the *a quo* norm states " Commercial Banks may purchase part or all of the collateral, either through auction or

outside the auction based on voluntary submission by the owner of the collateral or based on the power to sell outside the auction from the owner of the collateral in the event that the Debtor Customer does not fulfill his obligations to the bank, provided that the purchased collateral should be disbursed as soon as possible.” Substantially, the *a quo* provision is regulating the Foreclosed Collateral (*Agunan Yang Diambil Alih/ AYDA*). The norm of the provisions of Article 12A of Law 10/1998 was originally the essence of the norm of Article 6 letter k of Law 7/1992 which regulates one of the businesses of Commercial Banks, namely "buying through auction of collateral either all or part of in the event that the debtor does not fulfill his obligations to the bank, provided that the purchased collateral should be disbursed as soon as possible”. Although the norm of Article 6 letter k of Law 7/1992 was deleted and amended to the norm of Article 12A of Law 10/1998, if viewed from the systematics of Law 10/1998, the norm of the additional article is still the final provision of Chapter III Part Two which regulates Commercial Bank Business. Meanwhile, Rural Bank based on the provisions of Law 7/1992 is regulated in Chapter III Part Three starting from Article 13 to Article 14, so that it does not become part of a bank's business that can purchase part or all of the collateral, either through auction or outside the auction. Whereas in Law 7/1992, 2 (two) types of banks have been determined, namely Commercial Banks and Rural Banks [see Article 5 paragraph (1) of Law 7/1992].

Whereas according to the Court, with regard to the activities of banks buying part or all of the collateral either through auctions or outside of auctions, it has turned out not only to be regulated in Law 10/1998 but also regulated in Law No. 21/2008 on Sharia Banking (UU 21/2008) as stated in Article 40 paragraph (1) of Law 21/2008 that "In the event that the Facility Recipient Customer does not fulfill its obligations, the Sharia Bank and UUS may purchase part or all of the Collateral, either through or outside the auction, based on voluntary submission by the owner of the Collateral or based on an authorization to sell from

the owner of the Collateral, provided that the purchased Collateral must be disbursed no later than 1 (one) year". This provision stipulates that Sharia Banks and Sharia Business Units (Unit Usaha Syariah/ UUS) may purchase part or all of the collateral, either through auction or outside the auction. As for what is meant by Sharia Banks in Article 40 paragraph (1) of Law 21/2008, they consist of Sharia Commercial Banks and Sharia Rural Banks [see Article 1 number 7 of Law 21/2008]. Sharia Rural Banks (Bank pembiayaan Rakyat Syariah/ BPR Syariah) are basically the same as Rural Banks (Bank Perkreditan Rakyat/ BPR) in Law 7/1992 and Law 10/1998, including in their activities that both do not provide services in payment traffic [see Article 1 number 4 of Law 10/1998 *juncto* Article 1 number 9 of Law 21/2008]. While the difference in the use of the terms "financing" and "credit" is because in sharia banking there is no credit. Thus, based on the provisions of Article 40 paragraph (1) of Law 21/2008 Sharia Rural Banks are allowed to purchase part or all of the collateral, either through auction or outside the auction, as is the case with Sharia Commercial Banks.

Whereas the Court considers that basically Rural Bank has a role that is not much different among Commercial Banks, Sharia Commercial Banks, and Sharia Rural Banks in providing services in the financial sector to the public. Although Commercial Banks have a wider range of business types than Rural Banks, several types of businesses run by Rural Banks generally have similarities with Commercial Banks, which include collecting funds from the public in the form of deposits, providing credit, and providing financing for customers [see Article 13 of Law 7/1992 and Law 10/1998]. Moreover, the provisions of Article 15 of Law 7/1992 clearly state that the provisions in Article 8 and Article 11 of Law 7/1992 and Law 10/1998 which are part of the regulation concerning Commercial Bank business are also applied to Rural Bank businesses. Basically, what distinguishes the type of business of Commercial Banks from those of Rural Banks is that Commercial Banks can run payment traffic services, but in relation to the issues in the *a quo* request, both Commercial

Banks and Rural Banks can run a lending business. Moreover, the provisions of Article 8 paragraph (1) of Law 10/1998 expressly states "In providing credit or financing based on Sharia Principles, Commercial Banks are required to have confidence based on in-depth analysis or the intention and ability and capability of the Debtor Customer to pay off his/her debts or return the intended financing in accordance with the agreement". Because this provision is also applied to Rural Bank businesses based on Article 15 of Law 7/1992, in providing credit or loans to their customers, Rural Banks are also burdened with the same obligations as commercial banks to carry out in-depth analysis of the condition of potential debtor customers. The problem is, even though an analysis has been carried out regarding the intention, ability, and capability of the debtor customer to repay the credit, in reality it can happen that the Rural Bank's debtor customer is unable to repay the loan or credit as agreed, causing bad credit. This condition is likely to occur more and more when the economic situation is weakening. If these conditions are left unchecked, it is very likely that most or all of the Rural Banks will have difficulty developing and may even be in danger of closing their businesses. In contrast to Rural Banks, in dealing with such conditions, Commercial Banks, including Sharia Rural Banks, can use the AYDA instrument to resolve the problem of non-performing loans because this has been clearly stipulated in the law that governs it. This is not the case for Rural Banks whose existence is under the Banking Law (UU 7/1992 and Law 10/1998) because Rural Banks cannot implement AYDA either through auctions or outside of auctions. In fact, the AYDA mechanism, both through auctions and outside of auctions, is an effort to resolve the problem of bad credit by accelerating the settlement of debtor customer obligations. This is because the settlement of bad credit will affect the level of financial health and bank liquidity. Moreover, Law 7/1992 and Law 10/1998 have stated that lending is one form of business that can be carried out by Rural Banks, so that Rural Banks should also be given the convenience of settling bad credit when there are debtor

customer credit that are problematic. In this case, the AYDA mechanism and the lending business are two things that are interrelated and cannot be separated, as is also applied to Commercial Banks, Sharia Commercial Banks, and Sharia Rural Banks. This is also a part of the precautionary principle which is common and commonly applied in financial services.

Whereas according to the Court, Rural Bank is one of the banking institutions guaranteed by law. Rural Bank at this time has experienced development compared to before 1998 when Law 7/1992 had not yet been amended. The existence of Rural Bank has an equally important role in building the national economy, including for the economic progress of remote communities in areas that are difficult to reach by commercial banks. Therefore, Rural Banks should also have the same opportunity as commercial banks in maintaining business continuity. Even Article 40 paragraph (1) of Law 21/2008, has accommodated participation in the auction of collateral for Sharia Rural Banks which basically have a business market similar to that of Rural Bank. If the AYDA instruments and mechanisms through auctions can be applied to Rural Banks then this will certainly be beneficial for Rural Banks because it makes it easier for Rural Banks to overcome bad credit problems.

Whereas according to the Court, the existence of different interpretations of Article 12A paragraph (1) of Law 10/1998 will certainly have a national impact on the course of the collateral auction process and may lead to differences in the standard of treatment for Rural Banks in the implementation of collateral auctions between Rural Banks in the same region and Rural Banks in another region. Different interpretations of Article 12A paragraph (1) of Law 10/1998 create legal uncertainty and eliminate equal opportunities for both the Applicant and the Rural Bank in participating in the auction of collateral for the bad credit of their debtor customers. Article 12A paragraph (1) of Law 10/1998 requires legal certainty to avoid multiple interpretations, and for the sake of equality of auction treatment for Rural Banks in all regions nationally, including equal treatment between conventional Rural Banks

and Sharia Rural Banks, the Court affirms the phrase "Commercial Banks" in Article 12A paragraph (1) of Law 10/1998 should be interpreted as "Commercial Banks and Rural Banks".

Based on all of the above legal considerations, the Court has the opinion that the Applicant's argument is grounded according to law, then the Court renders the judgment in its injunction as follows:

1. Granting the Applicant's request;
2. Declaring the phrase "Commercial Bank" in Article 12A paragraph (1) of Law Number 10 of 1998 on Amendments to Law Number 7 of 1992 on Banking (State Gazette of the Republic of Indonesia of 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790) contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as "Commercial Banks and Rural Banks". Thus, Article 12A paragraph (1) of Law Number 10 of 1998 on Amendments to Law Number 7 of 1992 on Banking (State Gazette of the Republic of Indonesia of 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790) which originally reads, "Commercial Banks may purchase part or all of the collateral, either through auction or outside the auction based on voluntary submission by the owner of the collateral or based on the power to sell outside the auction from the owner of the collateral in the event that the Debtor Customer does not fulfill his obligations to the bank, provided that the purchased collateral should be disbursed as soon as possible", which reads in full "Commercial Banks **and Rural Banks** may purchase part or all of the collateral, either through auction or outside the auction based on voluntary submission by the owner of the collateral or based on the power to sell outside the auction from the owner of the collateral in the event that the

debtor Customer does not fulfill his/her obligations to the bank, provided that the purchased collateral should be disbursed as soon as possible”;

3. Ordering this judgment to be published in the Official Gazette of the Republic of Indonesia as appropriate.