

(Research/ Review) Article

Legal Responsibility of Debitur to Creditors For Acts Against the Law in Credit Agreements (Study of Decision Number 1060/Pdt.G/2023/PN Mdn)

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Abstract: Agreement is one of the most important sources of engagement in civil law. In practice, agreements become the legal basis for parties to regulate mutual rights and obligations. As in credit agreements where credit agreements are one of the most common forms of agreements in banking practices and financing activities in Indonesia. This agreement becomes the legal basis for the relationship between creditors and debtors in the context of providing loan facilities. This article discusses the juridical aspects of credit agreements, starting from the elements of a valid agreement, the principles that underlie it, to the legal consequences that arise in the event of default or unlawful acts by one of the parties. The research was conducted using a normative juridical method that focuses on analyzing laws and regulations, especially the Civil Code and the Banking Law. The results of the study show that credit agreements are not only civilly binding, but also contain potential criminal law consequences in the event of misuse. Therefore, it is important for the parties to understand the contents and legal consequences of the credit agreement thoroughly.

Keywords: Unlawful Acts, Credit Agreement, Legal Liability

1. Introduction

Indonesia is a state of law where every action and action of its citizens is regulated by the provisions of the law, this is in accordance with article 1 paragraph (3) of the 1945 constitution which states “the state of Indonesia is a state of law” even though this statement is very brief but has a very broad meaning, because it requires the state and all citizens without exception to submit and obey the law.

Money is an object that is used as a means of transaction or as a legal means of payment, money is also a symbol of a country that becomes a unifying tool, or can also be a tool of economic control or colonization by one country to another.

The need for economic transactions at this time is quite high. One of the economic transaction service providers is a bank. One example of the convenience offered by banks is the provision of credit loans. The provisions regarding bank credit agreements are regulated in article 1 number 11 of Law Number 10 of 1998 concerning Banking, which states that: “Credit is the provision of money or bills that can be equated with it, based on an agreement or borrowing agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with the amount of interest or profit sharing.” A credit agreement is an agreement between a creditor (usually a bank) and a debtor (customer)

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in which the creditor provides a sum of money or bills to the debtor, which must be returned within a certain period of time with interest.

According to Article 1313 of the Civil Code (KUHPerdara), an agreement is an action in which one or more people bind themselves to one or more other people, accompanied by conditions that must be met to make it valid. Meanwhile, Article 1319 of the Civil Code classifies agreements into two types, namely named agreements (*benoemde* or *nominaatcontracten*), which are specifically regulated in the law by a certain name, and unnamed agreements (*onbenoemde* or *innominaat contracten*), which are not recognized by a special name in the law.

Named agreements (*benoemde* or *nominaatcontracten*) are named agreements (in Dutch: *benoemde contracten* or *nominaat contracten*) are types of agreements that have been specifically regulated in Indonesian legislation, especially in the Civil Code (KUHPerdara). Meanwhile, the definition of an unnamed agreement (in Dutch called *onbenoemde* or *innominaat contracten*) is an agreement that does not have a special name and has not been specifically regulated in the Civil Code, but is still valid and binding as long as it fulfills the legal requirements of the agreement (Article 1320 of the Civil Code) and is subject to the general provisions of book III of the Civil Code.

In civil law, the principles of agreement refer to the basic principles that govern the formation and implementation of an agreement. These principles include the principle of freedom of contract, the principle of consensualism, the principle of legal certainty (*pacta sunt servanda*), the principle of good faith, the principle of personality, the principle of trust, the principle of legal equality, the principle of balance, the moral principle, the principle of propriety, and the principle of protection are interconnected and cannot be separated. All of these principles are applied together in the right and fair proportion, serving as a framework that binds the contents of the agreement.

According to D. Y. Witanto, financial institutions are divided into two types, namely banks and non-banks, bank financial institutions are institutions that collect funds from the public in the form of deposits (such as savings, current accounts, deposits) and then channel them back to the public in the form of credit, financing, or other financial services. Its main functions include financial intermediation, provision of payment services, and other financial service activities, while non-bank financial institutions are Non-Bank Financial Institutions (LKBB) or financial institutions that provide financial services, but do not have a license to collect funds in the form of demand deposits or savings like banks, both have a very important role in supporting business activities in the modern era. Almost all business activities today require the services of financial and banking institutions. This is due to the shift in transaction systems from manual transactions to digital transactions, which utilize electronic devices and internet networks. This shift occurs because digital transactions are considered easier, faster, and more practical, as they allow transactions to be carried out anytime and anywhere without being hindered by time and space constraints.

Based on the definition in Law Number 10 of 1998 concerning banking, credit is a facility that allows banks to provide a number of funds or bills to individuals or organizations, with the obligation of the recipient to repay the loan within a certain period of time and pay interest according to the agreement. Banks use a number of considerations as a basis for deciding whether a credit application can be approved or not.

In the creditworthiness assessment process, banks require accurate and complete data and information from prospective borrowers. This information is very important to help banks make the right decisions while reducing future risks. Therefore, prospective borrowers must provide clear and detailed information so that the analysis carried out by the bank can run optimally. The provisions regarding bank credit agreements are regulated in Article 1 number 11 of Law Number 10 of 1998 concerning Banking, which states that: "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan and borrowing agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with the amount of interest or profit sharing.

In the context of credit agreement law, the legal responsibility of debtors to creditors becomes an important issue, especially when unlawful acts arise. Unlawful acts are actions in which a person violates the provisions of the law so as to cause harm. This unlawful act can cause harm to one of the parties, so an understanding of the rights and obligations of each party in the credit agreement is very necessary.

However, in practice, it is often found that there are unlawful acts from the parties involved in credit. This unlawful act can occur either from the debtor, creditor, or other third parties involved. Unlawful acts are often questioned in the structure of the treatment of breach of promise or default. While both are things that originate from the bond, namely the conception of breach of promise / default originates from the bond that originates from the agreement and the structure of the tort originates from the bond that originates from the constitution.

Unlawful acts, which is a translation of *onrechtmatige daad*, are regulated in Article 1365 of the Civil Code (KUH Perdata) Book III in the section on obligations born of law. Therefore, unlawful acts become one of the sources of obligations arising under the law. This occurs because of the existence of unlawful acts that cause harm to other parties, giving rise to an obligation in the form of rights and obligations for the parties involved. For those who suffer losses, these actions give them the right to sue and obtain compensation from creditors. Meanwhile, the creditor has an obligation to compensate for its actions that are contrary to the law and cause losses, both in the form of material and immaterial losses for the party who suffered the loss.

According to R. Wirjono Prodjodikoro, the term tort is a technical term in the field of law, whose true meaning can only be properly understood by examining the meaning of Article 1365 of the Civil Code. One of the relevant cases related to this can be seen in Decision Number 1060/Pdt.G/2023/PN Mdn, where there was a dispute between the creditor and the debtor due to unlawful acts in the credit agreement. This case reflects real problems in the practice of civil law, especially regarding how the form of legal responsibility that can be imposed on debtors who commit unlawful acts against creditors in credit agreements? And how is the application of law in the settlement of unlawful acts by the court based on decision Number 1060/Pdt.G/2023/PN Mdn? This is important to study considering the potential material and immaterial losses suffered by the creditor due to the irresponsible actions of the debtor.

2. Research Method

In this Journal Research, researchers used normative juridical legal writing methods, this research method is a research method that focuses on understanding and deepening legal norms, laws and regulations, court decisions and legal issues related to the writing of this journal. This journal research method also uses literature data collection methods where literature books, laws and regulations, mass media both printed and electronic, journals, internet, articles, research results, and other papers and other documents (Decision Number 1060/Pdt.G/2023/PN Mdn), which are related to this journal research. While in the data analysis method, researchers use a qualitative approach that combines primary and secondary legal sources.

3. Result and Discussion

3.1 Forms of Legal Responsibility That Can Be Imposed on Debtors Who Commit Unlawful Acts Against Creditors in Credit Agreements.

A credit agreement is an agreement between a creditor (lender, usually a bank) and a debtor (borrower) in which the creditor provides a certain amount of funds that the debtor is obliged to return within a certain period of time, accompanied by interest. This agreement is a form of a loan and borrowing agreement as stipulated in Article 1754 of the Civil Code. And unlawful acts in Article 1365 of the Civil Code, which states that every act that violates the law and causes harm to others obliges the perpetrator to compensate for the loss.

Abdulkadir Muhammad stated that, one of these elements is not fulfilled, then the act cannot be said to be against the law. However, along with its development, the definition of unlawful acts is narrowly defined, namely against the law is violating a legal regulation. Under the influence of legism, unlawful acts are acts that violate the law.

Unlawful acts in Article 1365 of the Civil Code, does not provide a definition for unlawful acts but only mentions its elements.

There are four elements of unlawful acts, namely:

1. There is an unlawful act
2. There is fault
3. There is a loss
4. There is a causal relationship between the loss and the act

In Law, we recognize the existence of unlawful acts (PMH), where unlawful acts are identified with acts that violate the law, acts that conflict with the rights of others, acts that conflict with the values of decency and decency and acts that violate general principles in the field of law. In the context of civil law, unlawful acts are acts that violate Article 1365 of the Civil Code (BW), which explains that parties who are harmed by other parties have the right to claim compensation but this is not in the field of agreements. Unlawful acts as regulated in the Civil Code in Article 1365, namely Every unlawful act (onrechtmatige daad), which brings harm to another person, obliges the person whose fault caused the loss, to compensate for the loss.

The debtor as the perpetrator of unlawful acts in this case is punished as a result of actions taken against the creditor, where the debtor harms the creditor both materially and immaterially. These losses can be in the form of late payments, defaults, or other actions that violate the contents of the agreed credit agreement. Immaterial losses are losses that are difficult or cannot be measured financially, including pain, emotional suffering, loss of reputation. In Indonesian civil law, these losses are recognized and can be the basis for a claim for compensation. Whereas material losses are real losses that can be directly measured in money.

In the context of civil law, these actions can be subject to liability based on Article 1365 of the Civil Code, which states that every unlawful act that causes harm to another person, obliges the perpetrator to compensate for the loss. Therefore, the debtor in this case is subject to sanctions in the form of compensation, and fines

Article 1366 states that every person is liable, not only for damages caused by his acts, but also for damages caused by his negligence or recklessness. Article 1367 states that a person is liable not only for damages caused by his own acts, but also for damages caused by the acts of those who are his dependents on account of goods under his supervision.

In the context of civil law, these actions can be subject to liability based on Article 1365 of the Civil Code, which states that every unlawful act that causes harm to another person, obliges the perpetrator to compensate for the loss. Therefore, the debtor in this case is subject to sanctions in the form of compensation, and fines

The forms of legal responsibility that can be imposed on debtors who commit unlawful acts (PMH) against credit depend on the type of violation and its impact. The following are the forms of legal responsibility that can be imposed:

1. Civil Liability (Based on Article 1365 of the Civil Code)

Debtors can be subject to civil liability if their actions cause losses to creditors or other parties in the form of:

- a. Compensation, the debtor is obliged to pay material and/or immaterial losses.
- b. Return of the object or credit funds, if the credit is not used according to the agreed purpose.
- c. Cancellation of the agreement, The creditor's right to break the legal relationship.
- d. Asset confiscation, The debtor's property can be confiscated to cover losses.
- e. Execution of collateral, If there is collateral (e.g. certificate, BPKB), it can be directly auctioned.

As can be seen in Decision Number 1060/Pdt.G/2023/PN Mdn where Ramlan Purba as the debtor utilized his position to make a loan to PT.Bank Negara Indonesia (Persero) in the amount of, the following details:

No.	Account number	Facilities	Maximum credit limit	Arrears				Debit balance/p rincipal debt balance	Outstanding
				Principal	Interest	Penalties	Fees		
1.	607360307	KMK	15.000.00 0.000	15.000.0 00.000	2.524.45 7.553	778.639. 318	143.187.3 38	15.000.00 0.000	18.446.284.20 9
2.	442687045	Investm ent credit	54.000.00 0.000	41.409.0 90.914	6.671.28 0.032	928.283. 720	135.000	41.409.09 0.914	49.008.789.66 6
3.	754038822	Investm ent credit	10.000.00 0.000	7.795.90 9.086	1.402.23 3.015	180.926. 832	150.000	7.795.909. 086	9.379.218.933
Total			79.500.00 0.000	64.205.0 00.000	10.597.9 70.600	1.887.84 9.870	143.472.3 38	64.205.00 0.000	76.834.292.80 8

From the table above, it explains that the debtor committed an unlawful act where the debtor was negligent in fulfilling his obligations to the creditor, namely by no longer paying any principal, interest, fines, and fees in accordance with the agreed agreement, so that the creditor filed a lawsuit against the debtor to the Medan District Court for legal proceedings.

So in accordance with the actions taken by the debtor against the creditor, the district court decided to Punish both parties to the case PT Bumi Daya Agrotamas, domiciled at Jalan Padang Golf Complex CBD Polonia Blok BB No. 20-22, Kel. Polonia, Kec. Medan Polonia, Medan City, Prov. North Sumatra as the First Party / Plaintiff, Ramlan Purba, Head of Commercial Credit Remedial & Recovery of PT Bank Negara Indonesia (Persero) Tbk Regional Office 01, in this case acting in his position based on the Power of Attorney of the Board of Directors of PT Bank Negara Indonesia (Persero) Tbk. Number. KP/1313/HCE/1/R dated July 15, 2022 and Power of Attorney from the Head of Commercial and Small Business Credit Rescue and Settlement (RRM) of PT, Bank Negara Indonesia (Persero) Tbk, Number KP/002/RRM/1.4/R dated April 04, 2014 and PT Bank Negara Indonesia (Persero) Tbk, domiciled and headquartered in Central Jakarta, Jalan Jenderal Sudirman Kavling 1, , as the Second Party / Defendant - I., Financial Services Authority (OJK) as the Third Party / Co-Defendant - I and Ombudsman of the Republic of Indonesia, domiciled Jalan H.R. Rasuna Said, RT. 06 RW.07, Kel. Karet Kuningan, Kec. Setia Budi, South Jakarta Administrative City, DKI Jakarta as the Third Party / Co-Defendant - II, to comply with the contents of the Peace Agreement Letter that has been agreed upon above;

Punish Defendant I to pay court costs in the amount of Rp.1,088,720.00 (one million eighty-eight thousand seven hundred and twenty rupiah);

However, in this case why was the first respondent only fined with court costs, because the two parties had negotiated or agreed together before the district court handed down a decision against the first respondent.

3.2 Application of Law in the Settlement of Unlawful Acts by the Court Based on Decision Number 1060/Pdt.G/ 2023/PN Mdn

Application of law in tort settlement In practice, civil disputes can be resolved through litigation (courts) or through non-litigation channels such as mediation and arbitration. The Indonesian legal system provides a variety of alternative dispute resolutions that are appropriate to the nature and complexity of the case, whether in default or tort, the ultimate goal is to ensure that the injured party receives appropriate compensation and justice is served.

Non-litigation settlement is an out-of-court dispute resolution (non-litigation) is an effort to bargain or compromise to obtain a mutually beneficial solution. Mediated settlement is an alternative dispute resolution that can be used by the parties. This institution provides an opportunity for the parties to take the initiative, to resolve their disputes assisted by a third party as a mediator. The principle of mediation is a win win solution, so that the parties involved in the dispute feel that there are no winners and losers. Mediation not only accelerates the dispute resolution process, but also eliminates grudges and strengthens relationships. Arbitration settlement is a process of examining a dispute that is carried out judicially, such as by the parties to the dispute and the solution will be based on evidence submitted by a third party.

Litigation settlement is a dispute resolution process carried out through the court or what is often referred to as "litigation", namely a dispute resolution carried out by a court process where the authority to regulate and decide is exercised by a judge. This dispute resolution process results in all parties to the dispute facing each other to defend their rights before the court. The end result of a dispute resolution through litigation is a decision that states a win lose solution.

However, based on Decision Number 1060/Pdt.G/2023/PN Mdn, the case was resolved through litigation, which explains that litigation is a method of resolving a conflict through legal channels in court. Generally, litigation means an official process carried out by an individual or party to resolve a dispute through the judicial system. This process involves several stages, such as preparing legal documents, filing a lawsuit, conducting a trial, and issuing a decision from a judge or jury. Furthermore, both parties had previously negotiated or mutually agreed so that the subsequent decision could be made by the Medan District Court.

As stated in Decision Number 1060/Pdt.G/2023/PN Mdn filed by the First Party as the Plaintiff in relation to tort, hereinafter collectively referred to as "the Parties" have agreed to reconcile and make a Peace Agreement as a settlement of case Number 1060/Pdt.G/2023/PN Mdn with the following agreed clauses:

1. That the Parties have agreed to settle civil case Number 1060/Pdt.G/2023/PN Mdn by peaceful means while still based on the rules of the applicable Law;

2. That Defendant I & Defendant II agree to the Plaintiff's request regarding the relief of interest arrears and fines for the repayment of loans including Working Capital Loans account number 607360307, Working Capital Loans account number 442687045, and Investment Loans account number 754038822 namely with a minimum deposit of Rp64,500,000,000, - (Sixty Four Billion Five Hundred Million Rupiah) with the following terms and conditions:

- a. The latest effective payment schedule received by Defendant I & Defendant II on October 31, 2024.
- b. That the payment be made to the escrow checking account number 1822737769 in the name of PT Bumi Daya Agrotamas, with the statement Settlement deposit in the name of PT Bumi Daya Agrotamas;
- c. That settlement relief in the form of elimination of interest arrears and fines can be made after all obligations have been settled or in accordance with the nominal deposit of Rp.64,500,000,000, - (Sixty Four Billion Five Hundred Million Rupiah);
- d. That if there is a current obligation in the form of fees, it will be adjusted to the amount of the settlement deposit;
- e. That the Plaintiff can basically make a deposit greater than the installment or can make credit settlement / repayment faster than the set schedule;

f. If the payment of Rp64,500,000,000,- (Sixty Four Billion Five Hundred Million Rupiah) has been effectively received by Defendant I & Defendant II and the Plaintiff's credit facility is declared paid in full, then the original collateral documents, roya letter (if required) will be handed over to the rightful party / owner of the collateral or notarially notarized proxy;

g. If within the deposit deadline in paragraph 2.a is not realized and or there is negligence or payment arrears, then:

1) The decision letter on credit settlement number ECR/3.1/1802 dated September 19, 2024 is void and the Plaintiff is declared in default. Furthermore, the Plaintiff's credit settlement will be carried out through the sale/auction of collateral and/or other legal actions in accordance with the applicable provisions in Defendant I & Defendant II;

2) Payments that have been received by Defendant I & Defendant II (if any) cannot be withdrawn and used to reduce the Plaintiff's obligations (principal debt);

3) Furthermore, the Plaintiff's obligations will be calculated at the remaining outstanding amount;

h. Costs that will arise up to the settlement of the loan, including the cost of insurance premiums, valuation service fees, and other costs will be the responsibility of the Plaintiff, and will be adjusted to the settlement deposit amount;

i. The Plaintiff has signed the Credit Decision Letter (SKK) number ECR/3.1/1802 dated September 19, 2024 as a form of approval;

3. The Plaintiff signed the Vrijwaring Deed and Integrity Pact which released BNI and BNI Officers from any existing or future legal issues.

From the description of the decision above, it can be concluded or understood that the application of law in this settlement is an efficient form of alternative dispute resolution (APS) because it avoids a long trial process. Because before the court makes a lawsuit, the court offers peace to both parties so that the two parties can resolve the problem by mediation or making a mutual agreement, so that the plaintiff gets relief from the burden of debt, interest and fines, while the bank still gets a guarantee of payment certainty. Then the party who caused the loss must be legally responsible to the party who suffered the loss in the form of court costs and fulfill other responsibilities in accordance with decision No. 1060/Pdt.G/2023/PN Mdn.

If one party violates the contents of the peace agreement, then the other party can immediately execute it like an inkraacht judge's decision.

4. Conclusions

The form of legal responsibility that can be imposed on debtors who commit unlawful acts (PMH) against creditors in credit agreements can be classified as compensation, debtors can be required to pay compensation for losses incurred to creditors, both material and immaterial losses, as regulated in Article 1365 of the Civil Code. Immaterial losses are losses that are difficult or cannot be measured financially, including pain, emotional suffering, loss of reputation. In Indonesian civil law, these losses are recognized and can be the basis for a claim for compensation. Whereas material losses are real losses that can be directly measured in money. If PMH is related to a violation of the contents of the credit agreement (for example, the use of funds is not appropriate), the debtor can be subject to fines, interest sanctions, principal debt, in accordance with Article 1243 of the Civil Code.

Meanwhile, the application of law in the settlement of tort is carried out through two main channels, namely, Non-Litigation Settlement (out of court) is a dispute resolution process outside the court, which is carried out by the parties voluntarily to reach an amicable agreement, without going through a formal legal process in court. By using approaches such as negotiation, mediation, or arbitration, the parties attempt to resolve disputes amicably without having to resort to formal legal channels. This method is particularly appropriate in business relationships or agreements where it is still possible to improve or re-agree. Litigation settlement is when peaceful settlement efforts are unsuccessful, then the aggrieved party can take legal action by filing a civil lawsuit to the District Court, usually accompanied by a claim for compensation.

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