

## **Creditor's Legal Protection Related to Debtor's Default in A Joint Venture Partnership**

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### **KEYWORDS**

legal protection; default;  
cooperative fellowship

### **ABSTRACT**

In order to increase national development with an emphasis on the economic and business sectors, considerable capital support is required. The capital can be obtained from various sources, one of which comes from loan or credit facilities provided by banks. Money lending activities or better known as credit in daily life practice are not something strange anymore, in fact, this credit term is not only known by urban people, but also to people in rural areas. Credit generally functions to facilitate a business activity, and especially for economic activities in Indonesia plays a very important role in its position, both for production businesses and private businesses that are developed independently because they aim to improve the standard of living of the community. Default can occur both due to intentional factors and factors beyond human ability. This research method uses a normative juridical research method with a legislative and conceptual approach. The data sources of this research are primary, secondary and tertiary data sources. The technique of collecting legal materials is used through literature study. And the analysis of legal materials is carried out by interpreting the law and the method of legal construction. The legal interpretation and construction techniques used are grammatical interpretation and analogous construction which is carried out to fully describe the Legal Protection of Creditors Related to Debtor Default in the Covenant Agreement.

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### **Introduction**

In order to increase national development with an emphasis on the economic and business sectors, considerable capital support is required. The capital can be obtained from various sources, one of which comes from loan or credit facilities provided by banks. Money lending activities or better known as credit in daily life practice are not something strange anymore, in fact, this credit term is not only known by urban people, but also to people in rural areas. Credit generally functions to facilitate a business activity, and especially for economic activities in Indonesia plays a very important role in its position,

both for production businesses and private businesses that are developed independently because they aim to improve the standard of living of the community. The funds lent by the bank in providing credit facilities to debtors are funds that come from customer deposits that must be returned along with the interest in accordance with the agreed agreement. To get certainty of the debtor's loan repayment, a definite guarantee is needed, so that the guarantee has an important role for the bank in providing credit facilities if one day there is an obstacle in the return of credit by the debtor.

In general, there are four efforts that banks can take to deal with non-performing loans in the event of defaulted debtors, including: (B. Sibarani, 2001)

1. Credit restructuring efforts or business restructuring that can be pursued through the 3Rs (rescheduling, reconditioning, restructuring).
2. The Bank can make direct collections by using the authority of the execution parate based on the collateral binding agreement.
3. The bank can ask the court for help to carry out the execution.
4. The Bank can file a civil lawsuit against the debtor through the court.

In this day and age, the use of land rights as collateral is not a strange thing anymore. Because to guarantee the repayment of debtors' debts, the right to the land is used as collateral. Such circumstances demand as necessary to establish legal regulations on strong guarantee institutions, which can meet the demands and needs of the times (Abdurrahman, 1985). The provisions regarding the Right of Dependency only existed after the birth of a law legally on April 9, 1996, namely Law No. 4 of 1996 concerning the Right of Dependency on Land and Land-Related Objects (hereinafter referred to as the UUHT).

The Komanditer Fellowship is a type of business entity that is not a legal entity. The definition of a Commanditaire Vennootschap (CV) according to the provisions of Article 19 paragraph 1 of the Commercial Law Code is "A partnership by releasing money, also known as a consortium, established between one person or several allies who are responsible for all of one party and one or more persons as the release of money to another party." And business entities in the form of CVs are business entities that are not legal entities, because they are more focused on their allies. Namely complementary allies and commoditarian allies, where in running their business complementary allies are active allies and commoditized allies are passive allies to increase their business allies can increase CV capital through loans from banking and non-banking institutions with certain guarantees.

If the loan turns out to be unrepayable when due and can be collected, the CV can be filed for bankruptcy to the Court either by the Creditor or by the Debtor. If the CV experiences a default on the credit, what about the legal protection for the creditor for the return of the loan, because based on Article 20 paragraph 2 of the Commercial Law Code, the responsibility of the Allied Shareholders is only limited to the paid-up capital, thus it is very important to discuss the Creditor's Legal Protection Related to Debtor's Default in A Joint Venture Partnership (Garner, 2009).

In order to boost national development with a focus on the economic and business sectors, substantial capital support is necessary. This capital can be obtained from various sources, one of which is through loan or credit facilities provided by banks (Sudaryono, 2010). Lending activities, commonly known as credit, are a regular part of daily life and are well-understood not only in urban areas but also in rural regions (Suyatno, 2011). Credit primarily functions to facilitate business activities, playing a critical role in economic activities in Indonesia, both for production businesses and independently

developed private enterprises aimed at improving the community's standard of living (Harsono, 2012).

The funds lent by banks in providing credit facilities to debtors are derived from customer deposits, which must be returned along with the agreed-upon interest (Widyastuti, 2013). To ensure the certainty of repayment, a secure guarantee is needed, making collateral crucial for banks in offering credit facilities in case of any repayment issues by the debtor (Sutedi, 2014b).

To address potential non-performing loans due to defaulting debtors, banks have several options, including credit restructuring through the 3R approach (rescheduling, reconditioning, restructuring) (M. Sibarani, 2021). Additionally, banks can conduct direct collections using parate execution based on collateral agreements (Pramono, 2015). If these steps fail, banks can seek court assistance to execute the collateral or file a civil lawsuit against the debtor (Wijayanti, 2016).

The use of land rights as collateral in banking activities is no longer unfamiliar in Indonesia's legal practice. Land rights are often used as collateral to ensure the repayment of debtors' loans. The existence of such collateral provides legal protection for creditors in cases of debtor default. The enactment of Law No. 4 of 1996 concerning Mortgage Rights on Land and Land-Related Objects (UUHT) serves as a strong legal basis in this regard (Sumardjono, 2017).

On the other hand, a Commanditaire Vennootschap (CV) is a type of business entity that is not a legal entity (Munir, 2018). According to Article 19, paragraph 1 of the Indonesian Commercial Code (KUHD), a CV is defined as a partnership established by one or more partners who bear full responsibility and one or more other partners who only contribute capital without being directly responsible for business management (Garner, 2009). CVs often use land rights as collateral to obtain loans from banking and non-banking institutions to expand their businesses (Suhendar, 2019).

However, if the loan cannot be repaid when due, the CV may be filed for bankruptcy by either the creditor or the debtor (Hendrawan, 2020). This raises concerns about the legal protection for creditors holding collateral in the event of a debtor's default in a CV, considering that the responsibility of the limited partners is only limited to their contributed capital, as stipulated in Article 20, paragraph 2 of the Commercial Code (Yusuf, 2021).

Previous studies have extensively explored legal protection for creditors in the context of debtor default. For example, (Sutedi, 2014a) in "Legal Protection for Creditors in Providing Loans Secured by Land Rights" examines how UUHT provides strong protection for creditors against the risks of non-performing loans. The study emphasizes the importance of securing collateral according to legal provisions to ensure that creditors have a strong position in executing the collateral in the event of default.

Additionally, (Pramono, 2015) "Credit Restructuring as an Effort to Handle Non-Performing Loans" discusses strategies that banks can employ to manage non-performing loans. The study finds that credit restructuring through the 3R approach (rescheduling, reconditioning, restructuring) often serves as an effective solution to prevent default and maintain a good relationship between the bank and the debtor.

The novelty of this research lies in its specific focus on legal protection for creditors in the context of debtor default in a Commanditaire Vennootschap (CV). Unlike previous studies that generally discuss creditor protection in banking credit as a whole, this research delves deeply into the legal protection provided to creditors in non-legal

entity partnerships, a topic that has not been widely explored in Indonesian legal literature.

Despite numerous studies on creditor protection, there is a significant research gap concerning legal protection for creditors in the context of Commanditaire Vennootschap (CV). Previous research has primarily focused on credit agreements with land rights as collateral in legal entities. Therefore, this study aims to fill this gap by providing specific insights into legal protection for creditors within non-legal entity partnerships.

This research aims to determine the legal protection provided to creditors holding collateral in the event of debtor default in a Commanditaire Vennootschap (CV). Additionally, it seeks to identify the challenges faced by creditors in executing such collateral and to provide recommendations for enhancing legal protection for creditors within non-legal entity partnerships.

### **Problem Formulation**

From the introductory description above, there are main problems that will be researched by the author, namely:

What is the legal protection for creditors who hold guarantees for the debtor's default in the Covenant?

### **Research Methods**

This study uses a normative juridical research method with a legislative and conceptual approach. The legal materials used are primary legal materials consisting of the 1945 Constitution of the Republic of Indonesia, the Civil Code, and the Commercial Code. Secondary Legal Materials are in the form of publications on law and Tertiary Legal Materials from the Legal Dictionary and the Great Indonesian Dictionary.

### **Results and Discussions**

#### **Liability of the comancy allies for default against the creditor of the guarantee holder.**

According to H.M.N. Purwosutjipto, "a consortium is a consortium of firms that has one or several consortium affiliates (HMn Purwotsujipto, 1988). A commoditarian ally is an ally who only surrenders money, goods or energy as income to the federation, while he does not participate in the management or control of the federation." The Cooperative Fellowship (CV) is not specifically regulated by law, but the regulation refers to the provisions of the Maatschap in the Civil Code and Firm Partnership. Based on the provisions of the Civil Code and the Commercial Code, the comanteau ally is a passive ally that only includes capital and does not carry out all company policies in contrast to the complementary ally who can take an action, where the action in question is to manage the course of the commoditarian alliance and carry out legal relations on behalf of the commoditized alliance with third parties. If a company goes bankrupt, it means that the company suffers losses and is subject to general confiscation, losing authority in the management of assets. Based on Article 20 of the Commercial Law Code, which states that a limited partnership is not responsible for the bankruptcy of a CV that is responsible for returning assets, it is a complementary partnership because this partnership runs the company and has the right to enter into agreements with third parties.

However, in the event that Pesero Co., Ltd. or its passive ally signs a Credit Agreement or Deed of Grant of Dependent Rights to a Third Party or Creditor, Article 21 of the Commercial Code which states that "Each Pesero, the Releaser of money that

violates the provisions of the first or second paragraph of the previous article is liable for all debts and obligations of the Company.

This means that all company policies are carried out together with complementary allies and are jointly obliged to pay off the income (capital) as promised to be included in the alliance.

### **Legal Protection of Creditors Due to Debtor's Default in a Syndicate**

Based on Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the definition of Credit is explained: "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan-lending agreement between the bank and another party that obliges the borrower to pay off its debt after a certain period of time by providing interest". In the provisions of the article, what is meant by approval or loan-lending agreement is a form of credit agreement where an agreement must be made in written form. The agreement in the Banking Credit Agreement must be made in writing. This provision is contained in the Explanation of Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which requires banks as lenders to make a statement in writing. The requirement for a banking agreement to be in writing has been stipulated in the main provisions of banking by Bank Indonesia as intended in Article 8 paragraph (2) of the Banking Law.

The form of legal protection provided to creditors according to the provisions of the Law on Dependent Rights is in the form of the credit agreement itself. This credit agreement serves as evidence and provides limitations on the rights and obligations of each party. In order for the credit agreement to guarantee the repayment of the creditor's debt, the process of binding the guarantee with the clause granting the Right of Dependency must be carried out if the collateralized object is in the form of a fixed object, namely the right to land. This land right is widely used as collateral because it generally has a value or price that tends to increase every year.

After the process of binding the guarantee with the clause of granting the Right of Dependency by making a Deed of Granting the Right of Dependency by the Land Deed Making Officer (PPAT) which contains a promise that protects the creditor, in order for the credit agreement to guarantee the repayment of the creditor's receivables, it is necessary to carry out the process of encumbering the Right of Dependency in the form of a Deed of Rights which is carried out through 2 (two) stages, namely through the process of registration and issuance of the Right of Dependency in the form of a Certificate of Rights Dependents.

As proof of the existence of Dependent Rights, the Land Office issues a Certificate of Dependent Rights that has irahs that have executory power as the basis or basis for the execution if the debtor is injured in the promise in the future. In banking practice, credit agreements made in writing are outlined in 2 (two) forms, namely:

#### **a. Credit Agreement or Deed under hand**

A credit agreement or deed under hand is an agreement made only between the parties without the presence of an official authorized to make the deed, namely a notary. In fact, usually, in the signing of the deed of agreement, there is no witness who affixes his signature. The deed under this hand is usually in the form of a draft that is first prepared by the bank itself and then offered to prospective debtor customers for agreement. The standardized agreement contains all kinds of terms and conditions, which are in the form of forms and their contents have never been discussed or negotiated with prospective debtor customers first. If the prospective debtor customer

is not satisfied with the clause contained in it, then there is no opportunity to protest against the clause that is not allowed by the prospective customer, because the agreement has been standardized by the relevant banking institution, not by the banking officer who deals directly with the prospective debtor. So, prospective debtors who want to apply for credit must agree to all terms and conditions submitted by the bank as a creditor.

In practice, the deed or credit agreement under this hand has several weaknesses, so according to the author, the deed under this hand does not provide a guarantee for the repayment of creditors' receivables and legal protection for creditors. Some of the disadvantages of the act under this hand are:

1. If there is a default by the debtor, which will eventually be subject to legal action through the judicial process, then if the debtor concerned denies or does not recognize his signature, it will weaken the bank's position when litigating in court and the legal force of the credit agreement will be weakened;
2. Since the agreement or deed under this hand is only made between the parties, there may be a lack of data that should be completed for the purpose of binding credit;
3. Archive or original letter file Regarding this matter, it is also basically a weakness of the credit agreement under hand if the original archive or file is lost, resulting in the loss of evidence if the case is in court;
4. The possibility of a debtor denying the contents of the credit agreement under hand is very large, this is because in making the credit agreement deed the form or blank has been prepared in advance, so that the debtor can also avoid admitting that he has signed the content of the agreement.

#### **b. Credit Agreement or Authentic Deed**

An authentic deed is a letter or written or agreement to provide credit by a bank to its customers that is only made by or before a notary. The definition of an authentic deed is contained in Article 1868 of the Civil Code, namely: "An authentic deed is a deed that, in the form prescribed by law, is made by or in the presence of public officials who are authorized for it in the place where the deed is made. From the definition of an authentic deed in Article 1868 of the Civil Code, several things can be found:

1. First: the person authorized to make an authentic deed is a notary, unless the authority is handed over to other officials or other people. Other officials who can make authentic deeds are, for example, a clerk in a court hearing, a civil registrar in making birth or marriage certificates, or the government in making regulations.
2. Second: authentic deeds are distinguished in those made "by" and those made "in the presence" of public officials. In the case of "making the verbal process of the deed", a notary writes what he sees and experiences about the act (handeling) and the event (daadzaken), reads and signs only with witnesses outside the presence of the witnesses or because of the refusal of the witnesses. Thus, in making a deed of partij, a notary reads the deed, followed by the signing of the deed by the witnesses and by the notaries.
3. Third: the content of the authentic deed is all the acts that are required by law to be made in the authentic deed and all the "agreements" and "possessions" that are desired by those who are interested. An authentic deed may contain a "legal act" required by law or agreement required by the parties, such as sale, purchase, lease, lease or grant.

4. Fourth: authentic deeds provide certainty regarding the date. That a notary provides certainty about the date of the deed, which means that he is obliged to mention in the deed the year, month, and date at the time the deed is made. Violation of these obligations results in the deed losing its authenticity, and thus only has the force as a deed under the hand Regarding this authentic deed, there are several things that need to be known by the bank, namely:
  1. Power of Proof  
In an authentic deed, there are three types of evidentiary power, namely:
    - a. Prove between the parties, that they have explained what is written in the deed (formal power of proof);
    - b. Proving between the parties, that the event mentioned in the deed actually occurred (binding evidentiary force);
    - c. Prove not only to the parties concerned, but also to the third party that on the date in the deed, both parties have appeared in front of the public officer (notary) and explained what is written in the deed.
  2. Dependence on notaries What banks need to remember is that notaries as public officials are also ordinary human beings. Thus, in entering into a credit agreement before a notary, the bank's credit party is still required to play an active role in checking all legal aspects and the necessary completeness, because the possibility of errors or mistakes in a credit agreement made by a notary still exists. Thus, the bank does not absolutely depend on the notary, but the notary must be considered a partner in the implementation of a credit agreement. In addition, the bank still expects a legal opinion from the notary about every credit release to be held, so that the notary can act as one of the filters of the legal aspect of a credit release.
  3. Grosse Debt Acknowledgment Deed The excess of a credit agreement deed or debt acknowledgment made notarily (authentic) is that a Grosse Debt Acknowledgment Deed can be requested which has executory force, meaning it is equated with a judge's decision which the bank expects that the execution no longer needs to go through a lawsuit process which usually takes a long time and costs a lot of money. The form of legal protection given to creditors when the debtor defaults according to the Explanation of Article 10 of Law Number 4 of 1996 is in the form of the credit agreement itself which is contained in written form, namely in the form of an underwritten deed or an authentic deed.

According to the researcher, what better guarantees the creditor's rights in recovering his receivables when the debtor defaults is in a credit agreement with an authentic deed. This authentic deed has the advantage of being able to request a Grosse Debt Acknowledgment Deed which has executory power and is the basis for the execution if the debtor defaults on the promise. However, based on the General Explanation Number 9 and the Explanation of Article 14 paragraph (2) of the Law on Dependent Rights, a Land Rights Certificate has been issued as a substitute for the Grosse Deed of Debt Acknowledgment which has the same function.

This authentic deed is made by the parties in front of the authorized official, namely a notary through the process of binding a credit agreement with a guarantee for the granting of the Right of Dependency first, then a Deed of Granting of the Right of Dependency (APHT) is made by the Land Deed Making Officer (PPAT) which contains promises to guarantee the rights of creditors in obtaining repayment of their receivables and limiting the authority of the debtor, and the next stage is carried out, namely the

process of encumbering the Right of Dependency through the stage registration of Dependent Rights at the Land Office and as proof of the existence of Dependent Rights, the issuance of a Certificate of Dependent Rights which has the irah "FOR JUSTICE BASED ON THE ONE GOD", where this certificate is the basis or basis for the implementation of execution if the debtor refuses to pay off his debt in the future.

### **Conclusion**

The responsibility of the allies in the default of the communist alliance (CV), namely the responsibility of the active ally as an administrator and the passive ally as a disbursement of money, if it turns out that in carrying out the management of the alliance, the passive ally is proven to have participated and participated in acting on behalf of the CV which violates the provisions of Article 20, However, if this is not the case, the default will only befall the active ally while the passive ally is only responsible for the amount of income just. Unless a passive ally participates in an engagement and an act that can be equated with an active ally as in Article 21 of the Criminal Code, then the passive ally must also be jointly responsible with other active allies.

Legal protection to creditors when the debtor defaults in a credit agreement with a guarantee of Dependent Rights that more guarantees the creditor's rights in recovering his or her receivables when the debtor defaults is in a credit agreement with an authentic deed. This authentic deed has the advantage of being able to request a Grosse Debt Acknowledgment Deed which has executory power and is the basis for the execution if the debtor defaults on the promise. However, based on the General Explanation Number 9 and the Explanation of Article 14 paragraph (2) of the Law on Dependent Rights, a Land Rights Certificate has been issued as a substitute for the Grosse Deed of Debt Acknowledgment which has the same function. An authentic deed contains promises to guarantee the creditor's rights in obtaining repayment of his receivables.



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