

# Legal Settlement Of Breach Of Bank Loan Agreement With Fair Guarantees

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## ABSTRACT

Debt is an integral part of the business world, particularly as a solution for entrepreneurs experiencing capital shortages. Financial institutions, particularly banks, act as facilitators providing credit with or without collateral. A crucial aspect of credit provision is the existence of collateral to protect the bank, as the creditor, from the risk of default by the debtor. This study aims to analyze the legal resolution of default in bank loan agreements secured by certificates in a fair manner, using the case study of Decision Number 141/Pdt.GS/2021/PN Byw. This study uses a normative juridical method with a descriptive-analytical approach, based on primary, secondary, and tertiary legal materials. The results of the study indicate that legally, banks have the right to execute collateral if the debtor is in default, according to Article 6 and Article 20 of the Mortgage Law. However, in practice, the execution process is often faced with resistance from debtors who lack good faith, including the filing of new lawsuits to hinder the execution. In the context of justice, the judge in the decision of the case did not immediately grant all of the bank's demands, but instead considered the principle of substantive justice by rejecting some of the fine demands that were deemed disproportionate. This approach aligns with the views of legal philosophers such as Aristotle, John Rawls, and the progressive legal thought of Satjipto Rahardjo, who emphasized that justice is not merely formal equality but also treatment appropriate to the social and moral context. Therefore, the court's decision in this case demonstrates the implementation of guarantee law in accordance with statutory regulations and reflects the value of justice in resolving banking disputes.

**Keywords:** Default, Justice, Banyuwangi District Court Decision

## INTRODUCTION

Debt and receivables are common transactions in human life to meet needs, especially in the business world, where capital availability is a key element in starting or expanding a business. Many entrepreneurs experience a lack of capital or a lack of funds to finance their operations or meet their daily needs. Entrepreneurs can expand their businesses by obtaining credit. The birth of modern financial institutions, both those running businesses

conventionally and in accordance with Islamic law, aims to bridge the gap between the lack of capital experienced by entrepreneurs and the financial capabilities of fund owners.

Banks, as financial institutions, offer a solution for those in need of funds by pledging their assets to obtain credit. This collateral serves to convince the bank, as the creditor, to grant a loan, beginning with a written debt agreement. According to Article 8 of Law Number 7 of 1992, as amended by Law Number 10 of 1998, banks may grant credit to anyone they wish, provided they are confident in the debtor's ability and capacity to repay the debt as agreed. This means that credit can be granted even without collateral or additional security, provided the bank is confident in the debtor's ability and capacity to repay the debt. The value of collateral provided to creditors typically exceeds the value of the loan; this is done by the creditor to protect themselves from losses. Therefore, when a credit default occurs, the bank can use or sell the collateral to pay or cover the bad debt. The purpose of a credit guarantee is to protect the bank from unscrupulous customers, as few customers are able to repay their loans. Essentially, a credit guarantee binds the debtor to the creditor, securing the debt secured by the debtor's assets.

To support this research, we analyzed the case raised, namely Decision Number 141/Pdt.GS/2021/PN Byw., where a bank loan agreement was made between Suprayitno and Ampri Lantini with the Krian Wijaya People's Credit Bank located at Jl. Jember No. 54, Setail Village, Genteng, Banyuwangi Regency, East Java.

Debt repayment with collateral is by auction as stipulated by the applicable regulations, and if there is any remaining from the auction, it is returned to the debtor. In principle, the collateral must belong to the debtor, but the law also allows third party property to be used as collateral, provided that the party concerned is willing to use their property as collateral for the debtor's debt. From the description above, it can be concluded that collateral is a debt repayment by the debtor to the creditor if in the future there is a default in the debtor's debt payment with a number of assets belonging to the debtor in accordance with the agreement made according to the applicable laws and regulations.

It is common knowledge that no matter how careful banks are in providing bank loans, even though the banks provide loans based on the principle of trust and caution to customers, in reality, some of the loans distributed by the banks experience bad debts.

The term justice (*iustitia*) according to the Big Indonesian Dictionary comes from the word "adil" which means: not biased, not taking sides, siding with what is right, appropriate, not arbitrary.

According to Aristotle, the word "just" has more than one meaning. "Just" can mean "according to law," and "what is proportionate," meaning "what is due." This indicates that someone is said to be acting unjustly if they take more than their fair share.

Based on the description above, the author is interested in conducting this research with the title: "Legal Settlement of Default in Bank Loan Agreements with Fair Certificate Guarantees".

## **RESEARCH METHODS**

The approach is descriptive analytical, the research specifications are carried out using descriptive, namely a research method aimed at describing existing phenomena that are taking place at present or in the past. The collection of legal material sources in this normative juridical research is from various sources of legal materials, namely consisting of primary legal materials, secondary legal materials, including all publications on law that are not text documents, legal journals and comments on court decisions, tertiary legal materials, including materials that provide information on primary legal materials and secondary legal materials. The materials used in this research are legal dictionaries and encyclopedias. The data collection technique used is library research.

## **RESULTS AND DISCUSSION**

### **Legal Regulations on Guarantees in Indonesia**

According to Salim HS, guarantee law is a set of legal rules that regulate the relationship between the giver and recipient of guarantees in relation to the imposition of guarantees in order to obtain credit facilities. The elements in this definition include: the existence of legal rules (whether written as in statutory regulations, or unwritten that exist in society), the existence of guarantee providers and recipients, the existence of guarantees, both material and immaterial, and the existence of credit facilities as a goal.

The main function of credit guarantees is as a safeguard for creditors against the risk of debtor default, as a motivator for debtors to be disciplined in payments, and as part of the implementation of banking provisions related to credit risk management.

This guarantee is usually set out in an agreement. In civil law, an agreement has the same binding force as a law for the parties who make it (Article 1338 of the Civil Code). To be valid, an agreement must meet subjective requirements (agreement and capacity of the

parties) and objective requirements (certain circumstances and lawful causes) as stipulated in Article 1320 of the Civil Code. If these requirements are violated, the agreement can be cancelled or void by law.

If one of the parties violates the agreement (default), then that party can be subject to legal sanctions, including the obligation to pay compensation, interest and other costs as regulated in Articles 1243-1245 of the Civil Code. The process of enforcing this right usually begins with a warning letter (somasi), and if ignored, can proceed to a lawsuit in court.

A concrete case related to this is reflected in Banyuwangi District Court Decision No. 141/Pdt.GS/2021/PN Byw, in which BPR Krian Wijaya sued Suprayitno and Ampri Lantini for breach of contract in a credit agreement worth Rp 35 million. The court granted the lawsuit and ordered the defendants to pay the entire debt, along with fines and court costs amounting to Rp 53,444,000. According to Soebekti, good collateral is collateral that easily facilitates the credit process, does not weaken the debtor's position, and provides legal certainty for the creditor because it can be easily cashed in if the debtor fails to fulfill its obligations.

### **Legal Sanctions for Default That Fulfill a Sense of Justice**

Justice, according to the Big Indonesian Dictionary, means not being biased, not taking sides, and acting appropriately. In the view of classical philosophers like Aristotle, justice meant conformity to the law and balance in distribution. He considered someone unjust if they took more than they should, or if they broke the law. Hans Kelsen added that justice in law means a system that creates social happiness, not only for individuals, but for society as a whole. Hans Kelsen's view is included because it implies that this system regulates human behavior in a way that can bring happiness to all of society, while justice is a social happiness that humans cannot find as individuals and strive to find within society or within groups. Therefore, the human longing for justice is essentially a longing for happiness.

Socrates emphasized that "The essence of law in providing a just decision must be: not biased, adhering to the correct facts, and not acting arbitrarily in its power." In line with this, Satjipto Rahardjo stated that justice is the essence of law and is not merely a matter of numbers or equal distribution, but the result of philosophical considerations by judges. LJ Van Apeldoorn also rejected equality as an absolute measure of justice; he argued that justice demands differential treatment according to individual context and circumstances.

This opinion is reinforced by Ahmad Ali MD who stated that a fair legal decision must be based on substantive truth, not just formal truth. Fence M. Wantu emphasized that justice means placing everything in its proper place, based on the principle of equality before the law, and taking into account the laws that exist in society, including unwritten customs.

In modern justice theory, John Rawls put forward two important principles: first, the principle of maximum equal liberty, and second, the principle of just inequality, which states that socioeconomic inequality is only justified if it benefits the weakest group. This principle promotes equality of opportunity and well-being in society.

The concept of justice is also implemented in the Indonesian legal system, particularly in the implementation of Parate Exekusi in the Mortgage Law. Parate Exekusi allows creditors to sell collateral without going through the courts, provided the debtor is in default. Articles 6 and 20 of the Mortgage Law stipulate that creditors have the right to sell collateral to settle receivables if the debtor defaults. This execution must be preceded by notification and announced through the mass media.

A concrete example of the application of justice in a legal case can be seen in the Banyuwangi District Court Decision No. 141/Pdt.GS/2021/PN Byw, in which two defendants were declared in default for failing to repay a loan at Bank Perkreditan Rakyat Krian Wijaya. The judge ordered the defendants to pay the remaining loan and fines, but rejected some of the additional fines as they were deemed unjust. This decision aligns with Supreme Court Jurisprudence No. 2027 K/BU/1984, which emphasizes the need for consideration of justice in imposing sanctions.

Overall, justice in the context of Indonesian law is not only measured by equality of treatment, but also by the balance of rights and obligations, substantial assessment of the facts, and philosophical and moral considerations by judges as implementers of the law.

## CONCLUSION

1. The Court's decision in resolving problematic financing, the bank as the holder of the collateral object is in accordance with the applicable law in Indonesia regarding collateral law where the Bank has a special position (special creditor) entitled to carry out execution on the collateral of the debtor who has committed default and the debtor is obliged to carry out the contents of the Court's decision.

2. Implementation Obstacles encountered at the beginning of the implementation of collateral execution include resistance from debtors to the bank's execution efforts. It is not uncommon for debtors, acting in bad faith, to resist by filing a lawsuit with the District Court upon learning that the bank will execute the land and/or building used as collateral.

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