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Legal Certainty and Justice in the Enforcement of Collateral Following Default on Bank Loans

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Original Article

Abstract

Bank loan agreements may give rise to disputes when borrowers fail to fulfill their contractual obligations, thereby necessitating legal certainty and adequate protection of the interests of all parties. This study examines the legal framework governing bank loan agreements, the legal consequences of contractual default, available dispute resolution mechanisms, and the legal protection afforded to borrowers. It adopts a normative legal research methodology, employing statutory, conceptual, and case approaches. The collected legal materials are analyzed qualitatively using prescriptive legal reasoning. A borrower's default may give rise to claims for specific performance, damages, and the enforcement of collateral in accordance with applicable legal provisions. Disputes arising from default may be resolved through loan restructuring, mediation, or litigation. Legal protection for borrowers is essential to ensure that standard contractual clauses are regulated appropriately and that debt collection practices and collateral enforcement procedures are carried out fairly and proportionately. This study concludes that resolving loan defaults requires a balanced approach that ensures loan repayment, safeguards borrowers' legal rights, and upholds the principles of contractual fairness and justice.

Keywords: *Default, Loan Agreement, Banking, Legal Protection, Borrower*

Abstrak

Perjanjian kredit perbankan berpotensi menimbulkan sengketa ketika debitur tidak memenuhi kewajiban kontraktual, sehingga diperlukan kepastian hukum sekaligus perlindungan terhadap kepentingan para pihak. Penelitian ini bertujuan menganalisis pengaturan hukum perjanjian kredit perbankan, akibat hukum wanprestasi, mekanisme penyelesaian sengketa, dan perlindungan hukum bagi debitur. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Data hukum dianalisis secara kualitatif melalui penalaran preskriptif. Wanprestasi dapat menimbulkan tuntutan pemenuhan prestasi, ganti rugi, dan eksekusi jaminan sesuai ketentuan hukum. Penyelesaiannya dapat dilakukan melalui restrukturisasi kredit dan mediasi maupun litigasi. Perlindungan debitur diperlukan untuk mengendalikan klausula baku serta memastikan penagihan dan eksekusi berlangsung secara proporsional. Penelitian menyimpulkan bahwa penyelesaian wanprestasi harus menyeimbangkan kepastian pelunasan kredit, perlindungan debitur, dan keadilan kontraktual.

Kata kunci: *Wanprestasi, Perjanjian Kredit, Perbankan, Perlindungan Hukum, Debitur*

1. INTRODUCTION

The banking sector plays a strategic role in economic development by functioning as a financial intermediary that mobilizes funds from the public and channels them back into the economy through lending activities. This function enables individuals and business entities to obtain financing to meet their economic needs and support productive activities. Article 1, point 11, of Law No. 10 of 1998, which amends Law No. 7 of 1992 concerning Banking, defines credit as the provision of money or equivalent claims pursuant to a loan agreement between a bank and another party, under which the borrower is obligated to repay the loan within a specified period, together with interest. This definition establishes that lending is not merely a financial transaction but also a contractual legal relationship that creates reciprocal rights and obligations between the bank, as the creditor, and the customer, as the debtor.

This legal relationship is further governed by the general principles of contract law under the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata), particularly Article 1320, which establishes the requirements for the validity of an agreement, and Article 1338, which provides for the binding force of agreements and the obligation of the parties to perform them in good faith. A bank loan agreement therefore constitutes the legal foundation for determining the respective obligations of the parties, including the loan amount, interest rate, repayment period, and collateral requirements. The widespread use of standard-form contracts in banking transactions raises concerns regarding the balance of contractual power between the parties. Banks generally occupy a stronger bargaining position because they determine the contractual terms and conditions, while borrowers often have limited opportunities to negotiate and are effectively left with the choice of accepting or rejecting the terms unilaterally established by the bank.[1]

A significant legal issue arises when a borrower becomes unable to fulfill repayment obligations in accordance with the terms of the loan agreement. Such circumstances may constitute a breach of contract (wanprestasi) under Articles 1238 and 1243 of the Indonesian Civil Code, which regulate default and the resulting obligation to compensate for costs, losses, and interest. Importantly, contractual default does not necessarily result from the borrower's deliberate failure to perform. It may also arise from declining income, business failure, or broader economic fluctuations that undermine the borrower's financial capacity. The legal consequences extend beyond demands for repayment and may involve debt collection, loan restructuring, civil litigation, and collateral enforcement. In this regard, Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021 emphasize the

[1] Jauw Shinta Dewi and Yuyut Prayuti, "Rekonstruksi Keseimbangan Kontraktual Dalam Perjanjian Kredit Perbankan: Kritik Terhadap Dominasi Klausula Baku Pasca Pojk Perlindungan Konsumen 2023," *Jurnal Hukum Lex Generalis* 7, no. 4 (2026): 1–31, https://doi.org/10.56370/jhlg.v7i4.3247.

importance of safeguarding borrowers' legal rights in the enforcement of fiduciary security. Accordingly, default in banking loan agreements warrants comprehensive legal examination that balances contractual certainty, banks' legitimate interests in recovering outstanding debts, and adequate legal protection for borrowers.

Previous studies on contractual default in banking and commercial lending relationships have examined various dimensions, including the legal foundations of contractual obligations, debtor liability, factors contributing to nonperformance, and mechanisms for resolving contractual disputes. Sudjana, although focusing on the relationship between supplier agreements and factoring agreements, provides valuable insights into the complexity of contractual relationships when a breach occurs, particularly concerning the determination of parties entitled to demand payment and those bearing the associated legal and financial risks. This perspective demonstrates that contractual default cannot be examined independently of the underlying legal framework or the allocation of rights, obligations, and liabilities among the parties.[2]

Nuralisha and Mahmudah examine the legal principles governing contractual default and the resulting legal liability of debtors. Their findings highlight mediation as an alternative initial mechanism for resolving contractual disputes before resorting to formal judicial proceedings.[3] Similarly, Frisyudha et al. investigate the implications of government policies implemented during the COVID-19 pandemic for the performance of business contracts, including banking loan agreements. Their analysis highlights the importance of contractual renegotiation and the good-faith conduct of the parties when extraordinary economic circumstances impede the fulfillment of contractual obligations. These studies suggest that resolving contractual default should not be limited to enforcing contractual obligations but should also consider the economic circumstances and practical constraints affecting a borrower's ability to perform.[4]

Al Fajar and Sinilele adopt an empirical approach to investigate the factors contributing to loan defaults among Bank Rakyat Indonesia (BRI) customers in Bulukumba Regency, as well as the judicial considerations underlying the resolution of such cases.[5] By contrast, Dalimunthe examines the legal consequences of a debtor's failure to fulfill contractual obligations following the issuance of a formal notice of default, including the seizure of collateral and the imposition of additional charges or

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2 Sudjana Sudjana, "Akibat Hukum Wanprestasi Dan Tanggung Jawab Para Pihak Dalam Transaksi Anjak Piutang," *Veritas et Justitia* 5, no. 2 (2019): 374–98, https://doi.org/10.25123/vej.v5i2.3173.

3 Marsheila Audrey Nuralisha and Siti Mahmudah, "Tinjauan Yuridis Tanggung Jawab Hukum Dalam Perjanjian Kredit Perbankan Apabila Debitur Wanprestasi," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (2023): 277–90, https://doi.org/10.37680/almanhaj.v5i1.2364.

4 Aryabang Bang Frisyudha et al., "Renegosiasi Sebagai Upaya Penyelesaian Wanprestasi Dalam Kontrak Bisnis Selama Masa Pandemi Covid-19," *Jurnal Konstruksi Hukum* 2, no. 2 (2021): 344–49, https://doi.org/10.22225/jkh.2.2.3253.344-349.

5 Reza Al Fajar and Ashar Sinilele, "Urgensi Penyelesaian Sengketa Wanprestasi," *Alauddin Law Development Journal* 2, no. 1 (2020): 52–56, https://doi.org/10.24252/aldev.v2i1.13271.

interest.[6] Cahyani specifically analyzes the legal implications of default under banking loan agreements and identifies several alternative dispute resolution mechanisms, including mediation, collateral enforcement, and litigation.[7]

Lestari et al. examine contractual default in loan agreements through a case study of Court Decision No. 51/Pdt.G.S/2023/PN.Btg.[8] Similarly, Rizki et al. investigate default in secured loan agreements by analyzing Court Decision No. 35/Pdt.G/2022/PN Binjai, with particular attention to judicial reasoning, the imposition of coercive monetary penalties (dwangsom), and the application of civil law provisions.[9] Furthermore, Tambunan et al. examine the regulation of contractual default under the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata) and its application in judicial decisions, emphasizing the significance of good faith, evidentiary standards, and nonjudicial dispute resolution mechanisms.[10]

Although previous studies have examined contractual default, debtor liability, and mechanisms for resolving banking loan disputes, an important research gap remains concerning the integrated relationship between the binding force of contracts, disparities in contractual bargaining power, the legal consequences of default, and the protection of borrowers in resolving nonperforming loans. The novelty of this study lies in its integrated examination of these four dimensions to develop a legal framework that balances contractual certainty, the recovery of creditors' rights, and fairness in the treatment of borrowers.

This study aims to analyze the legal framework governing contractual default (wanprestasi) in banking loan agreements and its implications for the legal relationship between banks and borrowers. Specifically, it addresses four interrelated issues: (1) the legal regulation of banking loan agreements under the Indonesian Civil Code and applicable banking regulations; (2) the legal consequences of borrower default, including claims for contractual performance, compensation for losses, and collateral enforcement; (3) mechanisms for resolving contractual default through judicial and nonjudicial proceedings, particularly loan restructuring; and (4) legal protection for

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6 Dermina Dalimunthe, "Akibat Hukum Wanprestasi Dalam Perspektif Kitab Undang-Undang Hukum Perdata (BW)," *Al-Maqasid: Jurnal Ilmu Kesyariahan Dan Keperdataan* 3, no. 1 (2017): 12–29, https://doi.org/10.24952/almaqasid.v3i1.1444.

7 Yuli Puji Cahyani, "Tinjauan Yuridis Terhadap Wanprestasi Dalam Perjanjian Kredit Perbankan," *Jurnal Ilmu Hukum Toposantaro* 1, no. 2 (2024): 96–103.

8 Trianda Lestari et al., "Analisis Kasus Wanprestasi Antara Debitur Dan Kreditur Terhadap Perjanjian Pinjaman Kredit Bank Studi Kasus Putusan Nomor 5/PDT.G.S/2023/PN.BTG," *Terang : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1, no. 1 (2024): 126–37, https://doi.org/10.62383/terang.v1i1.76.

9 Rizki Rizki et al., "Wanprestasi Perjanjian Kredit Bank Dengan Jaminan: Studi Putusan Nomor 35/Pdt.G/2022/PN Bnj," *Disiplin: Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda* 31, no. 1 (2025): 11–20, https://doi.org/10.46839/disiplin.v31i1.1153.

10 Siti Ansari Tambunan et al., "Analisis Yuridis Wanprestasi Dalam Perjanjian Berdasarkan Kitab Undang-Undang Hukum Perdata (KUHPerdata) Dan Implementasinya Dalam Putusan Pengadilan Di Indonesia," *Jurnal Multidisiplin Teknologi Dan Arsitektur* 4, no. 1 (2026): 225–35, https://doi.org/10.57235/motekar.v4i1.8414.

borrowers to ensure a fair balance of rights and obligations between the contracting parties.

2. RESEARCH METHODOLOGY

This study employs a normative legal research methodology to examine the legal norms, principles, doctrines, and statutory provisions governing contractual default (wanprestasi) in banking loan agreements and the legal protection afforded to borrowers. Three legal approaches are adopted. First, the statutory approach examines the relevant provisions of the Indonesian Civil Code, the Banking Law, the Consumer Protection Law, and regulations governing the resolution of nonperforming loans. Second, the conceptual approach explores the legal concepts of contracts, contractual default, legal liability, and contractual balance. Third, the case approach analyzes relevant judicial decisions, including court rulings and Constitutional Court decisions, to identify how applicable legal principles are interpreted and implemented in practice.

The legal materials consist of three categories: primary legal materials, including statutory provisions and judicial decisions; secondary legal materials, comprising books, peer-reviewed journal articles, and legal scholars' opinions; and tertiary legal materials, which serve as supplementary references to support the interpretation of primary and secondary legal materials. The materials were collected through a systematic literature review and analyzed qualitatively using prescriptive legal analysis and deductive reasoning. This analytical process was undertaken to assess the consistency and coherence of applicable legal norms, interpret the legal consequences of contractual default, and formulate a legal protection framework that promotes legal certainty and fairness in balancing the rights and obligations of creditors and borrowers.

3. RESEARCH RESULT AND DISCUSSION

3.1. Legal Framework Governing Banking Loan Agreements Under Civil Law and Banking Regulations

The legal framework governing banking loan agreements is established through the interaction between specific provisions of banking legislation and the general principles of the law of obligations under the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata). Article 1, point 11, of Law No. 10 of 1998 concerning Banking, which amends Law No. 7 of 1992, provides the normative foundation for credit transactions by defining credit as the provision of money or equivalent claims pursuant to a loan agreement that obligates the borrower to repay the debt within a specified period, together with interest. This provision must be understood within the broader and evolving regulatory framework governing the financial sector, particularly

Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (the P2SK Law).

For a banking loan agreement to be legally valid, it must satisfy the four requirements established under Article 1320 of the Indonesian Civil Code: mutual consent, legal capacity, a definite subject matter, and a lawful cause. These requirements constitute the fundamental elements necessary to establish a valid contractual relationship between a bank and a borrower. Mutual consent refers to the parties' agreement on the substantive terms of the contract, whereas legal capacity concerns their legal competence to undertake binding legal acts. The requirements of a definite subject matter and a lawful cause ensure that the object and purpose of the agreement are sufficiently ascertainable and do not violate applicable laws or public policy. Accordingly, the granting of a credit facility cannot be based solely on an administrative arrangement between a bank and its customer; rather, the underlying agreement must satisfy all substantive requirements governing contractual validity.

Furthermore, Article 1338(1) of the Indonesian Civil Code establishes the binding force of legally valid agreements, thereby recognizing a loan agreement as legally binding on both the bank and the borrower. Consequently, each party is obligated to perform its contractual duties in accordance with the agreed terms, including the repayment of principal, payment of interest, compliance with the repayment schedule, and fulfillment of other contractual requirements. Nevertheless, the binding force of an agreement is not absolute. Article 1338(3) of the Indonesian Civil Code further requires that contractual obligations be performed in good faith. Thus, legal certainty in banking loan agreements derives not merely from the existence of a written contract but also from the honesty, fairness, reasonableness, and responsibility demonstrated by the parties throughout the contractual relationship.[11]

The widespread use of standard-form contracts in banking transactions raises important concerns regarding the balance of contractual power between the parties. Banks generally draft and determine the contractual provisions, benefiting from greater bargaining power and institutional capacity, whereas borrowers often have limited opportunities to negotiate the terms. The use of standard-form contracts does not automatically render an agreement legally invalid, provided that the contractual requirements under Article 1320 of the Indonesian Civil Code are satisfied and the relevant provisions do not contravene applicable laws and regulations. The incorporation of standard contractual clauses must also comply with Article 18 of Law No. 8 of 1999 concerning Consumer Protection, particularly its restrictions on prohibited standard clauses. Accordingly, the principle of freedom of contract must operate within a framework of balanced rights and obligations rather than serve as a

[11] Fahriza Salsabila Putri and Sevia Riski Yuni Nirmala, "Relevansi Normatif Asas Itikad Baik Dalam Pelaksanaan Perjanjian Untuk Peningkatan Kesadaran Hukum Masyarakat," *Acta Comitas* 11, no. 01 (2026): 64–76, https://doi.org/10.24843/AC.2026.v11.i01.p5.

justification for the stronger contracting party to unilaterally determine the entire substance of the legal relationship.

The regulation of contractual default (wanprestasi) constitutes another essential component of the legal framework governing banking loan agreements. Article 1238 of the Indonesian Civil Code regulates the determination of a debtor's default, whether through a formal notice of default (sommatie) or by operation of the contractual obligation itself when the expiration of a specified period automatically places the debtor in default. Furthermore, Article 1243 provides the legal basis for creditors to claim compensation for costs, losses, and interest when a debtor fails to fulfill contractual obligations after being declared in default. However, the application of these provisions must be considered alongside Articles 1244 and 1245 of the Indonesian Civil Code, which govern force majeure (overmacht). These provisions establish that not every failure to perform a contractual obligation automatically constitutes culpable nonperformance giving rise to liability for damages. An assessment of the circumstances underlying the failure to perform is therefore necessary to determine whether the debtor is legally at fault or whether circumstances exist that may exempt the debtor from liability for compensation.[12]

This analysis is consistent with and extends previous studies on contractual default in banking loan agreements. Nuralisha and Mahmudah emphasize debtor liability and mediation as an alternative mechanism for resolving contractual default (wanprestasi) in banking loan agreements.[13] Frisyudha et al. in contrast, focus on contractual renegotiation and the principle of good faith in addressing difficulties in contractual performance arising from the COVID-19 pandemic.[14] Meanwhile, Cahyani examines the legal consequences of contractual default and available dispute resolution mechanisms, including mediation and collateral enforcement.[15] Unlike these studies, which primarily emphasize contractual liability and dispute resolution, the present study further examines the systematic relationship among contractual validity, the binding force of agreements, freedom of contract, good faith, and statutory restrictions on standard-form clauses. These principles collectively establish the normative foundation for determining the rights, obligations, and legal liabilities of the parties to banking loan agreements.

The legal framework governing banking loan agreements therefore cannot be understood solely through the provisions of banking legislation. Rather, it must be

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[12] Nathasya Jhonray Siregar and Tasya Amira Frananda Siregar, "Force Majeure as a Ground for Exemption from Breach of Contract in Civil Law," *Jurnal Hukum Sehasen* 11, no. 1 (2025): 309–18, https://doi.org/10.37676/jhs.v11i1.8240.

[13] Nuralisha and Mahmudah, "Tinjauan Yuridis Tanggung Jawab Hukum Dalam Perjanjian Kredit Perbankan Apabila Debitur Wanprestasi."

[14] Frisyudha et al., "Renegosiasi Sebagai Upaya Penyelesaian Wanprestasi Dalam Kontrak Bisnis Selama Masa Pandemi Covid-19."

[15] Cahyani, "Tinjauan Yuridis Terhadap Wanprestasi Dalam Perjanjian Kredit Perbankan."

interpreted systematically in conjunction with the general principles of civil law and consumer protection regulations. This integrated framework positions the loan agreement as a legal instrument that provides banks with certainty in recovering funds while simultaneously safeguarding borrowers' rights within the contractual relationship. The binding force of loan agreements must therefore be accompanied by the principles of good faith, fairness, reasonableness, and contractual balance. Ultimately, the fair application of the law governing banking loan agreements requires harmonizing the borrower's obligation to repay the loan, the creditor's legitimate interest in recovering outstanding debts, and legal safeguards against contractual practices that may disproportionately disadvantage either party.

3.2. Legal Consequences of Borrower Default Under Banking Loan Agreements

Contractual default (wanprestasi) gives rise to legal consequences when a borrower fails to fulfill the obligations stipulated in a banking loan agreement. The primary legal basis for such liability is established under Articles 1238 and 1243 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata). Article 1238 regulates the determination of a debtor's default, whereas Article 1243 provides the legal basis for creditors to claim compensation for costs, losses, and interest when a debtor fails to fulfill contractual obligations after being formally declared in default. Accordingly, the legal consequences of default extend beyond the obligation to repay outstanding debts and may also involve civil liability for losses resulting from the nonperformance of contractual obligations.

Default under a banking loan agreement may take several forms, including failure to make scheduled installment payments, delays in fulfilling contractual obligations, payments in amounts inconsistent with the agreed terms, and violations of other contractual provisions. Default may also arise when a borrower fails to comply with restrictions governing the use of a credit facility or provides inaccurate information in violation of the loan agreement. Determining whether contractual default has occurred requires an examination of the substance of the obligation and the specific performance required of the borrower. Payment delays cannot be assessed independently of the agreed repayment schedule, contractual default provisions, and notification procedures established in the loan agreement.[16] Before asserting liability, a bank must establish the contractual basis for its claim and demonstrate that the applicable legal requirements for determining default have been satisfied.

The primary legal consequence of default is the borrower's obligation to perform the contractual obligations originally agreed upon. Article 1267 of the Indonesian Civil Code grants the aggrieved party the right to demand specific performance, provided

[16] Rizky Auliandi and Mangatur Hadiputera Simanjuntak, "Defaults in Credit Agreements: How Are They Settled?," *Unnes Law Journal* 6, no. 1 (2020): 143–62, https://doi.org/10.15294/ulj.v6i1.48230.

that performance remains possible, or to seek termination of the agreement together with compensation for costs, losses, and interest, subject to the applicable legal requirements. Contractual performance generally involves repayment of the loan principal, payment of interest, and settlement of other outstanding obligations arising from a valid agreement. This provision demonstrates that contractual default (wanprestasi) does not automatically extinguish the legal relationship between the bank and the borrower. Rather, the existing agreement continues to provide the legal foundation upon which the creditor may demand fulfillment of outstanding contractual obligations. Accordingly, specific performance remains a primary form of contractual liability, provided that performance is still legally and practically possible and no applicable legal grounds justify the borrower's exemption.

A further legal consequence is the obligation to pay damages under Article 1243 of the Indonesian Civil Code. Such compensation may cover costs, losses, and interest arising from the failure to perform contractual obligations. In banking transactions, these consequences may include outstanding installment payments and late-payment charges, provided that such charges are validly stipulated in the agreement and comply with applicable laws and regulations. Nevertheless, a claim for damages cannot be justified solely by establishing that a borrower has made a late payment. The creditor must also establish the underlying contractual obligation, the circumstances constituting default, the causal relationship between the breach and the alleged losses, and the applicable legal requirements for civil liability. Furthermore, Articles 1244 and 1245 of the Indonesian Civil Code recognize the possibility of exemption from liability for damages when nonperformance results from force majeure (overmacht) satisfying the relevant legal requirements. Examining the circumstances underlying contractual default is therefore essential to distinguish between nonperformance attributable to the borrower's legal responsibility and circumstances that may exempt the borrower from liability for compensation under applicable law.

The third legal consequence concerns the enforcement of collateral securing banking loans. Collateral serves as security for the repayment of outstanding debts when a borrower fails to fulfill contractual obligations. The enforcement of collateral in the form of land is governed by Law No. 4 of 1996 concerning Mortgage Rights (Hak Tanggungan), whereas movable assets subject to fiduciary security interests are regulated by Law No. 42 of 1999 concerning Fiduciary Security. Nevertheless, the existence of collateral does not confer unrestricted authority on banks to enforce security interests unilaterally. Constitutional Court Decision No. 18/PUU-XVII/2019 establishes that when the parties have not agreed on the occurrence of contractual default and the debtor objects to voluntarily surrendering the collateral, enforcement must proceed through judicial mechanisms. This legal position was further clarified in Constitutional Court Decision No. 2/PUU-XIX/2021. Taken together, these decisions affirm that

creditors' rights to enforce collateral must be exercised in accordance with applicable legal procedures while respecting the legal rights of borrowers.

Contractual default (wanprestasi) may also produce economic and administrative consequences for borrowers, particularly through the deterioration of their credit quality and the recording of their financing histories in the Financial Information Services System (Sistem Layanan Informasi Keuangan or SLIK), administered by the Financial Services Authority (Otoritas Jasa Keuangan or OJK). Such records may influence how financial institutions assess borrowers' creditworthiness when they apply for financing in the future. Furthermore, when disputes proceed to litigation, borrowers may be required to bear court costs in accordance with the applicable judicial decision. Consequently, the implications of contractual default extend beyond the obligation to repay outstanding debts, potentially affecting borrowers' financial standing, future access to credit, and legal position.

These findings are consistent with Dalimunthe's research, which examines the consequences of contractual default, particularly collateral seizure and liability for additional costs and interest.[17] Nuralisha and Mahmudah similarly emphasize debtor liability and mediation as a dispute resolution mechanism before judicial proceedings are initiated.[18] Cahyani also identifies compensation obligations and alternative dispute resolution mechanisms, including mediation and collateral enforcement, as important legal consequences of default.[19] Meanwhile, Lestari et al. and Rizki et al. examine the application of contractual default provisions through analyses of judicial decisions.[20] Unlike these studies, which primarily focus on particular forms of liability or specific dispute resolution mechanisms, the present study integrates the fulfillment of contractual obligations, the payment of damages, and collateral enforcement into a sequential framework of legal consequences, each of which must be implemented in accordance with its respective legal requirements.

Contractual default under banking loan agreements therefore gives rise to three principal legal consequences: the right to demand specific performance, the right to claim compensation for damages, and the right to enforce collateral in accordance with applicable laws and regulations. Although these legal remedies serve to protect creditors' interests, their implementation must not disregard procedural certainty, the principle of good faith, or borrowers' legal rights. Borrower liability must be determined proportionately by considering the contractual basis of the obligation, the fulfillment of the legal elements of default, the circumstances underlying nonperformance, and the

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17 Dalimunthe, "Akibat Hukum Wanprestasi Dalam Perspektif Kitab Undang-Undang Hukum Perdata (BW)."

18 Nuralisha and Mahmudah, "Tinjauan Yuridis Tanggung Jawab Hukum Dalam Perjanjian Kredit Perbankan Apabila Debitur Wanprestasi."

19 Cahyani, "Tinjauan Yuridis Terhadap Wanprestasi Dalam Perjanjian Kredit Perbankan."

20 Lestari et al., "Analisis Kasus Wanprestasi Antara Debitur Dan Kreditur Terhadap Perjanjian Pinjaman Kredit Bank Studi Kasus Putusan Nomor 5/PDT.G.S/2023/PN.BTG"; Rizki et al., "Wanprestasi Perjanjian Kredit Bank Dengan Jaminan: Studi Putusan Nomor 35/Pdt.G/2022/PN Bnj."

legality of debt collection and collateral enforcement measures. Accordingly, resolving contractual default should not be directed solely toward restoring creditors' rights but should also promote a fair balance of interests and uphold the principles of justice within banking relationships.

3.3. Mechanisms for Resolving Default in Banking Loan Agreements: Nonjudicial and Judicial Approaches

The resolution of contractual default does not necessarily require judicial proceedings. Before resorting to litigation, the parties may pursue nonjudicial mechanisms, including direct communication, negotiation, loan restructuring, and mediation. Such approaches are particularly relevant when borrowers continue to demonstrate good faith and retain the capacity to fulfill their contractual obligations despite experiencing financial difficulties. The initial stage of the resolution process generally involves the bank issuing a formal notice or warning letter to the borrower concerning outstanding payment obligations. This notice informs the borrower of the outstanding debt, reiterates the contractual obligations, and provides an opportunity for both parties to discuss possible solutions before the dispute escalates into formal legal proceedings. This process is also relevant to the determination of contractual default under Article 1238 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata), subject to the specific default provisions stipulated in the loan agreement.

Loan restructuring plays a strategic role in addressing contractual default by allowing the adjustment of repayment obligations to reflect the borrower's financial circumstances and repayment capacity. Such adjustments may involve extending the loan repayment period (rescheduling), modifying contractual terms and conditions, including interest rates (reconditioning), or reorganizing the financing structure (restructuring). These measures may be implemented individually or in combination, depending on the bank's assessment of the borrower's financial condition. Through restructuring, borrowers are given an opportunity to continue repaying their loans under revised contractual arrangements, while banks can improve the quality of their loan portfolios and mitigate potential losses associated with the accumulation of nonperforming loans.

Restructuring should not be understood merely as a postponement of repayment obligations but rather as an adjustment to the contractual relationship intended to facilitate the continued performance of the agreement.[21] Its effectiveness depends on a realistic assessment of the borrower's repayment capacity, the transparency and accuracy of financial information, the prospects for business recovery where applicable, and the

[21] Raisa Agnia et al., "Restrukturisasi Kredit Dalam Perspektif Hukum Perbankan: Dampak Terhadap Hubungan Kontraktual Antara Bank Dan Nasabah," *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 2 (2025): 131–39, https://doi.org/10.65310/9fxd0m58.

willingness of both parties to comply with the revised contractual terms. Restructuring does not constitute an automatic right of borrowers to obtain a reduction in their financial obligations. Instead, it represents a resolution mechanism subject to the bank's assessment and approval in accordance with applicable laws and regulations. In this context, the principle of good faith under Article 1338(3) of the Indonesian Civil Code provides an essential legal foundation for ensuring that contractual adjustments are not used as a means of evading existing obligations but are genuinely directed toward achieving a sustainable resolution of outstanding loans.

In addition to restructuring, mediation provides an alternative mechanism for resolving disputes between banks and borrowers concerning the implementation of loan agreements, the determination of outstanding obligations, the calculation of penalties, and debt collection practices. Through mediation, the parties can communicate their respective interests and positions with the assistance of a neutral third party, with the objective of reaching a mutually acceptable settlement. Unlike restructuring, which primarily concerns adjustments to the substantive terms of a loan agreement, mediation emphasizes communication, negotiation, and the resolution of disagreements through mutual consent. These mechanisms may complement one another: restructuring can constitute the substantive outcome of an agreed-upon settlement, while mediation can facilitate negotiations when direct communication between the parties proves ineffective. Nonjudicial dispute resolution offers important advantages in terms of procedural flexibility, efficiency, and the potential to preserve the contractual relationship between banks and borrowers.

When nonjudicial dispute resolution efforts fail to produce an agreement, or when the borrower continues to default on contractual obligations, the bank may initiate judicial proceedings by filing a breach-of-contract lawsuit before the competent District Court. The success of such proceedings depends on the bank's ability to establish the existence of a valid legal relationship arising from the loan agreement, the specific contractual obligations imposed on the borrower, the occurrence of a breach of those obligations, and the legal grounds supporting the claims asserted. The court subsequently examines the evidence and legal arguments presented by both parties to determine whether contractual default has occurred and to establish the appropriate form of legal liability. Although litigation provides legal certainty through an enforceable judicial decision, it generally involves greater time and financial costs than consensual dispute resolution mechanisms.

Judicial proceedings may also involve the enforcement of collateral securing the credit facility. The enforcement of land collateral is governed by Law No. 4 of 1996 concerning Mortgage Rights (Hak Tanggungan), whereas fiduciary security is regulated by Law No. 42 of 1999 concerning Fiduciary Security, as interpreted in relevant Constitutional Court decisions. The enforcement process must take into account the

type of collateral, compliance with applicable legal requirements, and the protection of the borrower's legal rights. Furthermore, where a debtor has multiple creditors and satisfies the statutory requirements, the resolution of outstanding debts may also proceed through bankruptcy proceedings or a Suspension of Debt Payment Obligations (Penundaan Kewajiban Pembayaran Utang or PKPU). Nevertheless, these mechanisms do not automatically apply to every instance of delayed loan repayment. Their application requires fulfillment of the specific statutory conditions governing bankruptcy or debt payment suspension.

These findings are consistent with Nuralisha and Mahmudah, who identify mediation and litigation as mechanisms for resolving contractual disputes arising from banking loan agreements.[22] They also correspond with the findings of Frisyudha et al., who emphasize the importance of contractual renegotiation and good-faith performance when economic circumstances impede the fulfillment of contractual obligations, particularly during the COVID-19 pandemic.[23] Furthermore, Cahyani identifies mediation, collateral auctions, and litigation as alternative mechanisms for resolving nonperforming loan disputes.[24] Building upon these studies, the present research develops a more integrated framework by examining loan restructuring, mediation, breach-of-contract litigation, collateral enforcement, bankruptcy proceedings, and the suspension of debt payment obligations (PKPU) as interconnected mechanisms for resolving contractual default while taking into account both borrowers' financial circumstances and creditors' legitimate interests.

The resolution of contractual default in banking loan agreements should prioritize nonjudicial mechanisms, particularly loan restructuring, when borrowers demonstrate good faith and a reasonable prospect of fulfilling their contractual obligations. Litigation should serve as an alternative when consensual resolution proves unsuccessful or when judicial intervention becomes necessary to establish and enforce the parties' legal rights. The effectiveness of dispute resolution depends not merely on the availability of legal remedies but also on selecting an appropriate mechanism based on the nature of the contractual breach, the borrower's repayment capacity, and the bank's legitimate interest in recovering outstanding debts. Such a phased approach promotes a balance between legal certainty, creditor protection, and fairness to borrowers within the framework of banking relationships.

3.4. Legal Protection of Borrowers and the Balance of Rights and Obligations in Banking Loan Agreements

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[22] Nuralisha and Mahmudah, "Tinjauan Yuridis Tanggung Jawab Hukum Dalam Perjanjian Kredit Perbankan Apabila Debitur Wanprestasi."

[23] Frisyudha et al., "Renegosiasi Sebagai Upaya Penyelesaian Wanprestasi Dalam Kontrak Bisnis Selama Masa Pandemi Covid-19."

[24] Cahyani, "Tinjauan Yuridis Terhadap Wanprestasi Dalam Perjanjian Kredit Perbankan."

Legal protection for borrowers constitutes an integral component of the implementation of banking loan agreements. Although banks are entitled to demand repayment of outstanding loans, the exercise of this right must remain consistent with the principles of legal certainty, contractual fairness, and the protection of parties occupying a weaker bargaining position. One of the fundamental concerns regarding borrower protection arises from the widespread use of standard-form contracts in banking transactions. These agreements are generally drafted unilaterally by banks, leaving borrowers with limited opportunities to negotiate or modify the proposed contractual provisions. Such circumstances may create contractual imbalances, particularly when agreements confer excessively broad powers on banks or impose disproportionate obligations on borrowers. In this context, Article 18 of Law No. 8 of 1999 concerning Consumer Protection serves as an important legal instrument for regulating standard-form contractual clauses, insofar as the relevant legal relationship falls within the scope of consumer protection. This provision restricts the inclusion of certain clauses that may disadvantage consumers, thereby ensuring that banks' contractual freedom does not become a means of eliminating or restricting borrowers' legal rights in violation of applicable law.

The principle of freedom of contract cannot be interpreted as granting banks unrestricted authority to determine the entire substance of an agreement without considering borrowers' legitimate interests. Article 1320 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata) establishes four requirements for contractual validity: mutual consent, legal capacity, a definite subject matter, and a lawful cause. These requirements provide the legal foundation for assessing the validity of contractual relationships, including whether the parties' consent was obtained without defects arising from mistake, duress, or fraud. Legal protection for borrowers should not be limited to the resolution of disputes after they arise; rather, it must also be ensured during the formation of the loan agreement. Transparency regarding the loan principal, interest rates, administrative fees, repayment period, late-payment charges, and legal consequences of default is essential to ensuring that borrowers fully understand their contractual rights and obligations before entering into an agreement.

Furthermore, the principle of good faith, as established under Article 1338(3) of the Indonesian Civil Code, constitutes a fundamental basis for maintaining contractual balance in the performance of banking loan agreements. This principle requires both banks and borrowers to fulfill their respective obligations honestly, fairly, and responsibly while refraining from abusing their contractual positions. Banks are not merely entitled to demand loan repayment; they must also perform their own contractual obligations in accordance with the agreed terms and applicable laws and regulations. Conversely, borrowers remain obligated to make payments in the amounts, at the interest rates, and within the timeframes lawfully established in the agreement.

The principle of good faith does not exempt borrowers from their repayment obligations. Rather, it establishes a standard of conduct that requires both parties to exercise their contractual rights and perform their obligations in a fair and proportionate manner.[25]

Another essential dimension of borrower protection concerns the legal limitations imposed on banks' debt collection practices and collateral enforcement measures. The enforcement of fiduciary security must be based on the legally established occurrence of contractual default and must take into account the debtor's willingness to voluntarily surrender the collateral. Where the parties disagree on whether a contractual default has occurred, or where the debtor refuses to voluntarily surrender the collateral, enforcement must proceed through the appropriate judicial mechanism in accordance with applicable legal requirements. This procedural safeguard protects borrowers against unilateral enforcement measures that do not satisfy the applicable legal standards. Nevertheless, such protection does not eliminate creditors' legitimate rights to recover outstanding debts through lawful enforcement procedures. Instead, a proper balance of interests requires recognition of banks' rights as creditors while establishing legal and procedural limitations on the exercise of those rights.

Borrower protection is also closely associated with the application of the prudential principle by banks, beginning with the credit approval process. Assessing a borrower's character, repayment capacity, capital, collateral, and prevailing economic conditions through the 5C framework (Character, Capacity, Capital, Collateral, and Condition of Economy) constitutes an essential component of creditworthiness evaluation. The consistent application of these principles enables banks to identify potential risks at an early stage and reduce the likelihood of nonperforming loans. In particular, evaluating repayment capacity is essential to preventing the extension of credit facilities that exceed a customer's financial capabilities. This demonstrates that responsibility for credit risk management does not rest exclusively with borrowers after credit has been granted; it also depends on the quality of the bank's financial assessment and the degree of prudence exercised in making lending decisions.

The findings of this study are consistent with Nuralisha and Mahmudah, who emphasize borrower liability and the resolution of contractual disputes through civil law mechanisms.[26] The research conducted by Frisyudha et al. (2021) is also relevant, particularly in highlighting good faith and contractual renegotiation as essential elements in addressing difficulties in fulfilling contractual obligations.[27] Meanwhile, Cahyani focuses on resolving nonperforming loans through mediation and collateral

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[25] Citra Agung et al., "Implementasi Prinsip Itikad Baik Dalam Kontrak Bisnis: Perspektif Hukum Perdata," *Journal of Economics, Bussiness and Management Issues* 3, no. 2 (2026): 117–28, https://doi.org/10.47134/jebmi.v3i2.1132.

[26] Nuralisha and Mahmudah, "Tinjauan Yuridis Tanggung Jawab Hukum Dalam Perjanjian Kredit Perbankan Apabila Debitur Wanprestasi."

[27] Frisyudha et al., "Renegosiasi Sebagai Upaya Penyelesaian Wanprestasi Dalam Kontrak Bisnis Selama Masa Pandemi Covid-19."

enforcement.[28] The present study extends these discussions by conceptualizing borrower protection not merely as a remedial mechanism applied after a dispute arises but as a continuous legal process encompassing contract formation, contractual performance, debt collection, and collateral enforcement.

Legal protection for borrowers under banking loan agreements should therefore be based on three fundamental pillars: ensuring contractual validity and balanced contractual terms; requiring the performance of contractual obligations in accordance with the principle of good faith; and ensuring compliance with established legal procedures governing debt collection and collateral enforcement. A balance of contractual rights and obligations cannot be achieved merely by granting borrowers the right to challenge a bank's actions. Rather, it requires appropriate legal limitations on the exercise of creditors' contractual authority, together with the proportionate enforcement of borrowers' obligations. Accordingly, effective legal protection must ensure that banks retain legal certainty in recovering outstanding loans while simultaneously preventing the abuse of bargaining power and unlawful debt collection practices. This integrated approach establishes contractual fairness and legal certainty as the essential foundations of a balanced legal relationship between banks and borrowers.

4. CONCLUSION

This study examines the legal framework governing banking loan agreements, the legal consequences of contractual default (wanprestasi), available dispute resolution mechanisms, and the legal protection afforded to borrowers. Banking loan agreements are governed by the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata) and applicable banking regulations. Their formation and performance must comply with the legal requirements for contractual validity and uphold the principles of legal certainty and good faith. A borrower's default may give rise to legal consequences, including claims for specific performance, payment of damages, and collateral enforcement in accordance with applicable legal requirements. Disputes arising from default may be resolved through loan restructuring and mediation or, where an amicable settlement cannot be reached, through litigation. Meanwhile, adequate legal protection for borrowers is essential to prevent contractual imbalances and ensure that debt collection practices and collateral enforcement are conducted lawfully and proportionately.

Resolving contractual default requires a balanced approach that facilitates the recovery of creditors' rights while safeguarding borrowers' legal interests. In practical terms, the findings provide a basis for banks and policymakers to strengthen transparency in loan agreements, improve loan restructuring mechanisms, and ensure fair and lawful debt collection procedures. This study is limited by its reliance on a

[28] Cahyani, "Tinjauan Yuridis Terhadap Wanprestasi Dalam Perjanjian Kredit Perbankan."

normative legal research approach and, therefore, does not assess the actual implementation of the relevant legal provisions through empirical evidence. Accordingly, banking policies should promote amicable dispute resolution and proportionate contractual safeguards. Future research should adopt empirical or socio-legal approaches to evaluate the effectiveness of loan restructuring, the practices and procedures governing collateral enforcement, and the implementation of legal protections for borrowers.

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