

## Legal Analysis of Default in Credit Agreement (Decision No. 25/Pdt. G. S/2024/PN. Pct.)

Marlina Elisabeth Pakpahan<sup>1\*</sup>, Elkana Dasilva Ginting<sup>2</sup>, Claudya Yolanda Putri Manalu<sup>3</sup>, Clara Brigitta Jap<sup>4</sup>

<sup>1-4</sup> PUI PT Business Law, Indonesia

Email: <sup>1</sup>[marlinaelisabethpakpahan@unprimdn.ac.id](mailto:marlinaelisabethpakpahan@unprimdn.ac.id), <sup>2</sup>[kginting293@gmail.com](mailto:kginting293@gmail.com),  
<sup>3</sup>[claudyaypm@gmail.com](mailto:claudyaypm@gmail.com), <sup>4</sup>[clarayap4@gmail.com](mailto:clarayap4@gmail.com)

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### Abstract

Credit agreements have become one of the principal financing instruments in the Indonesian financial system and hold a strategic position in supporting both consumer and productive sectors. Therefore, credit agreements must comply with Civil Code and Law Number 10 of 1998 concerning Banking to ensure legal certainty and protection for all parties involved. However, in practice, debtors may fail to fulfill repayment obligations, resulting in breach of contract (default). This issue is reflected in Decision Number 25/Pdt.G.S/2024/PN Pacitan, where Bank Rakyat Indonesia Pacitan Branch sued the debtors for non-performance of contractual obligations. This study aims to analyze the regulation of breach of credit agreements, to examine the legal provisions regarding credit agreements, and to analyze the judge's considerations in deciding Case Number 25/Pdt.G.S/2024/PN Pct. This study applies normative legal research using statutory, conceptual, and case approaches through library research on legal materials. The result showed that breach of contract in judicial practice is interpreted not only as contractual non-compliance but also as civil liability requiring proportional legal remedies, compensation, and judicial balance between creditor protection and debtor rights.

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## 1. Introduction

Economic growth is one of the indicators used in analyzing economic development in a country. Economic growth shows the extent to which economic activity generates additional income for the community in a certain period, and it is hoped that the

\* Corresponding Author

E-mail address: [marlinaelisabethpakpahan@unprimdn.ac.id](mailto:marlinaelisabethpakpahan@unprimdn.ac.id)

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community's income will also increase.<sup>2</sup> Economic growth is currently accelerating, and in line with this, the existence and role of banks as distributors of funds is greatly needed by economic actors.<sup>3</sup> Therefore, the legal relationship between the parties (creditors and debtors) in the form of credit agreements plays an important role in the distribution of bank funds.

A credit agreement is a principal agreement (principal) that is real in nature. As a form of principal agreement, the collateral agreement is its assessor.<sup>4</sup> The existence and termination of the collateral agreement depends on the principal agreement. Real means that the occurrence of a credit agreement is determined by the transfer of money from the bank to the debtor customer.<sup>5</sup> This credit agreement is the provision of credit facilities by the creditor to the debtor, which may be in the form of money or other facilities, with the debtor's obligation to repay the loan in accordance with the terms agreed upon by both parties. Basically, credit agreements are governed by the principles of valid agreements as stipulated in Article 1320 of the Civil Code, namely the existence of an agreement, the ability of the parties to enter into an agreement, the existence of something agreed upon, and the existence of a lawful cause.

Every individual who enters into an agreement is obliged to fulfill the terms of the contract. This is because the agreement or contract contains promises that must be fulfilled, and these promises are binding on all parties involved, just as laws are.<sup>6</sup> This is as stipulated in Article 1338 paragraph (1) of the Civil Code, which states that all forms of agreements made legally shall apply as binding laws for the parties involved, as long as the contract is executed in good faith and is not prohibited by law.<sup>7</sup>

According to Subekti, in essence, every form of credit provision, in whatever form and scheme, is a loan agreement, as stipulated in Articles 1754 to 1769 of the Civil Code. These articles establish the legal basis for debt-credit relationships, including the rights and obligations of the parties. This opinion confirms that credit agreements do not stand as separate legal entities, but are part of loan agreements in the realm of civil law.<sup>8</sup> In addition, Marhainis Abdul Hay also stated that credit agreements are identical to loan agreements, which are governed by the provisions in Chapter XIII of Book III of the Civil Code. This means that credit agreements are subject to the general principles of contract law, such as the principle of consensualism, the principle of freedom of contract, and the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code.<sup>9</sup>

Based on Article 1 point 11 of Law Number 10 of 1998 concerning Banking, credit is the provision of money or bills that can be equated with it, based on an agreement or

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<sup>2</sup> Dubb, "Community Wealth: Creating a New Community Economic Base in Detroit."

<sup>3</sup> Krishnamurthy, "Banking Deregulation, Local Credit Supply, and Small-Business Growth."

<sup>4</sup> Alok, Chaurey, and Nukala, "Creditors' Rights, Threat of Liquidation, and the Labor and Capital Choices of Firms."

<sup>5</sup> Hermansyah, *Hukum Perbankan Nasional Indonesia*.

<sup>6</sup> Daula et al., "Legal Analysis of Credit Agreement Breaches by Debtors in Banking Financial Transactions from a Business Law Perspective."

<sup>7</sup> Sriwidodo and Kristiawanto, *Memahami Hukum Perikatan*.

<sup>8</sup> Subekti, *Jaminan-Jaminan Untuk Pemberian Kredit Menurut Hukum Indonesia*.

<sup>9</sup> Hay and Marhainis, *Hukum Perbankan Indonesia*.

loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest.<sup>10</sup> However, sometimes the borrower (debtor) does not repay the debt as agreed in the Credit Agreement, thereby committing a breach of contract (default). Therefore, if the credit agreement is not implemented as agreed by the parties, then such action constitutes a breach of contract (default).<sup>11</sup>

According to the legal dictionary, default means negligence, omission, breach of promise, failure to fulfill obligations in an agreement.<sup>12</sup> Meanwhile, according to Subekti, the debtor committed four main types of default. First, the debtor did not do something that was expected to be completed by him. Second, the debtor committed an act that was not permitted according to the report. The total default consisted of the first and second installments. Third, the debtor carried out the instructions but with a delay. Fourth, the debtor carried out what was ordered, but not in the manner that was ordered.<sup>13</sup> Meanwhile, Article 1238 of the Civil Code explains that a person is considered to be in default if the debtor is negligent, if he has been declared negligent by a warrant or a similar deed, or if the agreement itself stipulates that the debtor must be considered negligent upon the expiration of the specified time.<sup>14</sup>

Breach of contract in civil law is not only viewed as a contractual violation, but also as a form of civil liability that requires a balance of rights and obligations between the parties to the agreement. This is as stated in Decision Number: 25/Pdt.G.S/2024/PN Pct, in which PT. Bank Rakyat Indonesia (PERSERO), Tbk. Pacitan Branch Office as the Plaintiff sued Putri Lestari as Defendant I and Joko Santoso as Defendant II on the basis of breach of contract (default). Therefore, this study aims to analyze the regulation of breach of credit agreements from the perspective of civil law in relation to Decision Number 25/Pdt.G.S/2024/PN Pct., to examine the legal provisions regarding credit agreements in relation to Decision Number 25/Pdt.G.S/2024/PN Pct., and to analyze the judge's considerations in deciding Case Number 25/Pdt.G.S/2024/PN Pct.

## 2. Method and Legal Material

This study employed a normative legal research method, which focuses on examining legal norms, legal principles, statutory regulations, and court decisions relevant to the legal issues under study. Normative legal research is conducted through library-based legal analysis by reviewing secondary legal data consisting of primary, secondary, and tertiary legal materials.

The primary legal materials used in this research include the provisions of the Kitab Undang-Undang Hukum Perdata (Civil Code), especially Articles 1238, 1243, 1267, and 1320 concerning default and contractual obligations, as well as Law Number 10 of 1998 concerning Banking governing credit agreements in Indonesian banking law. In addition, the main legal source analyzed in this study is Decision Number 25/Pdt.G.S/2024/PN

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<sup>10</sup> Undang-Undang Nomor 10 Tahun 1998 Pasal 1 angka 11

<sup>11</sup> Sudarsono, *Kamus Hukum*.

<sup>12</sup> Sudarsono, *Kamus Hukum*.

<sup>13</sup> Ramadhani, "Wanprestasi dan Akibat Hukumnya."

<sup>14</sup> Pasal 1238 Kitab Undang-Undang Hukum Perdata

Pacitan as the central judicial object of analysis.

Secondary legal materials consist of legal doctrines, scientific journal articles, textbooks, and scholarly opinions related to contract law, breach of contract (default), banking law, and dispute settlement mechanisms in credit agreements. Supporting literature was selected to strengthen doctrinal interpretation and legal argumentation.

The research approach applied includes:

1. Statutory Approach, by examining legal provisions governing agreements, defaults, and banking credit arrangements
2. Case Approach, through juridical analysis of court considerations and legal reasoning in Decision Number 25/Pdt.G.S/2024/PN Pacitan
3. Conceptual Approach, by analyzing legal doctrines regarding breach of contract, debtor liability, and creditor legal protection

Data collection was carried out through library research, namely collecting legal documents, court decisions, laws and regulations, legal journals, and related literature accessed both physically and electronically. The legal materials obtained were analyzed using qualitative juridical analysis, namely interpreting legal norms systematically and linking them with judicial practice to explain how breach of contract in credit agreements is legally assessed and resolved in Indonesian civil law practice.

### 3. Results and Discussion

#### 3.1 Regulation of Breach of Credit Agreement in Civil Law Perspective in Relation to Decision Number 25/Pdt. G. S/2024/PN. Pct.

According to the legal dictionary, default means negligence, omission, breach of promise, failure to fulfill obligations in an agreement.<sup>15</sup> Thus, default is a situation where a debtor (obligor) fails to fulfill or perform the obligations as stipulated in the agreement. The provisions on Default in Article 1243 of the Civil Code state that: “compensation for costs, losses, and interest due to the non-fulfillment of an obligation shall only be required if the obligor, after being declared in default of fulfilling their obligation, continues to default, or if something that must be given or done can only be given or done within a period of time that has been exceeded.” Based on the contents of Article 1243 of the Civil Code, the elements of default are as follows:

1. The existence of a valid agreement
2. The existence of a mistake/negligence on the part of the debtor (intentional or negligent)
3. A declaration of default (summons) has been issued, but the obligation has still not been fulfilled

Contract Law based on Article 1338 paragraph (1) of the Civil Code (KUH-Perdata) states that “All agreements made legally are valid as law for those who make them.”<sup>16</sup> Subekti explained the meaning of Article 1338 paragraph (1) of the Civil Code above as follows: “This sentence means that a valid agreement, i.e., one that does not conflict with

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<sup>15</sup> Sudarsono, *Kamus Hukum*.

<sup>16</sup> Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*.

the law, is binding on both parties. Such an agreement generally cannot be revoked, except with the consent of both parties or based on reasons stipulated by law.”<sup>17</sup> Article 1320 of the Civil Code regulates the validity of agreements as follows:

- a. Agreement between the parties who bind themselves; the agreement of the parties is an absolute element for the creation of a contract. This agreement can be reached in various ways, but the most important thing is that there is an offer and acceptance of that offer.
- b. Competence to enter into an agreement; to enter into a contract, the parties must be competent. A person is considered competent to enter into a contract if they are 21 years of age or older, but conversely, a person is considered incompetent to enter into a contract if they are under 21 years of age, unless they were married before reaching the age of 21.
- c. A specific matter in a contract: the subject matter of the agreement must be clear and determined by the parties. The subject matter of the agreement may be goods or services, but it may also be the non-performance of an act. This specific matter in a contract is referred to as a performance that may take the form of goods, expertise or labor, or the non-performance of an act. A lawful reason, meaning that the contract does not conflict with laws and regulations.<sup>18</sup>

Therefore, if a debtor (obligor) fails to fulfill or perform the obligations as stipulated in the agreement, they are said to have committed a breach of contract.<sup>19</sup> The provisions on default in the Civil Code are regulated in Articles 1234 - 1267 of the Civil Code, which explain the forms of performance, the legal consequences of default, and the rights and obligations of the parties to an agreement. Furthermore, Indonesian civil procedural law, which is regulated through the *Het Herziene Indonesisch Reglement (HIR)* and the *Reglement op de Burgerlijke Rechtsvordering (RBg)*, provides formal procedures for filing lawsuits in court, from the first instance to cassation, as a form of guaranteeing a fair legal process.<sup>20</sup> The resolution of breach of contract disputes in civil law aims to provide justice and legal certainty for the parties bound by an agreement. Breach of contract or failure to fulfill a promise can occur either intentionally or unintentionally.<sup>21</sup> Regarding the definition of default, according to Ahmadi Miru, default can take the form of an act:

1. Completely failing to fulfill the achievement
2. The achievement is not perfect
4. Late in fulfilling the achievement
5. Doing what is prohibited in the agreement<sup>22</sup>

In general, a default only occurs if the debtor is declared to have failed to fulfill their obligations, or in other words, a default exists if the debtor cannot prove that they

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<sup>17</sup> Subekti, *Pokok-Pokok Hukum Perdata*.

<sup>18</sup> Miru, *Hukum Kontrak Perancangan Kontrak*.

<sup>19</sup> Dewi and Kurniawan, “Civil Law Liability of Debtors in Credit Agreements with Individual Guarantees.”

<sup>20</sup> Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan*.

<sup>21</sup> Miru, *Hukum Kontrak Perancangan Kontrak*.

<sup>22</sup> *Ibid*

committed the default through no fault of their own or due to force majeure. If no time limit is specified for the performance of an obligation, a creditor is deemed to be required to warn/admonish the debtor to fulfill his obligations.<sup>23</sup> This admonishment is also known as a *sommatie* (summons). In the event that a grace period for the fulfillment of obligations has been specified, then according to Article 1238 of the Civil Code, the debtor is considered to be in default upon the expiration of the specified period. A *somasi* must be submitted in writing, explaining what is being demanded, on what basis, and when the performance is expected to be fulfilled. This is useful for creditors if they wish to sue the debtor in court. In this lawsuit, the *somasi* serves as evidence that the debtor has indeed committed a breach of contract.<sup>24</sup> Therefore, based on Article 1238 of the Civil Code, it can be said that a debtor is in default if he has been given a summons by the creditor or bailiff. The summons must have been issued at least three times by the creditor or bailiff. If the summons is ignored, the creditor has the right to bring the matter to court.

Default by the debtor may cause losses to the creditor. Therefore, the sanctions or legal consequences for debtors who default are as follows:<sup>25</sup>

1. The debtor is required to pay compensation for losses suffered by the creditor (Article 1243 of the Civil Code)
2. Cancellation of the agreement is accompanied by payment of compensation (Article 1267 of the Civil Code)
3. The transfer of risk to the debtor occurs at the time of default (Article 1237(2) of the Civil Code)
4. Payment of court costs if the matter is brought before a judge (Article 1818(1) of the HIR)

In accordance with the provisions of Article 1267 of the Civil Code, in the event that the debtor defaults, the creditor may choose to exercise their rights in the form of:

1. Fulfillment of the agreement
2. Fulfillment of the agreement accompanied by compensation
3. Compensation only
4. Cancellation of the agreement
5. Termination of the agreement accompanied by compensation

Breach of Credit Agreement in Civil Law Perspective is related to Decision Number 25/Pdt. G. S/2024/PN. Pct., where in Decision Number: 25/Pdt.G.S/2024/PN Pct, PT. Bank Rakyat Indonesia (PERSERO), Tbk. Pacitan Branch Office as the Plaintiff sued Putri Lestari as Defendant I and Joko Santoso as Defendant II on the basis of breach of contract. Based on Debt Acknowledgment Letter Number: 82334551/6462/4/21 dated April 15, 2021, on behalf of Putri Lestari (Defendant 1) as a customer who owes a debt to PT. Bank Rakyat Indonesia (Persero) Tbk Sudimoro Pacitan Unit. The Loan Application Form dated April 14, 2021, was submitted and signed by Putri Lestari

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<sup>23</sup> Gunawan et al., "Breach of Contract in Focus: Legal Analysis of Debt Transfer, Property Rights, and Contractual Obligations."

<sup>24</sup> Simanjuntak, *Hukum Perdata Indonesia*.

<sup>25</sup> *Ibid*

(Defendant 1) and Joko Santoso (Defendant II) to PT. Bank Rakyat Indonesia (Persero) Tbk. for an amount of IDR 200,000,000 (two hundred million rupiah) for a period of 60 (sixty) months. And to secure the loan, the defendants provided collateral in the form of land and/or buildings with proof of ownership SHM No. 177 Pager Lor Village in the name of Kadeni. However, the Defendants did not fulfill their obligation to pay the credit installments as agreed in the Debt Acknowledgment Letter Number: 82334551/6462/04/21 dated April 15, 2021. And for these loan arrears, the Plaintiff has visited the Defendants 4 (four) times and has also sent 3 (three) warning letters to the Defendants, as evidenced by Warning Letter I dated March 22, 2024, Warning Letter II dated April 22, 2024, and Warning Letter III dated July 25, 2024, requesting the Defendants to immediately fulfill their obligation to pay the remaining loan/credit to the Plaintiff, but the Defendants still did not fulfill their obligation. The Panel of Judges examining and deciding the case, in its decision, stated that Defendant 1 and Defendant II had committed a breach of contract against the Plaintiff, which was appropriate because based on the evidence and witness testimony -it was proven that the Defendants did not fulfill their obligation to pay the credit installments as agreed in the Debt Acknowledgment Letter Number: 82334551/6462/04/21 dated April 15, 2021. And for these loan arrears, the Plaintiff has visited the Defendants 4 (four) times and has also sent 3 (three) warning letters to the Defendants, as evidenced by Warning Letter I dated March 22, 2024, Warning Letter II dated April 22, 2024, and Warning Letter III dated July 25, 2024, requesting the Defendants to immediately fulfill their obligation to pay the remaining loan/credit to the Plaintiff, but the Defendants still did not fulfill their obligation. In its legal considerations, the Panel of Judges in the case stated that Article 1238 of the Civil Code regulates when a person can be declared in default, namely:

1. The debtor is declared in default when the debtor has been given a formal notice but the debtor still fails to perform the agreed-upon obligation, or;
2. The debtor is declared in default without the need for a formal notice based on the nature of the agreement

And the Plaintiff can prove the arguments of its lawsuit, which essentially state that the Defendants did not fulfill their obligation to pay the credit installments as agreed in the Debt Acknowledgment Letter Number: 82334551/6462/04/21 dated April 15, 2021, resulting in the Defendants' credit falling into the category of non-performing credit and causing losses to the Plaintiff. Therefore, the Panel of Judges decided in its ruling that Defendant I and Defendant II had committed a breach of contract against the Plaintiff.

### ***3.2 Legal Provisions Regarding Credit Agreements in relation to Decision Number 25/Pdt. G. S/2024/PN. Pct.***

The main function of Indonesian banking is to collect and distribute funds to the public, where the distribution to the public is in the form of credit and/or other forms in order to improve the standard of living of the people.<sup>26</sup> The Indonesian Banking Law does

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<sup>26</sup> Renjana, Taufiq, and Hasana, "Legal Implications of Credit Deed Agreements Without Legalization at Banks."

not provide a definition of a credit agreement. The term credit agreement is found in a Presidential Instruction, which instructs banks that in providing credit in any form, they must use a “credit agreement contract” (Guidelines for Credit Policy (Presidential Instruction No. 15/EK/10) dated October 13, 1996, in conjunction with Bank Negara Indonesia Circular Letter Unit I No. 2/539/UPK/Pem. dated October 8, 1966, and Bank Indonesia Circular Letter No. 2/643/UPK/Pemb. dated October 20, 1966).<sup>27</sup> Credit agreements are generally made in writing because it is safer for the parties involved as they cannot deny what has been agreed upon, and it serves as strong and clear evidence in the event that something happens to the credit that has been disbursed or in the event of a breach of promise by the bank.<sup>28</sup>

The word “credit” comes from the Latin word “Credere,” which means the creditor’s trust in the debtor. In this case, the creditor believes that the debtor will repay the loan and interest in accordance with the agreement between the two parties. Meanwhile, for the recipient of the credit, it means that they have received trust, so they have an obligation to repay the loan in accordance with the agreed term. Therefore, credit can be granted if there is trust between the person or entity granting the credit and the person receiving the credit, meaning that the creditor believes that the credit will not default. Meanwhile, based on Article 1 paragraph 11 of Law No. 10 of 1998 concerning Banking, credit is defined as the provision of money or bills that can be equated with it, based on an agreement or loan agreement between a bank and another party that obliges the borrower to repay the debt after a certain period of time with the provision of interest.<sup>29</sup> From the provisions of Article 1 paragraph 11 of Law No. 10 of 1998 concerning Banking, it can be understood that the term credit has a specific meaning, namely lending “money”. The Banking Law refers to a “loan agreement” as the reference for a credit agreement.

Based on Article 2 of Law No. 10 of 1998 concerning Banking, it is stipulated that banking activities must be carried out based on the principle of prudential banking as an effort to avoid bad credit. According to Muhammad Djumhana, banking practices in granting credit must go through analysis and research. This analysis and research is a requirement for granting credit, commonly referred to as the 5 Cs, namely:

1. Character (*watak*)

This principle carefully considers the habits, personal characteristics, lifestyle, family circumstances (children, spouse), hobbies, and social standing of the prospective debtor. This principle is a measure of willingness to pay.

2. Capacity (*kemampuan*)

Research on the debtor’s capacity is conducted to determine the extent to which the debtor is able to repay the principal and interest on the loan. The assessment of the debtor’s ability to pay is based on their business activities and their ability to manage the business that will be financed by the credit.

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<sup>27</sup> Badruzaman, *Perjanjian Kredit Bank*.

<sup>28</sup> Meher et al., “Protection of Consumer Rights in Bank Credit Agreements Based on the Principle of Balance.”

<sup>29</sup> UU No. 10 Tahun 1998 Pasal 1 ayat 11 Tentang Perbankan

3. Capital (*permodalan*)

An investigation into the debtor's capital or financing principles does not only look at the size of the capital, but also how the debtor distributes that capital.

4. Collateral (*agunan*)

The assessment of collateral submitted by the Debtor as security for bank loans is obtained to determine the extent to which the value of the collateral can cover the risk of the Debtor's failure to repay their obligations.

5. Condition of economy (*kondisi perekonomian*)

In principle, this condition assesses the general economic condition and the condition of the prospective debtor's business sector.<sup>30</sup>

Credit agreements must comply with the provisions of Book III of the Civil Code (KUHPerdata) and Law No. 10 of 1998 concerning Amendments to Law -Law Number 7 of 1992 concerning Banking (Banking Law) so that the implementation of credit agreements is more focused and provides legal protection to the parties involved. The Banking Law refers to "loan agreements" as a reference for credit agreements. According to Subekti, in essence, every form of credit provision, in any form and scheme, is a loan agreement, as stipulated in Articles 1754 to 1769 of the Civil Code. These articles establish the legal basis for debt-credit relationships, including the rights and obligations of the parties. This opinion confirms that credit agreements do not stand as separate legal entities, but are part of loan agreements in the realm of civil law.<sup>31</sup> Provisions regarding loan agreements in the Civil Code are regulated in Article 1754 of the Civil Code, which states that: A loan agreement is an agreement whereby one party provides another party with a certain amount of consumable goods on the condition that the latter party will return the same amount of goods of the same type and condition. According to the Civil Code, a loan agreement also has a broad meaning, namely that the object is something that is consumed when used (*verbruiklening*), including money. Based on this loan agreement, the party receiving the loan becomes the owner of the borrowed money and later returns it in the same form to the lending party.<sup>32</sup>

In Bank Indonesia Regulation No. 14/22/PBI/2012 concerning the Provision of Credit or Financing by Commercial Banks. The regulation of credit agreements also includes provisions regarding the structure and important elements that must be included in every credit agreement document. These elements include:

1. Identity of the Parties: Complete information about the parties involved, namely the bank as the lender and the debtor as the borrower.
2. Credit Value and Interest: Provisions regarding the amount of credit granted, the interest rate applied, and the method of calculating interest, which must be explained in detail to the debtor.
3. Term: An explanation of the duration of the credit, including the schedule for principal and interest payments.

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<sup>30</sup> Djumhana, *Hukum Perbankan Di Indonesia*.

<sup>31</sup> Subekti, *Jaminan-Jaminan Untuk Pemberian Kredit Menurut Hukum Indonesia*.

<sup>32</sup> Badruzaman, *Perjanjian Kredit Bank*.

4. Collateral: Assets or collateral required as security for the credit, in accordance with applicable provisions.
5. Penalties and Fines: Provisions regarding penalties or fines imposed if the debtor fails to fulfill their obligations, such as late payments or default.<sup>33</sup>

That in relation to Decision Number: 25/Pdt.G.S/2024/PN Pct, based on the Debt Acknowledgment Letter Number: 82334551/ 6462/4/21 dated April 15, 2021, it is true that Putri Lestari (Defendant 1) as a customer owes a debt to PT. Bank Rakyat Indonesia (Persero) Tbk Sudimoro Pacitan Unit. The Loan Application Form dated April 14, 2021, was submitted and signed by Putri Lestari (Defendant 1) and Joko Santoso (Defendant II) to PT. Bank Rakyat Indonesia (Persero) Tbk. for an amount of Rp 200,000,000 (two hundred million rupiah) for a period of 60 (sixty) months. And based on the evidence of the Debt Acknowledgment Letter Number: 82334551/6462/04/21 dated April 15, 2021 (vide evidence P-1) and evidence in the form of a Loan Application Form dated April 14, 2021 (vide evidence P-2) as well as the oral responses of the Defendants confirming the existence of the credit agreement, it can be ascertained that a credit agreement was indeed made between PT. Bank Rakyat Indonesia (Persero) Tbk Pacitan Branch (Plaintiff) as the Creditor/Credit Facility Provider and the Defendants as the Debtor/Credit Facility Recipient, whereby the Defendants are obliged to pay monthly installments (principal + interest) to the Plaintiff in the amount of Rp. 5,271,000 (five million two hundred seventy-one thousand rupiah) for a period of 60 (sixty) months starting from April 15, 2021, for a loan amounting to Rp. 200,000,000 (two hundred million rupiah) that has been received by the Defendants. The Defendants failed to fulfill their obligation to pay the credit installments as agreed in the Debt Acknowledgment Letter Number: 82334551/6462/04/21 dated April 15, 2021, resulting in the Defendants' credit being classified as non-performing and causing losses to the Plaintiff. Due to the loan arrears, the Plaintiff has visited the Defendants four (4) times (vide evidence P-7) and has also sent three (3) warning letters to the Defendants, as evidenced by Warning Letter I dated March 22, 2024, Warning Letter II dated April 22, 2024, and Warning Letter III dated July 25, 2024 (see evidence P-8) requesting that the Defendants immediately fulfill their obligation to pay the remaining loan/credit to the Plaintiff, but it appears that the Defendants have still not fulfilled this obligation.

In its legal considerations, the Panel of Judges examining and deciding the case stated that based on the Plaintiff's written evidence and the Defendants' oral responses above, the credit agreement between the Plaintiff and the Defendants was made in accordance with the provisions of Article 1320 of the Civil Code, so that the agreement is a valid agreement and thus the credit agreement is subject to and complies with the provisions of Article 1338 of the Civil Code, which states that "all agreements made legally are valid as law for those who make them". Therefore, Defendant I and Defendant II have committed a breach of contract against the Plaintiff.

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<sup>33</sup> Peraturan OJK No. 35/POJK.03/2018 Pasal 12 tentang Penyelesaian Kredit Bermasalah pada Bank Umum

### ***3.3 The Judge's Considerations in Deciding Case Number 25/Pdt. G. S/2024/PN. Pct.***

The decision of the judge who examined and ruled on the case in Decision Number 25/Pdt. G. S/2024/PN. Pct is *Judex Facti*, which is considered correct and not contrary to the law in the case in question. That PT. Bank Rakyat Indonesia (PERSERO), Tbk. Pacitan Branch Office as the Plaintiff sued Putri Lestari as Defendant I and Joko Santoso as Defendant II on the basis of breach of contract (default). Based on the Debt Acknowledgment Letter Number: 82334551/6462/4/21 dated April 15, 2021, on behalf of Putri Lestari (Defendant 1) as a customer who owes a debt to PT. Bank Rakyat Indonesia (Persero) Tbk Sudimoro Pacitan Unit. The Loan Application Form dated April 14, 2021, was submitted and signed by Putri Lestari (Defendant 1) and Joko Santoso (Defendant II) to PT. Bank Rakyat Indonesia (Persero) Tbk. for an amount of IDR 200,000,000 (two hundred million rupiah) for a period of 60 (sixty) months. And to secure the loan, the Defendants provided collateral in the form of land and/or buildings with proof of ownership SHM No. 177 Pager Lor Village in the name of Kadeni. However, the Defendants did not fulfill their obligation to pay the loan installments as agreed in the Debt Acknowledgment Letter Number: 82334551/6462/04/21 dated April 15, 2021. And for these loan arrears, the Plaintiff has visited the Defendants 4 (four) times and has also sent 3 (three) warning letters to the Defendants, as evidenced by Warning Letter I dated March 22, 2024, Second Warning Letter dated April 22, 2024, and Third Warning Letter dated July 25, 2024, requesting the Defendants to immediately fulfill their obligation to pay the remaining loan/credit to the Plaintiff, but the Defendants still did not fulfill their obligation.

That based on the evidence of the Debt Acknowledgment Letter Number: 82334551/6462/04/21 dated April 15, 2021 (vide evidence P-1) and evidence in the form of a Loan Application Form dated April 14, 2021 (vide evidence P-2) as well as the verbal responses of the Defendants confirming the existence of the credit agreement, it can be ascertained that a credit agreement was indeed entered into between PT. Bank Rakyat Indonesia (Persero) Tbk Pacitan Branch (Plaintiff) as the Creditor/Credit Facility Provider and the Defendants as the Debtor/Credit Facility Recipient, whereby the Defendants are obliged to pay monthly installments (principal + interest) to the Plaintiff in the amount of Rp. 5,271,000 (five million two hundred seventy-one thousand rupiah) for a period of 60 (sixty) months starting from April 15, 2021, for a loan amounting to Rp. 200,000,000 (two hundred million rupiah) that has been received by the Defendants. The Defendants did not fulfill their obligation to pay the credit installments as agreed in the Debt Acknowledgment Letter Number: 82334551/6462/04/21 dated April 15, 2021, so that the Defendants' credit was classified as non-performing credit and caused losses to the Plaintiff. Defendant I and Defendant II have committed a breach of contract against the Plaintiff. This is in accordance with the legal considerations of the Panel of Judges in the case in question, which states that Article 1238 of the Civil Code regulates when a person can be declared in breach of contract, namely:

1. The debtor is declared in default when the debtor has been given a formal notice but the debtor still fails to perform the agreed obligations, or;

2. The debtor is declared in default without the need for a formal notice based on the nature of the agreement

The Panel of Judges in its legal considerations stated that based on the evidence submitted by the Plaintiff and the oral responses of the Defendants before the court, the credit agreement between the Plaintiff and the Defendants was made in accordance with the provisions of Article 1320 of the Civil Code, so that the agreement is a valid agreement and thus the credit agreement is subject to and complies with the provisions of Article 1338 of the Civil Code, which states that “all agreements made legally are valid as law for those who make them”. The Defendants were also proven to have failed to fulfill their obligation to pay the credit installments as agreed in the Acknowledgment of Debt Letter Number: 82334551/6462/04/21 dated April 15, 2021, so that the Defendants’ credit fell into the category of bad credit and caused losses to the Plaintiff. Defendant I and Defendant II have been proven to have committed a breach of contract against the Plaintiff. In accordance with the provisions of Article 1267 of the Civil Code, in the event that the debtor commits a breach of contract, the creditor may choose to assert their rights in the form of:

1. Fulfillment of the agreement
2. Fulfillment of the agreement accompanied by compensation
3. Compensation only
4. Cancellation of the agreement
5. Cancellation of the agreement accompanied by compensation

In Decision Number 25/Pdt. G. S/2024/PN. Pct, the Panel of Judges decided to order Defendant I and Defendant II to immediately pay in full the entire remaining loan/credit to the Plaintiff in the amount of Rp.212,619,308.00 (two hundred twelve million six hundred nineteen thousand three hundred eight rupiah), consisting of the principal amount of Rp. 150,811,338.00 (one hundred fifty million eight hundred eleven thousand three hundred thirty-eight rupiah), interest of Rp. 59,307,970.00 (fifty-nine million three hundred seven thousand nine hundred seventy rupiah) and a penalty of Rp. 2,500,000.00 (two million five hundred thousand rupiah), and orders Defendant I and Defendant II to jointly and severally pay the litigation costs incurred in the amount of Rp. 205,000.00 (two hundred and five thousand rupiah).

In accordance with Bank Indonesia Regulation No. 14/22/PBI/2012 concerning the Provision of Credit or Financing by Commercial Banks, one of the important elements that must be included in every credit agreement document is the existence of assets or collateral required as credit security, in accordance with applicable provisions. In this case, to secure their loan, the Defendants provided collateral in the form of land and/or buildings with proof of ownership in the form of SHM No. 177 Desa Pager Lor in the name of KADENI. During the trial, the Plaintiff stated that Certificate of Ownership No. 177 used as collateral by the Defendants belonged to the parents of Defendant I, and the Defendants confirmed this statement. If the Defendants do not voluntarily repay the entire remaining loan/credit to the Plaintiff, then the collateral in the form of SHM No. 177 in Pager Lor Village in the name of KADENI, which was pledged to the Plaintiff,

shall be auctioned through the State Property and Auction Service Office (KPKNL) and the proceeds from the auction shall be used to repay the Defendants' loans/credits to the Plaintiff. Therefore, the Panel of Judges in the case ruled that the collateral with proof of ownership of SHM No. 177 in the name of Kadeni be auctioned through the State Property and Auction Service Office (KPKNL) to settle the defendants' loan/credit payments to the plaintiff, if the Defendants do not immediately pay off the remaining balance of their loans to the Plaintiff.

#### **4. Conclusion**

Default in a credit agreement generally occurs if the debtor is declared to have failed to fulfill their obligations, or in other words, default occurs if the debtor cannot prove that they committed the default through no fault of their own or due to force majeure, and the debtor has also been given a formal warning by the creditor. The formal warning must have been given at least three times. If the summons is ignored, the creditor has the right to bring the matter to court.

Credit agreements must comply with the provisions of law as stipulated in Book III of the Civil Code -Civil Code (KUHPerdata) and Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (Banking Law) so that the implementation of credit agreements is more focused and provides legal protection to the parties who make them.

The decision of the judge who examined and ruled on the case in Decision Number 25/Pdt. G. S/2024/PN. Pct is *Judex Facti*, which is correct and does not conflict with the law in the case in question. Based on the evidence and witness testimony presented at the trial, the Debt Acknowledgment Letter Number: 82334551/6462/4/21 dated April 15, 2021, in the name of Putri Lestari (Defendant 1) who owes a debt to PT. Bank Rakyat Indonesia (Persero) Tbk Sudimoro Pacitan Unit. which was submitted and signed by Putri Lestari (Defendant 1) and Joko Santoso (Defendant II) is in accordance with the provisions of Article 1320 of the Civil Code, so that the agreement is a valid agreement and thus the credit agreement is subject to and complies with the provisions of Article 1338 of the Civil Code, which states that "all agreements made legally are valid as law for those who make them". The Defendants did not fulfill their obligations as stated in the agreement letter, so Defendant I and Defendant II have been proven to have committed a breach of contract against the Plaintiff.

#### **Conflict of interest**

The authors declare that there are no conflicts of interest among the authors in this study.

#### **Authors' contribution**

All authors contributed substantially to the conception and design of the study, the analysis and interpretation of data, and the discussion of the results.

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