



## LEGAL REVIEW OF LATE PAYMENT OF SYNDICATED BANK CREDIT AGREEMENTS DUE TO COVID-19

Dr. Rizkan Zulyadi, SH, M.H<sup>1</sup>

(Law Faculty, Universitas Medan Area, Indonesia)

[rizkan@staff.uma.ac.id](mailto:rizkan@staff.uma.ac.id)

Zaini Munawir, SH, M.Hum<sup>2</sup>

(Law Faculty, Universitas Medan Area, Indonesia)

[zaini@staff.uma.ac.id](mailto:zaini@staff.uma.ac.id)

Mahalia Nola Pohan, SH, M.Kn<sup>3</sup>

(Law Faculty, Universitas Medan Area, Indonesia)

Email: [mahalia@staff.uma.ac.id](mailto:mahalia@staff.uma.ac.id)

### Abstract

*Lenders in the form of loans provided by domestic or foreign lenders or banks. The lenders formed a syndication together to fund the borrower's business operations. The choice of law and the choice forum chosen largely determine the legal form for each party. How to arrange syndicated loans in Indonesia involving domestic and foreign bank participants, and the implementation of collateral in the implementation of syndicated loan agreements with banks? This type of research is normative, and prescriptive in law, providing legal arguments for international syndicated loan approvals in the framework of providing legal protection to lenders. The data used are secondary data obtained through literature study and analyzed qualitatively. International syndicated loan arrangements according to law in Indonesia do not apply legal lending limit if a primary bank is provided as a major bank that is included in one of the 200 (two hundred) major global banks determined by the banker's almanac. With the rise of the Covid-19 pandemic case, it has become a problem of delays in credit payments, including declining syndicated loan payments from domestic and foreign banks. The consideration of this paper is the question of syndicated loans in Indonesia involving domestic and foreign banks and also the implementation of legal options, Jurisdiction of Settlement of Syndicated Credit Disputes at Domestic and Foreign Banks, and legal protection against Congestion 19.*

**Keywords:** Agreement, Syndication Credit, Bank, Default, Jurisdiction, Covid-19

## 1. INTRODUCTION

The availability of funds and capital for companies to carry out business activities is something that will determine the company's survival. The need for capital and funds for the company is undoubtedly a very important need. These funds can be in the form of capital or debt. One form of source of funds that can be utilized by companies is credit funds provided by banks to individual communities and also business entities, especially debtors to meet consumption needs in order to increase production.

One form that developed in the world of Business Law is the provision of syndicated loans to the banks, syndicated loans were originally born from the world of Capital Markets in the United States in the 1950s, whereas in London itself, this syndication was born in the 1960s, syndicated loans in the market internationally in London can be given in all convertible currencies, which is different from the United States market on Wall Street, where syndicated loans are given only in US dollars even if the recipient of the loan is a foreign party. This syndicated credit can be provided in several types of currencies.

The reasons through syndicated loans from the borrower's side are for large amounts of financing, simpler credit procedures, recognition of credibility, low interest costs, tools for accessing capital markets. Whereas in terms of loan providers (lenders) the aim is to spread risk, due to limited loan funds, to obtain benefits (fees), to increase the credibility and image of the bank providing loans to the public. There are several parties involved in syndicated loans, namely: the debtor (the borrower is also called the borrower), the creditor (the loan provider is also called a lender), the main bank (lead manager) or the agent (arranger). There are several creditors as participants of syndicated loans and



one bank agent who is the authority of the banks of the members or participants of the syndicate. So there is a complex relationship to the credit agreement of several legal subjects that bind themselves to an agreement. Legal relations between participants and debtors are regulated by their rights and obligations.

The interesting things to study if syndicated loans involve foreign banks (international syndicated loans) related to the selection of which law will be used or which country's law will be applied in the agreement in the event of a dispute or problem credit or bad credit. Will the law be enforced by bank agents, credit recipients / borrowers (lenders) related to where syndicated loan agreements are signed, where collateral is held or the law of a country which is not at all related to syndicated loan agreements.

In this paper the problem is how the legal arrangements and principles of syndicated loan agreements in Indonesia involving domestic and foreign banks, because given the weakness of collateral law in Indonesia in the field of syndication agreements involving laws from other countries. and other issues are how to implement legal options and jurisdictions for domestic and foreign bank syndicated credit dispute settlement and how Legal Protection Against Syndicated Credit Caused By Covid-19

## 2. RESEARCH METHODE

Types of Research used is normative research. Normative research methods are researching doctrines (doctrinal research), and theories (theoretical research) are the focus of analysis, use secondary data, examine positive legal norms, principles, legal principles, examine the regulations legislation and court decisions, the problem is related to relevant theories, and also examines the legal methods.

The type of this study is prescriptive. In principle, the type of the research are three, namely descriptive, evaluative, and descriptive. Descriptive is describing or describing the subject or object of research and the researcher does not justify (assess) the results of his research. Evaluative is to provide justification for the results of research that are only to evaluate whether the hypothesis of the proposed legal theory is accepted or rejected.

To obtain the data needed in research, the authors use the document study technique. Document studies are carried out by studying and examining various other laws and regulations such as:

- a. Primary legal material consists of legal provisions that are basic norms or basic rules and regulations.
- b. Secondary legal material, which is material that provides explanations and reviews of primary legal materials, such as: books, papers, magazines, scientific journals, articles, articles free from the internet, and newspapers, even personal documents or opinions from experts the law that is relevant to the problem in this study.

## 3. RESULT AND DISCUSSION

### **Legal Arrangement of Syndicated Loan Agreements in Indonesia Involving Domestic and Foreign Banks**

International syndicated loans such as a bank credit agreement are inseparable. Legal arrangements regarding syndicated loans in Indonesia involving domestic and foreign bank participants are not regulated under a single law (special law). The regulation in the Civil Code and in Law Number 7 of 1992 as amended through Law Number 10 of 1998 concerning Banking (Banking Law) only recognizes the term credit, not syndicated credit, moreover international syndicated credit is not found.

#### **1. KUH Perdata (Civil Code)**

The term credit itself cannot be found in the Civil Code. If you pay attention to the provisions in the Civil Code the term credit can be equated with the term borrowing and lending regulated in Book III Chapter XIII Civil Code. Although the term credit is not affirmed in the Civil Code, it does not mean credit activities do not have a legal basis in the Civil Code. The legal basis in the Civil Code is lending and borrowing, which was developed so that the term credit arises in trading activities.



Based on the Civil Code provisions, it appears that several important things that must be considered are: lending and borrowing requires agreement between the borrower (debtor) and the lender (creditor). In addition to the agreement (agreement), the provisions of the Civil Code also regulate the existence of objects / objects lent both in money and in the form of goods. Then the party receiving the loan will replace it with the same item or replace it with cash. Borrowers (debtors) are required to pay interest if agreed.

**2. Regulation No. 7/1992 JO Regulation No 10/1998 Of Banking**

Regulation Number 7 of 1992 as amended through Regulation Number 10 of 1998 concerning Banking (Banking Law) does not regulate in detail about syndicated loans. Rather it only determines the legal basis for credit in general in accordance with the provisions of the Civil Code which is about lending and borrowing based on agreements between banks (creditors) and customers (debtors). Creditors in international syndicated loans are likened to lenders, whereas debtors are likened to borrowers. It's just that in international and national syndicated loans there is one bank that acts as the controller and person in charge of the syndication called the lead manager or lead bank or arranger.

**3. Regulation No 13/1968 of Central Bank**

Syndicated loans are also not found in the Regulation No. 13 of 1968 concerning Central Banks. This law determines the task of Bank Indonesia as the Central Bank to supervise credit matters (vide: Article 29), provide liquidity credit to banks to treat liquidity in an emergency, prepare bank credit plans including limiting lending, etc. others (vide: Article 32).

**4. BI Circulation Letter No 7/23/DPD 8 Juli 2005 (SEBI 7/23/2005)**

The syndicated credit provisions in BI Circular Letter Number 7/23 / DPD dated July 8, 2005 (SEBI 7/23/2005) as referred to in Article 9 paragraph (1) PBI 7/14 / PBI / 2005 are loans granted by more than one bank. If a syndicated loan consists of domestic and foreign banks, the total contribution of foreign banks must be greater than the contribution of domestic banks.

**5. PBI No. 7/14/PBI/2005 Concerning the Limitation of Rupiah Transactions and Provision of Foreign Currency Loans by Banks (PBI 7/14/PBI/2005)**

Bank Indonesia Regulation (PBI) Number 7/14 / PBI / 2005 (abbreviated PBI 7/14 / PBI / 2005) regulates the Limitation of Rupiah Transactions and the Provision of Foreign Currency Loans by Banks. This restriction is an exception to the prohibition of restrictions on rupiah transactions and lending of foreign currency loans by banks. PBI 7/14 / PBI / 2005 limits rupiah transactions as determined in Article 11 of the Banking Law concerning LLL permitted is 10% and 30% of bank capital

There are so many principles in contract law, such as:

1. The principle of freedom of contract

The first principle is freedom of contract (freedom of contract) giving freedom to the parties to make agreements including being free to make their substance in any form or format as well as content as desired by the parties, treaty law in Indonesia adheres to the principle of freedom of contract where every party enters into an agreement free to make agreements (vide: Article 1338 Civil Code) as long as the contents of the agreement do not violate the principle of decency, propriety, appropriateness, and public order (Article 1337 Civil Code).

2. The principle of consensualism

The principle of consensualism is contained in number 1 Article 1320 of the Civil Code as explained earlier, that this principle determines the agreement between them (the parties) who bind themselves in the agreement. Related to the principle of consensualism, agreements can be made in principle free not bound by form and not formally but sufficiently by mere consensus.

The principle of consensualism is also called the principle of agreement that is agreed to bind between the two parties agreeing to the material or content in the agreement, there is no coercion or under pressure from any party. All parties must be free to make choices.

3. The principle of legal certainty

The principle of legal certainty (pacta sunt servanda) is also contained in number 1 Article 1338 of the Civil Code, specifying, "all treaties made legally apply to those who make it as a law". In this article, apart from the principle of freedom of contract, the principle of legal certainty is also contained. Legal certainty in this article means that promises must be kept in other words "debt must be paid".

4. The principle of good faith



The principle of good faith is contained in number 3 Article 1338 of the Civil Code, which specifies: "The agreement must be implemented in good faith". Mariam Darus Badruzaman called the principle of good faith in Article 1338 paragraph (3) of the Civil Code as a counterweight to the principle of legal certainty contained in number 1 Article 1338 of the Civil Code.

**Implementation of Legal Options and Jurisdiction in Settlement of Syndicated and Domestic Bank Syndicated Credit Disputes.**

For the case of Jurisdiction in syndicated loans, arbitration clauses are appropriately mentioned in international credit contracts / agreements made and agreed by the parties (lenders and borrowers). Both before and after the dispute they determine the absolute competence of arbitration. In the agreement usually determined the choice of law and the choice of arbitration to resolve the dispute in the event of a dispute. In accordance with the principle of freedom of contract, they are free to make legal choices as well as the choice of dispute resolution forums in the agreement.)

If a syndicated loan is a loan from an international syndicated loan, then the problem arises regarding the law of which country will be enforced in the event of a dispute between the parties related to the syndicated loan agreement. Is the law used from the law of the agent country, or the law of the borrower country, or the law of one of the lending countries (lenders), or the law of the country where the syndicated loan agreement is signed, or the law of a country not related at all to the syndicated loan agreement.

If the choice of law is not found in the contract concerned, then in the settlement of the dispute the assistance of secondary link points, secondary points of contact are facts in the HPI case which will help determine which law should be applied in solving HPI problems that are being faced. This secondary link is often referred to as the deciding link because it will determine the law of the place where it will be used as the applicable law in resolving a case.

Secondary links are called deciding links that will determine which laws will apply to incidents of International Civil Law (HPI). One of the HPI objects that lays down rules in order to choose the law to be enforced (rules for the choice of law) are rules that define what law should govern a case that contains a foreign element. The choice of law almost always depends on the links that will show what legal system is relevant in the set of facts being faced.

The applicable law in general for domestic syndicated loans is local country law. However, it is also possible that in the domestic syndicated loan agreement, it is determined that the reference is the foreign country law for the resolution of disputes arising in connection with the implementation of the syndicated credit agreement.

**Legal Protection Against Syndicated Credit Congestion Caused By Covid-19.**

The impact of covid-19 pandemic is late credit payments, because there are still many differences of opinion stating whether Covid-19 is a force majeure or not, what is meant by force majeure are events such as fire, earthquake, flood, riots which directly result in delays and / or failure to carry out the obligations stated in the Agreement.

During the Covid-19 Pandemic period, there were many delays in credit payments, which were not in accordance with the agreement, where the debtor objected to having to pay the credit on time, so the Financial Services Authority (OJK) provided the regulations given freedom of non-bank financial institutions and non-bank financial institutions to refer or not refer to the OJK regulations, the regulations include POJK 11 / OJK.03 / 2020 Relaxation of bank credit for debtors affected by Covid-19 both directly and indirectly and POJK 14 / OJK.05 / 2020 regarding countercyclical policies for insurance companies, pension funds, financial institutions etc.

So what about this syndicated credit itself in the 19th covid? Here we can see from several banks in implementing syndicated loan agreements, taken from Bloomberg data, the uncertain economic conditions are expected to make this syndicated loan distribution again depressed this year. Based on Bloomberg data, total syndicated loans in the first quarter of this year were recorded at US \$ 2.16 billion, down 55.27 percent from the same period last year of US \$ 4.83 billion. Meanwhile, PT Bank Pembangunan Daerah East Java Tbk. said the company still recorded a pretty good syndicated loan growth at the beginning of this year which the company channeled to various projects. "Syndicated loans at the beginning of this year are still quite good. The position in March 2020 became Rp2.8 trillion, up 79.8 percent on an annual basis. "It's just that, Ferdian said the company also saw a



tendency to slow down syndicated lending until the end of 2020 would occur, quoted from business finance.

Many banks that carry out syndicated loans restructured during the co-19 period to make a way out in carrying out syndicated loan payments, restructuring schemes provided by the company ranging from lowering interest rates, extending tenors, to changing the structure of credit facilities. For example, Panin Bank has provided PT Bank Panin Tbk (PNBN) has agreed to restructure credit affected by the Covid-19 pandemic valued at Rp919.28 billion. Bank Panin President Director Herwidayatmo said the company's move to approve the restructuring was not too long ago. Although, the provisions of the Financial Services Authority (OJK) were issued a month ago before the POJK came out.) This is one way out of the tardiness of syndicated loan payments made by bank financial institutions

#### 4. CONCLUSIONS AND SUGGESTIONS

Syndicated Loans are loan agreements that involve loans from several domestic and foreign banks, there are several parties involved in syndicated loans, namely: the debtor (the borrower is also called the borrower), the creditor (the loan provider is also called a lender), the main bank (lead manager) or the agent (arranger). There are several creditors as participants of syndicated loans and one bank agent who is the authority of the banks of the members or participants of the syndicate. The implementation of legal options and the jurisdiction of domestic and foreign bank syndicated loan dispute settlement in practice is absolutely valid if the choice of law has been agreed in the international syndicated credit agreement clause. Many banks that carry out syndicated loans restructured during the co-19 period to make a way out in carrying out syndicated loan payments, restructuring schemes provided by the company ranging from lowering interest rates, extending tenors, to changing the structure of credit facilities connections.

Suggestions from this article are, the regulation of syndicated loan agreements should be included in banking legislation and reaffirmed by SEBI 7/23/2005 and PBI 7/14 / PBI / 2005, so that the implementation of legal options and jurisdiction of bank syndicated loan dispute resolution in and foreign banks do not find problems in the practice of dispute resolution required by the parties to determine the choice clause of the law and the choice of an international arbitration forum.

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