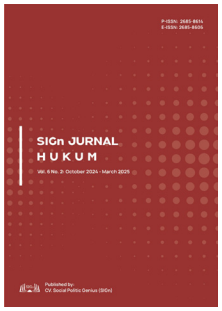

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Article Title

Legal Protection for Banking Institutions in Small and Medium Enterprise Credit Agreements

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ABSTRACT

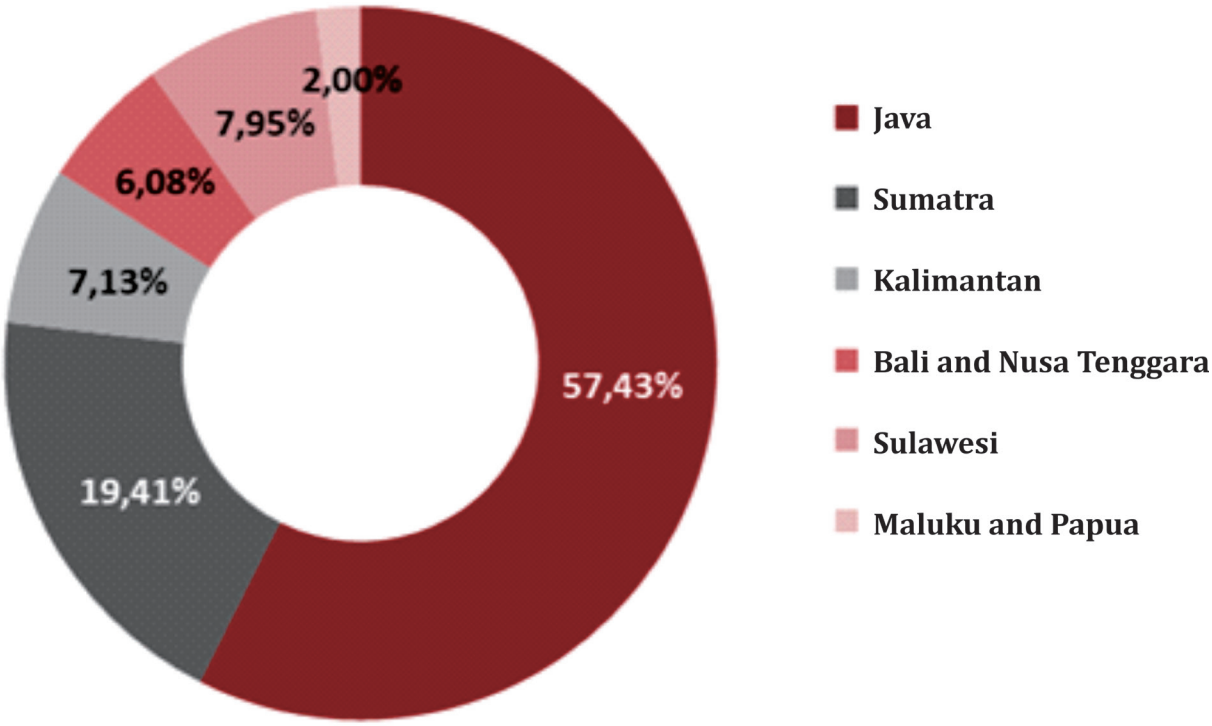
Legal protection for banking institutions in Small and Medium Enterprise (SME) Credit Agreements is a fundamental issue in maintaining the financial system's stability and promoting economic growth. This research analyzes the legal framework and legal certainty of protection for banks in SME Credit Agreements in Indonesia. This normative legal research uses a statute approach, with primary data sources in the form of relevant legislation and secondary data sources in business law literature. The results show that the juridical basis of protection for banks consists of preventive regulations (prudential principles, credit agreements, collateral, FSA supervision) and repressive regulations (credit restructuring, collateral execution, dispute resolution). Although this legal framework is comprehensive, its implementation faces significant challenges, such as inconsistent law enforcement, legal loopholes in collateral regulations, and the complexity of the judicial process. To improve legal certainty, regulatory reform, capacity building of law enforcement officials, information technology adoption, and supervision strengthening are recommended. Thus, this research contributes to strengthening legal protection for banking institutions, which will support the creation of a healthy and sustainable credit ecosystem for SMEs.

Keywords: *Banking Institutions; Default; Legal Certainty; Legal Protection; SME Credit Agreements.*

INTRODUCTION

The strategic role of the Micro, Small, and Medium Enterprises (MSME) sector in the Indonesian economy is undeniable, both as a provider of employment and a contributor to the Gross Domestic Product (GDP) (Ingarasi & Suwigno, 2022). Nevertheless, access to financing remains one of the main obstacles MSMEs face in developing their businesses (Crisyanti et al., 2023). FSA (2023) data shows that although the distribution of MSME loans/financing increased proportionally to 21.07% of total bank loans in March 2023, its growth slowed to 8.63% (year-on-year) compared to the previous year, which reached 15.00%. This slowdown indicates challenges in MSME lending, which need to be comprehensively analyzed to ensure the sustainability of financial support for this sector.

The dominance of the wholesale and retail trade sector (48.63%) and the agriculture, hunting, and forestry sector (16.07%) in the MSME loan portfolio signals a concentration of risk that needs to be effectively mitigated by banking institutions. Although the overall MSME Non-Performing Loan (NPL) ratio remains below 5%, the increase in NPLs in the wholesale and retail trade sector indicates specific vulnerabilities that require special attention. The geographical distribution of MSME loans, which is concentrated in Java (57.43%), and the highest growth in Central Sulawesi (20.59%), highlight regional disparities that need to be bridged through more inclusive and equitable lending policies.



Graph 1. Distribution of MSME Credit (FSA, 2023).

As legal instruments governing the relationship between banking institutions and MSMEs, credit agreements play a central role in the MSME financing ecosystem. These agreements provide MSMEs with access to capital for business expansion, increased production, and diversification of products or services, but they also establish clear rights and obligations for both parties (Ruslya et al., 2021; Dewi et al., 2022). The implementation of prudential principles through comprehensive creditworthiness analysis, based on the 5C parameters (Character, Capacity, Capital, Conditions, and Collateral) and 7P (Personality, Purpose, Prospect, Payment, Profitability, Protection, and Party), is a crucial step to minimize the risk of non-performing loans while maximizing the potential benefits for both parties (Rahayu et al., 2021). However, the complexity of the clauses in credit agreements, especially those related to collateral and interest rates, requires a deep understanding from MSME actors so that they are not trapped in a disadvantageous position (Maulana et al., 2021).

On the other hand, adequate legal protection for banking institutions is an absolute prerequisite for maintaining the financial system's stability and encouraging sustainable lending to MSMEs. Debtor default, an inherent risk in any credit agreement, can cause significant financial losses to banks and disrupt the stability of the banking system as a whole (Kautsar & Apriani, 2022). Therefore, a strong legal framework, which includes effective dispute resolution mechanisms and firm collateral execution rights, is essential to provide legal certainty and protect the interests of banks as creditors (Nurkhasanah et al., 2025). Harmonization between Law Number 10 of 1998, the Civil Code, and related regulations from the Financial Services Authority (FSA)

and Bank Indonesia (BI) forms the normative foundation for realizing comprehensive legal protection.

However, the gap between *das sollen* (ideal norms) and *das sein* (empirical reality) in implementing legal protection for banks remains a crucial issue. The high NPL ratio, procedural and substantive obstacles in collateral execution, and the potential for legal resistance from debtors are some of the challenges banks face in collecting their receivables. Previous studies, such as those conducted by Danil and Thamrin (2021) on Mortgage Rights and Budiman et al. (2024) on the impact of the COVID-19 pandemic on credit agreements, confirm the gap between regulation and practice and highlight the need for legal reform that is more adaptive to economic and social dynamics. This legal uncertainty not only harms banks but can also hinder lending to MSMEs, which negatively impacts economic growth.

Based on the above description, this research is here to bridge the understanding gap and significantly contribute to the discourse of legal protection for banking institutions in the context of Small and Medium Enterprise (SME) Credit Agreements. By thoroughly analyzing the existing legal framework, examining aspects of legal certainty in its implementation, and identifying the challenges faced, this research is expected to produce constructive policy recommendations. The ultimate goal is to balance interests between banks as creditors and SMEs as debtors and to minimize the potential for abuse of power in loan execution, thereby creating a conducive and sustainable business climate for the growth of MSMEs in Indonesia.

METHOD

This research falls under the category of normative legal research, which focuses on the study of positive legal norms relevant to the issue of legal protection for banking institutions in SME Credit Agreements. The primary approach applied is the statute approach, where the tracing, analysis, and interpretation are carried out on the legal provisions contained in relevant legislation (Qamar & Rezah, 2020). Specifically, this research is prescriptive, aiming to describe and analyze existing legal phenomena and provide arguments, formulate new norms, and offer constructive policy recommendations to strengthen legal protection for banking institutions.

The primary legal materials that serve as the main references in this research include Law Number 10 of 1998, the Civil Code, Law Number 4 of 1996, Law Number 42 of 1999, and Law Number 30 of 1999. To enrich the analysis and gain a comprehensive understanding, this research also utilizes secondary legal materials in the form of textbooks, scientific journals, articles, and research results relevant to the issue of legal protection for banking institutions, particularly in the context of SME Credit Agreements.

Legal data and materials were collected through library research or document study techniques, which involved systematically tracking, reviewing, and documenting the primary and secondary legal sources mentioned above (Disemadi, 2022). Furthermore, the collected legal data and materials were analyzed using content analysis techniques to identify, classify, and interpret the meanings contained in these legal texts. Normative juridical analysis was also applied to examine the legal data and materials based on applicable legal norms, principles, and doctrines so that this research can produce valid conclusions and policy recommendations based on a solid legal framework, which are ultimately aimed at answering the established research objectives (Sampara & Husen, 2016).

RESULTS AND DISCUSSION

A. Juridical Basis of Legal Protection for Banking Institutions in SME Credit Agreements

Comprehensive legal protection for banking institutions in SME Credit Agreements is a constitutional imperative to ensure the financial system's stability and support sustainable economic growth (Ju et al., 2021). The juridical basis for this protection stems from various legislations that holistically regulate the rights and obligations of banks as creditors and provide preventive and repressive mechanisms to manage credit risk effectively. The legal construct of this protection rests on two main pillars: preventive regulations, which aim to prevent defaults, and repressive regulations, which provide legal solutions when defaults have occurred (Fatmawati, 2024). These two pillars interact synergistically to create a healthy credit climate and provide legal certainty for all parties involved.

Within the framework of preventive regulation, the prudential principle occupies a central position as the core principle in banking activities, including lending to SMEs (Disemadi, 2019). The manifestation of this principle is expressly regulated in Article 2 and Article 8 section (1) of Law Number 10 of 1998, which requires banks to carry out a comprehensive creditworthiness analysis, covering the aspects of character, capacity, capital, condition, and collateral of prospective debtors. This obligation not only functions as an internal bank mechanism to mitigate risk but also as a legal protection instrument that prevents non-performing loans that can harm the bank and the financial system's stability as a whole (Aprita, 2021). Thus, violations of the prudential principle have implications for administrative sanctions from the FSA and can also be the basis for civil lawsuits by aggrieved parties.

Furthermore, the credit agreement, as a *lex specialis* that governs the legal relationship between the bank and the SME debtor, must meet the legal

requirements of the agreement as stipulated in Article 1320 of the Civil Code. The four requirements, namely the agreement of the parties, legal capacity, a specific object, and a lawful cause, are the foundation of the validity of the credit agreement. Specifically, SME Credit Agreements must be formulated in writing, with clauses that not only protect the debtor's interests but also provide strong protection for the bank, including provisions regarding default, collateral, and dispute resolution mechanisms (Bittie et al., 2024). The clarity and firmness of these clauses are crucial to minimize the potential for disputes in the future and provide legal certainty for both parties (Manangin, 2022).

The existence of collateral, either in the form of Mortgage Rights under Law Number 4 of 1996 or Fiduciary Security under Law Number 42 of 1999, is an essential legal instrument in providing preventive protection for banks. Mortgage Rights give the bank preferential rights to prioritize the repayment of its receivables on the land and/or buildings pledged as collateral. In contrast, Fiduciary Security gives the bank legal ownership of the movable goods pledged as collateral, even though they are still physically controlled by the debtor (Suarjana et al., 2021). The *parate executie* mechanism regulated in Article 6 of Law Number 4 of 1996 allows banks to sell the collateral through public auction without requiring a court decision, significantly speeding up the loan recovery process. Thus, collateral is a secondary way out for the bank and a deterrent for debtors not to default.

In addition, supervision by the FSA as the regulator and supervisor of the banking industry, as mandated by Law Number 21 of 2011, is an important element in preventive regulation. The FSA's authority to establish operational standards, conduct inspections, and impose administrative sanctions on banks that violate the prudential principle is an effective legal instrument to maintain the integrity of the banking system and prevent high-risk lending practices. The sanctions imposed by the FSA are intended not only to provide a deterrent effect but also as a corrective effort to improve bank performance and increase compliance with regulations (Dewantara & Nufitasari, 2021).

In the realm of repressive regulation, the law provides a set of instruments for banks to deal with debtor defaults and recover losses incurred. Article 1238 of the Civil Code expressly stipulates that the debtor is considered negligent after being given a warning or summons, which opens the way for the bank to demand fulfillment of the agreement's performance, compensation, or cancellation (Zia, 2020). However, banks are encouraged to seek loan restructuring before taking the often time-consuming and costly litigation path, as facilitated by Bank Indonesia Regulation Number 14/15/PBI/2012. Restructuring, which can take the form of extending the term, reducing interest rates, or converting debt, is a settlement mechanism that prioritizes the win-win solution principle, where the bank seeks

to recover its receivables while providing an opportunity for the debtor to improve its financial condition (Sholichah et al., 2023).

If restructuring efforts are unsuccessful, the bank can execute the collateral as a forced loan recovery effort. As previously described, the *parate executie* mechanism in Law Number 4 of 1996 makes it easier for banks to sell the collateral through public auction (Siregar & Putra, 2022). However, in practice, collateral execution often faces both juridical (for example, resistance lawsuits from debtors) and non-juridical (for example, difficulty finding buyers). Therefore, a comprehensive understanding of execution procedures and risk mitigation strategies is needed to minimize potential obstacles.

As a last resort, the bank can take formal legal action through a civil lawsuit based on Article 1365 of the Civil Code, which demands compensation for unlawful acts committed by the debtor. In addition, Law Number 30 of 1999 opens up the option of dispute resolution through arbitration, which offers a faster, more flexible, and more confidential process than litigation in court (Solahudin & Attamimi, 2024). The choice of legal path taken will largely depend on the bank's strategy, the characteristics of the debtor, and the economic value of the receivables being collected. If implemented effectively, these repressive legal instruments will provide legal certainty and strong protection for banking institutions in dealing with the risk of SME debtor default.

B. Legal Certainty in SME Credit Agreements: A Perspective of Banking Institution Protection

As the main foundation in every contractual interaction, legal certainty becomes a *conditio sine qua non* in credit agreements between banking institutions and SMEs. More than just a legal formality, legal certainty in this context is a vital instrument that protects banks from the potentially systemic risk of default, considering the central role of banks as intermediary institutions in driving the economy (Langit & Setyorini, 2022). The realization of legal certainty in SME Credit Agreements not only guarantees the rights and obligations of the parties but also creates a conducive investment climate, encourages healthy lending, and ultimately contributes to inclusive and sustainable economic growth (Putri & Jamilah, 2023). Therefore, an in-depth analysis of legal certainty from the perspective of banking institution protection is necessary.

In the Indonesian legal system, the normative foundation of legal certainty in SME Credit Agreements is interwoven with the convergence of various legislations. Law Number 10 of 1998, as a *lex specialis* governing the banking industry, explicitly emphasizes the prudential principle as the primary foundation in lending. Article

1 point 2 of Law Number 10 of 1998 mandates banks to function as collectors and distributors of public funds, which must be carried out prudently. Article 8 section (1) of Law Number 10 of 1998 further affirms the bank's obligation to conduct a comprehensive risk analysis before extending credit as a manifestation of the prudential principle. On the other hand, the Civil Code, as a *lex generalis* governing contract law, provides a fundamental basis regarding the validity of agreements (Article 1320) and the principle of good faith (Article 1338), both of which are central pillars in ensuring legal certainty in every contractual transaction, including SME Credit Agreements. In addition, Articles 1131 and 1132 of the Civil Code expressly state that all of the debtor's assets are collateral for their debts, giving the bank preferential rights to execute assets in the event of default. The convergence of these regulations, reinforced by regulations from the FSA and Bank Indonesia, *prima facie*, creates an adequate legal framework to protect the interests of banks.

However, reality shows that implementing legal certainty in SME Credit Agreements often faces various multi-dimensional obstacles. Inconsistency in law enforcement, especially in executing loan collateral, is one of the most crucial issues (Sitompul et al., 2022). Unscrupulous debtors often exploit legal loopholes and complicated procedures or even engage in unfounded legal resistance (*vexatious litigation*) to hinder or thwart the execution of collateral, even though there is a valid and binding agreement in the credit agreement (Nurohman et al., 2024). This phenomenon harms banks financially and creates a bad precedent that can undermine investor confidence and hinder the distribution of productive loans to MSMEs. The length of the judicial process and the complexity of bureaucracy are also significant inhibiting factors, which often cause banks to bear costs and risks disproportionate to the value of the loans disbursed.

Furthermore, legal loopholes in existing regulations, particularly regarding fiduciary security and mortgage rights, provide room for debtors to engage in legal maneuvering to avoid their responsibilities. For example, Wihandriati (2022) study highlights weaknesses in Law Number 42 of 1999 that allow debtors to transfer objects of fiduciary security without the bank's knowledge, or even fraudulently declare bankruptcy to avoid debt repayment obligations. The absence of strict criminal sanctions for debtors who commit these acts further weakens the effectiveness of legal protection for banks. This confirms that legal certainty depends on the quantity of regulations and the quality, substance, and harmonization between legislations.

Addressing the complexity of these problems, strategic steps that are comprehensive and multi-pronged are needed to strengthen legal certainty in SME Credit Agreements, especially from the perspective of banking institution

protection. *First*, regulatory reform that is *ius constituendum* is necessary, which includes:

1. Amendment of Law Number 4 of 1996 and Law Number 42 of 1999 to close existing legal loopholes and strengthen creditor rights;
2. Simplification of collateral execution procedures, including the possibility of implementing a broader and more effective out-of-court execution mechanism (*parate executie*);
3. Harmonization of related legislation to avoid overlapping and conflicting norms; and
4. Strengthening civil and criminal sanctions for debtors who are proven to have defaulted or committed acts that harm the bank.

Second, increasing the capacity and integrity of law enforcement officials, especially judges, bailiffs, and court clerks, is an essential prerequisite for realizing fair, consistent, and expeditious law enforcement. Training, continuing education, and adequate supervision of the performance of law enforcement officials are key to minimizing the potential for deviations and ensuring that the rights of banks as creditors are optimally protected. *Third*, adopting information technology, mainly through digitizing legal documents, can be a transformative solution to increase transparency, accountability, and efficiency in the credit agreement process and dispute resolution. Implementing electronic signatures, electronic registration for loan collateral, and online dispute resolution (ODR) can reduce transaction costs, speed up processes, and minimize the risk of document manipulation or forgery.

Fourth, the supervision by the FSA and Bank Indonesia of bank lending practices must continue to be improved to ensure compliance with the prudential principle and to detect and prevent the potential for NPLs as early as possible. Improving the quality of human resources in supervision, developing an effective early warning system, and implementing strict and deterrent sanctions for banks that violate them are crucial steps that need to be implemented. With the synergy between substantial legal reform, law enforcement with integrity, utilization of technology, and adequate supervision, it is hoped that legal certainty in SME Credit Agreements can be realized in a tangible way, which in turn will create a healthy, dynamic credit ecosystem and contribute to sustainable national economic development.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion, it can be concluded that legal protection for banking institutions in SME Credit Agreements in Indonesia is a crucial issue that requires comprehensive attention from various aspects. The juridical basis of

this protection, which extends from preventive to repressive regulations, provides an adequate legal framework. Preventive regulations, which include the prudential principle in lending, careful formulation of credit agreements, the existence of collateral as security, and supervision by the FSA, aim to minimize the risk of default from the outset. On the other hand, repressive regulations, which include credit restructuring mechanisms, collateral execution, and dispute resolution through litigation and arbitration, provide legal instruments for banks to deal with defaults and recover losses incurred. However, from the perspective of banking institution protection, the implementation of legal certainty in SME Credit Agreements still faces substantial challenges.

Inconsistency in law enforcement, legal loopholes in fiduciary security and mortgage rights regulations, and the complexity and length of the judicial process significantly hinder the realization of optimal legal certainty. Legal maneuvering by unscrupulous debtors, who exploit weaknesses in regulations and legal procedures, further complicates the bank's efforts to obtain its rights. This condition harms banks financially and creates uncertainty that can hinder the distribution of productive loans to MSMEs. Therefore, strengthening legal certainty in SME Credit Agreements is necessary to protect the interests of banks, create a healthy credit ecosystem, and support sustainable economic growth.

Based on the above conclusions, several strategic recommendations are proposed to increase the effectiveness of legal protection for banking institutions in SME Credit Agreements. *First*, regulatory reform that is *ius constituendum* is necessary, focusing on improving the Fiduciary Security Law and the Mortgage Rights Law, simplifying collateral execution procedures, harmonizing legislation, and strengthening sanctions for defaulting debtors. *Second*, increasing the capacity and integrity of law enforcement officials through continuing education, adequate supervision, and enforcement of professional codes of ethics is a crucial step to ensure fair, consistent, and expeditious law enforcement. *Third*, accelerating the adoption of information technology in the credit agreement process and dispute resolution, including implementing electronic signatures, electronic registration for loan collateral, and online dispute resolution (ODR), can increase transparency, accountability, and efficiency. *Fourth*, the FSA and Bank Indonesia need to continue strengthening their supervisory function on bank lending practices by developing an effective early warning system, improving the quality of human resources, and implementing strict and deterrent sanctions for banks that violate the prudential principle. Through the synergistic and sustainable implementation of these recommendations, it is hoped that legal certainty in SME Credit Agreements can be realized in a tangible way, which will positively contribute to the stability of the financial system and national economic growth.

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