

The Implications Of The Supreme Court Decision Number 1664k/PDT/2017 On The Settlement Of Credit Disputes In PT. BPR Universitas Gadjah Mada

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Abstract

Credit dispute resolution is an important aspect in financial risk management in banking institutions, including PT. BPR (People's Credit Bank). As a financial institution serving the micro market segment, PT. BPRs are often involved in credit disputes that require legal settlement. The Supreme Court's decision Number 1664K/PDT/2017 has proven to be an important milestone in the Indonesian legal system and a precedent in handling credit disputes. This study aims to find out how the general arrangement regarding the right of dependents, to find out the factors that cause debtors not to pay credit, and to find out the implications of the Supreme Court's decision in decision number 1664K/Pdt/2017. This study uses a qualitative method with an analytical descriptive approach, where this type of research is normative legal research. Based on the findings of the research, the Supreme Court determined that the cassation application filed by Identika was rejected and charged Identika with case costs. This decision confirms that the execution and auction carried out by PT. BPR UGM through KPKNL has been legally valid, and that the aspects that Identika objected to are irrelevant in the context of resistance to this execution.

Keywords: Implications, Disputes, Credits

a. INTRODUCTION

In general, BPR is one type of bank that serves many micro, small, and medium entrepreneurs. Meanwhile, according to Law Number 10 of 1998 concerning Banking, People's Credit Banks are banks that carry out *conventional* business activities or based on sharia principles that in their

activities do not provide services in payment traffic. Business developments in Indonesia show an increasing need for financing to support their business development, therefore the People's Credit Bank plays a very important role in society¹.

Banks have a very important role in terms of financing to support the growth of the business world towards economic improvement. The reciprocal relationship between the creditor, i.e. the bank, and the debtor as a user of bank services should reflect the equal standing of both parties in the credit agreement. However, in reality, problems often arise in the process of repaying loans by debtors, which ultimately leads to bad loans².

A dispute is a situation in which individuals experience conflict, both real and only in their view. Disputes arise when there is no agreement or common ground between the parties involved. Usually, disputes are triggered by a violation of an agreement or contract that has been agreed upon by both parties³. Therefore, credit dispute resolution is an important aspect in financial risk management in banking institutions, including PT. BPR (People's Credit Bank). As a financial institution serving the micro market segment, PT. BPR Universitas Gajah Mada is often involved in credit disputes that require legal settlement.

The Supreme Court's decision Number 1664K/PDT/2017 has proven to be an important milestone in the Indonesian legal system and a precedent in handling credit disputes. The subject matter of this decision is *litigation* involving differences in the interpretation of credit agreements and the implementation of related obligations. This decision has an impact on the way financial institutions, including PT. BPR Universitas Gajah Mada, in handling similar disputes by highlighting legal aspects that need to be considered in credit disputes. The implementation of this decision is a challenge, because PT. BPR Universitas Gajah Mada needs to adjust its policies and practices to ensure compliance and effectiveness in dispute resolution. Analysis of the impact of the Supreme Court Decision Number 1664K/PDT/2017 on PT. BPR Universitas Gajah Mada aims to understand how the decision impacts credit dispute resolution practices, internal policies *and company* procedures. This study provides insight into the adjustments needed by PT. BPR Universitas Gajah Mada is in

¹ Hidayati, R. R., & Marlius, D. (2018). Promotional activities in increasing third-party funds at PT. Bank Perkreditan Rakyat (BPR) Batang Kapas Pesisir Selatan.

² Papatungan, N. (2016). Legal Study of Dependent Rights on Land Rights as a Condition for Obtaining Credit. *Lex Privatum*.

³ Nurhayati, S., & Fadhillah, M. H. (2022). Measuring the opportunities and challenges of resolving sharia fintech business disputes through LAPS. *Journal of Tabarru': Islamic Banking and Finance*, 63-70.

relation to legal requirements and is important to ensure the improvement of credit risk management in the future.⁴

In Indonesian legal practice, unlawful acts are regulated by the Civil Code (KUHPerdata) and various other laws and regulations. The basic principle of unlawful acts is that any act that causes harm to another party and is not based on legitimate rights or interests can be considered an unlawful act. Regulations regarding unlawful acts aim to protect individual rights and maintain balance in legal relations between parties. In court, cases of unlawful acts often involve a complex process, where the plaintiff must prove that the defendant's actions meet the criteria of unlawful acts, which include elements of fault, losses and the existence of a cause-and-effect relationship between the unlawful act and the losses suffered. In addition, the importance of clear and *relevant* evidence is key in determining appropriate compensation for the victim⁵.

Based on the data or description above, the author is interested in researching the issue with the title "**Implications of the Supreme Court Decision Number 1664K/Pdt/2017 on the Settlement of Credit Disputes at PT. BPR GADJAH MADA UNIVERSITY**".

b. RESEARCH METHODS

2.1 Implications

The implication according to the Great Dictionary of the Indonesian Language is involvement or relatedness⁶. In this case, involvement or association with the existence of an invention. Implication is a consequence that occurs because there is a discovery or something else⁷. In terms of this research, the implications are the result of the existence of a Supreme Court Decision for the Applicant and the Respondent.

2.2 Definition of Credit Dispute Resolution

Credit dispute resolution is a process to resolve disputes or problems that occur between a lender (usually a bank or financial institution) and a creditee (debtor) related to the agreement or

⁴ Chan, Syapri. "Settlement of banking bad credit disputes." *Normatif Journal* (2021): 6-17.

⁵ Sari, I. (2021). unlawful acts (PMH) in criminal law and civil law. *Scientific Journal of Aerospace Law*.

⁶ The Great Dictionary of the Indonesian Language, Fourth Edition, Ministry of National Education, p. 529.

⁷ Unsplash/Bram Naus, <https://kumparan.com/pengertian-dan-istilah/arti-implikasi-menurut-ahli-dan-jenis-jenisnya-20scBRMCNv9>

performance of credit. These disputes can arise for a variety of reasons, such as the debtor's inability to pay off the debt, changes in interest rates, or inconsistencies in the terms of the credit agreement⁸.

2.3 Definition of Dependent Rights

Dependent Rights are collateral used to ensure the repayment of debts owed by debtors to creditors. Based on Article 1 number 1 of Law Number 4 of 1994 concerning Dependent Rights over land and objects related to land, Dependent Rights are security rights charged to land rights as regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles⁹.

2.4 Type of Research

This research is descriptive analytical, which aims to explain the research object in a thorough, in-depth, and structured manner. An analytical approach refers to the processing of data obtained to analyze problems based on the applicable legal framework. The main focus of this research is an important aspect in credit dispute resolution. The approach applied is a normative legal approach, which is a legal research method that focuses on the study of literature and secondary data as the main source. This method is very relevant to evaluate the legal effectiveness in resolving credit disputes in PT. BPR Gadjah Mada University¹⁰.

2.5 Data Type

In legal research, there are two types of data needed, namely Primary Data and Secondary Data. This study uses Secondary Data which includes:

- a. Primary Legal Materials, such as the Civil Code, Law Number 4 of 1994 concerning Dependent Rights, and Law Number 7 of 1992 concerning Banking which has been updated with Law Number 10 of 1998.
- b. Secondary Legal Materials, in the form of literature from relevant books and journals that discuss Legal Science.
- c. Tertiary Legal Materials, which are reference sources used to provide explanations of Primary and Secondary Legal Materials, such as encyclopedias, sources from the internet, and others.

⁸ Sukino. (2024). Mediation Dispute Resolution for Bad Loans. Eureka Aksara Media.

⁹ Kusumawati, Dora. (2019). Banking Credit Agreements in the *Perspective of Welfare State*. Deepublish.

¹⁰ Arioen, R., Ahmaludin, A., Junaidi, J., Indriyani, I., & Wisnaningsih, W. (2023). Research Methodology Textbook. Sari, N. (2016).

RESULTS AND DISCUSSION

1. GENERAL REGULATIONS ON DEPENDENT RIGHTS IN INDONESIA

The definition of Dependent Rights is regulated in Article 1 paragraph 1 of Law Number 4 of 1996 concerning Dependent Rights. The Right of Dependency on land and objects related to it, hereinafter referred to as the Right of Dependency, is a guarantee imposed on the right to land as stipulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. This guarantee may or may not cover other objects that are integral to the land, with the aim of paying off certain debts, giving priority to certain creditors over other creditors¹¹. Dependent Rights is a form of guarantee that has an important value for humans as legal subjects in supporting daily life needs.

Law functions as a protection for human interests in the form of general and normative rules and norms. As a set of rules, the law applies to everyone and determines the procedure for implementing compliance with these rules. In a narrow sense, law is a right granted to legal subjects through legal instruments, both *preventively* and *repressively*, in written and unwritten form. As a country based on Pancasila, the legal system in Indonesia must be in accordance with the values of Pancasila, as well as consider the rights and obligations of the community to create a relationship with supporting theories or concepts as a guide in research or the preparation of research systematics.

In a credit agreement, the creditor as the provider of the credit facility and the debtor as the recipient or borrower usually require a guarantee. This guarantee aims to ensure debt repayment by the debtor while minimizing risk. The collateral can be either movable or immovable, with land being the most commonly used form of collateral. The land includes property rights, business use rights, building use rights, or use rights, whose value tends to increase over time. This immovable object is regulated by the Dependent Rights institution as mentioned in Article 4 paragraph 1 of Law Number 4 of 1996 concerning Dependent Rights over land and objects related to it.

In the process of granting credit, risks cannot be completely avoided, including the risk of default by the debtor. Therefore, this study aims to examine the form of legal protection provided to related parties based on Law Number 4 of 1996 concerning Dependent Rights, as well as how the provisions in the articles of the law provide legal protection in the event of *default*¹².

¹¹ Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles

¹² Law Number 4 of 1994 concerning Dependent Rights

In the event of *default* , the creditor has the right to execute the right of dependency. This has been regulated in Article 20 Paragraphs 1-5 of Law No.4 of 1996, namely:

- 1) If the debtor defaults on the promise, it is based on:
 - a. The right of the first holder of the Right of Dependency to sell *the object of* the Right of Dependency as referred to in Article 6.
 - b. The executory title contained in the certificate of Dependent Rights as referred to in Article 14 paragraph (2), *the object of the* Dependent Rights is sold through a public auction according to the procedures specified in the laws and regulations for the settlement of receivables of the holder of the Dependent Rights with prior rights from other creditors.
- 2) By agreement of the giver and the holder of the Dependent Rights, the sale *of the object of* the Dependent Rights can be carried out under the hands if thereby it will be able to obtain the highest price that benefits all parties.
- 3) The implementation of the sale as intended in paragraph (2) can only be carried out after 1 (one) month has passed since it is notified in writing by the giver and/or holder of the Right of Dependency to the interested parties and announced at least in 2 (two) newspapers circulating in the area concerned and/or the local mass media, and no party expresses any objection.
- 4) Any promise to carry out the execution of the Right of Dependency in a manner contrary to the provisions of paragraph (1), paragraph (2), and paragraph (3) is null and void.
- 5) Until the announcement for the auction is issued, the sale as referred to in paragraph (1) can be avoided by paying off the debt guaranteed by the Right of Dependency along with the execution costs that have been incurred.

The efforts to settle bad loans according to Bank Indonesia regulations are:

- 1) Rescheduling: is a change in credit terms related to the payment schedule or credit term, including the grace period. This change can include adjusting the number of installments, either by changing the amount of the installment or not.
- 2) Reconditioning: is a modification of part or all of the terms of credit, including payment schedules, terms, or other conditions, as long as it does not affect the maximum limit of the credit balance or convert part or all of the loan into equity.
- 3) Credit restructuring: is an adjustment of credit conditions that can involve:
 - a. Reinvestment of funds by banks;
 - b. Conversion of part or all of the interest arrears into a new principal of the loan; or

- c. Conversion of part or all of the credit into capital participation in the company.

In addition to the rescue steps as above, the handling of bad loans can also be done through several legal steps, including:

- a. Through the State Receivables Affairs Agency,
- b. File a civil lawsuit, or
- c. Resolve disputes through arbitration.

2. FACTORS THAT CAUSE DEBTORS NOT TO PAY CREDIT TO CREDITORS BASED ON SUPREME COURT DECISION NUMBER 1664K/Pdt/2017

Various factors that cause credit disputes in the context of Dependent Rights are usually related to financial constraints or things beyond the control of management¹³. The causes can be categorized into external and internal factors. External factors that trigger bad loans include natural disasters, armed conflicts, changes in economic and trade conditions, and technological developments. Meanwhile, internal factors involve limited credit funds disbursed, complicated application procedures, high credit costs, and inadequate bank services.

In this case, based on the Supreme Court's ruling, some of the causes of bad credit are:

1. During the current credit period, the debtor suffered significant business losses, so that it failed to pay off the loan installments at Bank PT. BPR UGM.
2. Debtors do not get the opportunity to overcome their bad loans through mechanisms regulated by Bank Indonesia, such as restructuring, rescheduling, or reconditioning¹⁴.
3. The credit agreement made by the bank (creditor) contains standard clauses that are detrimental to the debtor and are not in accordance with the Consumer Protection Law, thus putting the debtor at a disadvantage.

¹³ Radityo, M. E. (2014). The Use of *Guarantie Buy Back* Guarantee by Developers on Home Ownership Loans (Case Study at Bank Bukopin Medan Branch). *Premise Law Journal*.

¹⁴ Afhami, Sahal. (2021). Credit Agreement Law: Reconstruction of Standard Agreements in Credit Agreements in Indonesia. *Phoenix Publisher*.

3. IMPLICATIONS OF THE SUPREME COURT'S DECISION ON CREDIT DISPUTES BASED ON DECISION NUMBER 1664K/Pdt/2017

a. Case Chronology

This case is against the background of Identika Sosiawati Widyanti, as the cassation applicant, owns the land and building that she pledged to obtain a loan of Rp450 million from PT. BPR Universitas Gajah Mada (Terlawan I) in November 2014 with a credit deadline of 60 months. However, in the middle of the trip, Widyanti experienced financial problems that resulted in difficulties in fulfilling her obligation to pay monthly installments of Rp12,450,000. This caused delays in installment payments, which the bank *responded* with issuing warnings and submitting an auction application to execute the right of dependents as a form of settlement of bad loans. However, the decision does not include how long the debtor is late in paying his credit and does not also list the date of delivery of the Somas.

No.	Date	Event	Detail
1.	August 2014	Initial loan application at Bank Panin	Identika Sosiawati Widyanti applied for a loan of IDR 300 million with a land certificate guarantee.
2.	October 2014	Take over loans to PT. BPR UGM	Because it needed additional capital, Widyanti transferred the loan to PT. BPR UGM.
3.	28 November 2014	Credit agreement with PT. BPR UGM	Loan of IDR 450 million with monthly installments of IDR 12,450,000 for 60 months.

The reasons for the applicant to file an appeal are due to the following matters:

- 1) Credit agreements with banks contain a number of standard clauses that are detrimental and contrary to Law No. 8 of 1999 concerning Consumer Protection.
- 2) The process of signing the SKMHT (Power of Attorney for Charging Dependent Rights) by a notary (Defendant II) is considered invalid because it is not in accordance with legal procedures. In this case, the guarantee certificate was still at Bank Panin when the SKMHT was created.

- 3) The auction execution conducted by the Sleman District Court is considered legally flawed and null and void because it is based on an agreement that contains standard clauses that are unfair to the applicant.

Based on the results of the decision, the Supreme Court rejected the applicant's cassation due to the following matters:

- 1) The Supreme Court found that the Applicant had been in arrears in payment of credit installments so that it was considered to have committed *a default*¹⁵. Therefore, Defendant I (PT. BPR UGM) has a legal basis to execute the guarantee according to the applicable procedures.
- 2) The Supreme Court held that an objection to a standard clause in a credit agreement was not a valid basis for opposing the execution process. According to the Court, the issue of the standard clause should have been filed through an ordinary lawsuit, not a resistance to execution.
- 3) The Supreme Court considered that the execution carried out by the Sleman District Court and KPKNL Yogyakarta was in accordance with the provisions of the law. The decision of the District Court and the High Court that accepted the execution was considered valid because it was based on evidence *of the applicant's default* and the appropriate auction procedure.
- 4) The Supreme Court rejected the petitioner's argument regarding the existence of formal defects in the SKMHT because this issue is more administrative. According to the Court, this administrative aspect does not hinder the implementation of execution.
- 5) The Supreme Court also stated that the lawsuit filed by the Applicant was late and not accompanied by interested parties (such as the auction winner). This makes the Petitioner's lawsuit incomplete and unacceptable.

Considering that the credit agreement and auction execution were in accordance with the law and that the Applicant was proven to have committed *a default*, the Supreme Court affirmed that the Applicant's lawsuit was unacceptable. The Supreme Court rejected the cassation and ruled that the Applicant must bear the costs of the case. This Supreme Court decision emphasizes the

¹⁵ Sirait, A. S., & Bintang, H. J. (2024). JURIDICAL AGAINST THE CONFISCATION OF FIDUCIARY OBJECTS OF PT. MANDIRI TUNAS FINANCE is caused by *a default* committed by the debtor (Decision Number 18/Pdt. GS/2023/PN Cbi). Dharmawangsa News.

importance of contract enforcement and respect for creditors' rights in the event of *default*¹⁶. However, this decision also shows that the existing legal mechanism has not fully protected consumers from the potential abuse of standard clauses in credit agreements. The Supreme Court's decision emphasizes the principle of strong execution for creditors, but also indicates that consumer protection in credit agreements still requires special attention, both in terms of regulation and application in banking practices.

Case Analysis

The Supreme Court's decision Number 1664 K/Pdt/2017 is the result of the cassation filed by Identika Sosiawati Widyanti, who sued PT. BPR Gajah Mada University (PT. BPR UGM) and notary Agus Praptini related to the dispute over the credit agreement and the implementation of the auction of pledged assets. This case began when Identika transferred a loan from Bank Panin to PT. BPR UGM in 2014. At that time, the certificate of ownership as collateral was transferred and registered in the name of Identika at PT. BPR UGM. A new credit agreement of IDR 450 million was then made between Identika and PT. BPR UGM, with monthly installment payments of IDR 12.45 million for 60 months. However, on its journey, Identika experienced financial difficulties and failed to fulfill its obligations, so PT. BPR UGM submitted an application for an asset auction.

In the process of resisting the execution, Identika emphasized that there are several legal reasons behind the lawsuit. First, he claimed there was a standard clause in the credit agreement that burdened him as a consumer and violated the Consumer Protection Law¹⁷. This standard clause includes provisions on late fines, granting absolute power of attorney to banks, and other unilateral provisions that are considered very burdensome to consumers and are not in accordance with Article 18 of Law Number 8 of 1999 concerning Consumer Protection. Second, in the preparation of the Power of Attorney to Charge Dependent Rights (SKMHT) carried out by notary Agus Praptini, Identika stated that there was a legal defect because the SKMHT was made without an original certificate. Identika claimed that the SKMHT was made based on a deed under hand

¹⁶ Pasaribu, D. R., & Sendy, B. (2023). ANALYSIS OF LEGAL PROTECTION AGAINST THE CANCELLATION OF LAND SALE AND PURCHASE AGREEMENTS DUE TO *DEFAULT* (Analysis of Decision Number: 316/Pdt. G/2023/PN. Mdn). NUSANTARA: Journal of Social Sciences.

¹⁷ Fitrianto, B. (2020). Criminal Law Aspects in Banking Crime in the Perspective of Law of the Republic of Indonesia Number 10 of 1998 concerning Banking. Journal of SOMASI (Social Humanities Communication).

that was not in accordance with the procedure, thus doubting the validity of the guarantee of the right of dependency.

In her lawsuit at the Sleman District Court, Identika demanded that her credit agreement be canceled for the sake of the law and that the auction carried out be declared legally defective. He also requested that the SKMHT made by notary Agus Praptini be considered invalid due to formal defects. However, the Sleman District Court rejected the resistance with the consideration that Identika's lawsuit did not meet the legal requirements, especially because there were parties who were not included in the case, such as the State Property and Auction Service Office (KPKNL) and the auction winner, Nasyith Majidi. In addition, the Sleman District Court considered that Identika's lawsuit against him should have been filed before the auction process was completed, not after the auction was completed and the object of the guarantee had been transferred to a third party. The Yogyakarta High Court then upheld the decision of the Sleman District Court on the grounds that the credit agreement and the implementation of the auction had been in accordance with the applicable procedures, while Identika's resistance was considered vague because it did not meet the provisions of the resistance lawsuit.

Not satisfied with the decision, Identika filed an appeal to the Supreme Court on the grounds that the High Court and the District Court did not consider all legal aspects, including objections related to the standard clause and the validity of the SKMHT. In his cassation memory, Identika cited the Supreme Court's jurisprudence which stated that a decision that did not provide sufficient consideration must be canceled. In addition, Identika argued that the High Court's decision only took over the consideration of the District Court without providing strong additional reasons.

The Supreme Court, after reviewing the grounds of cassation and the evidence submitted, held that the decision of *Judex Facti* (High Court and District Court) was correct and in accordance with the law. First, the Supreme Court stated that the credit agreement between Identika and PT. BPR UGM is valid, even though there is a standard clause, because the clause does not affect the validity of the agreement as a whole. The standard clause is considered irrelevant in this resistance to execution and if Identika feels aggrieved, then the clause should be sued through the ordinary civil lawsuit route, not resistance to execution. The court also stated that Identika's objection to the validity of the SKMHT did not have a direct impact on the validity of the auction execution, considering that Identika herself had signed the SKMHT and the credit agreement.

The Supreme Court also considered that the grounds of cassation related to the award of facts were not acceptable in the cassation examination. In cassation law, the Supreme Court is only authorized to examine the existence of errors in the application of the law, not to re-examine facts or evidence that has been decided at the lower level. Because *Judex Facti* had considered the evidence and applied the law appropriately, the Supreme Court ruled that Identika's cassation was rejected. The Supreme Court also stated that the *Judex Facti* decision does not contradict the applicable laws and regulations, so there is no legal reason to cancel the decision.

Finally, the Supreme Court ruled that the appeal filed by Identika was rejected and charged Identika with the cost of the case. This decision confirms that the execution and auction carried out by PT. BPR UGM through KPKNL has been legally valid, and that the aspects that Identika objected to are irrelevant in the context of resistance to this execution¹⁸.

c. CONCLUSION

Based on the discussion above, it can be concluded that the decision is an important precedent in handling credit disputes in Indonesia. This decision affirms the creditor's right to execute the guarantee in the case of *debtor default*. In this case, the Supreme Court ruled that a breach of the standard clause in the credit agreement was not a sufficient reason to refuse the execution of the guarantee. In addition, this ruling shows that if there is an objection to the standard clause, then the debtor should file a lawsuit through ordinary civil channels, not through resistance to execution.

The implications of this decision for financial institutions, such as PT. The BPR of Gadjah Mada University, is that they need to adjust policies and procedures in handling credit disputes, including improving compliance with consumer protection laws and ensuring that credit agreements do not contain adverse standard clauses. In addition, this ruling emphasizes the importance of prudence in credit risk management, especially in dealing with bad loans.

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