

## Implementation of Legal Protection Against Default Cases Regarding Disputes in Debt and Receivable Agreements (Case Study of Collateral Objects in the Governance of Debt Agreements in the Village Scope)

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### Abstract

The process of accounts payable which is an agreement between one party and another party and the object being agreed is generally money. The position of one party is the party providing the loan (creditor), while the other party is the party receiving the loan (debtor). The essence of the debt agreement is that the creditor lends money to the debtor, and the debtor is obliged to return it within a predetermined time accompanied by interest. Debt repayments are made in monthly installments. If there is an obstacle regarding debt repayment or there is no effort to be able to pay the debt, an element of default occurs. This discussion will also review further the cases that often occur in rural areas regarding borrowing debts in the village environment.

**Keywords:** Creditors, Debt, Default



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### INTRODUCTION

Default is a situation where a person has neglected to fulfill the obligations required by law. So default is the result of non-fulfillment of legal obligations. In general, the debtor is said to be in default when he, because of his own mistakes, does not carry out the performance, or does something that according to the agreement is not permitted to be done. Default means that the debtor does not do what he promised or breaks his promise, violates the agreement and does something he is not allowed to do. An agreement is something that is very much needed in today's society because many people often make agreements that originate from agreements. The agreement is regulated in a contract law regulation that is useful as a guideline for the parties to the agreement. According to the provisions in the Civil Code Article 1313, states that "Agreement is an act by which one person or more binds himself to one or more other people".

The loan agreement is included in the type of loan agreement, this is as stipulated in Article 1754 of the Civil Code which states that "A loan agreement is an agreement whereby one party gives to another party a certain amount of goods that are used up due to usage, with the condition that the latter party will return the same amount of the same type and condition". Accounts payable is an agreement between the two parties and the object of the agreement is generally money. In this loan agreement there are 2 parties that play an important role, namely the creditor and the debtor. The creditor is the party entitled to fulfill an achievement or can be referred to as the debtor, while the debtor is the party who has the obligation to fulfill an achievement which can be referred to as the debtor.

The activities of borrowing and borrowing money that often occur in the community can be noted that in general it is often required to submit debt guarantees by the borrower to the party giving the loan. The most important thing about lending and borrowing money is the mutual trust of the party giving the debt to the debtor, and vice versa. This trust will arise if the borrower is able to fulfill the terms and conditions provided by the party who lent the money.

Debt agreements are not only a form of agreement between the parties but also a basis that results in the emergence of rights and obligations. Therefore, an authentic deed is the most appropriate choice because it has the power as perfect evidence. As stated in article 1870 of the Civil Code which reads "An authentic deed provides between the parties and their heirs or people who receive rights from them, a perfect proof of what is contained in it". Problem Formulation: How to settle cases in debt disputes? What is the legal protection for cases of default that occur in the scope of village governance?

## **RESEARCH METHODS**

Methodologically, this research is included in the type of research using normative methods. Law is conceptualized as what is written in laws and regulations or law is conceptualized as a rule or norm which is a standard of human behavior that is considered appropriate. 22 The types of studies in this study are descriptive qualitative in nature. This qualitative descriptive research generally aims to describe a systematic, factual, and accurate description of a particular object. 23 The data used in this study are: Secondary data is data obtained through literature study which includes primary legal materials, secondary legal materials, and tertiary legal materials (Amiruddin and Zainal Asikin, 2012).

## **RESEARCH RESULTS AND DISCUSSION**

### **Settlement of Accounts Payable Disputes**

As a debt agreement, each party, both the creditor and the debtor, creates reciprocal rights and obligations. The essence of the debt agreement is that the creditor lends money to the debtor, and the debtor is obliged to return it within a predetermined time accompanied by interest (Widyantari, 2014). In lending money contained in a debt agreement by the creditor to the debtor it is not without risk, because risks may occur, especially because the debtor is not obliged to pay off his debt in full, but the debtor is entrusted with paying later in stages or in installments. The risk that generally occurs is failure or congestion in paying off debt. The risks that are generally detrimental to the creditor need to be considered carefully by the creditor, so that in the process of granting credit, it is necessary for the creditor to have confidence in the ability and ability of the debtor to pay the debt until it is paid off (Noviaditya, 2010).

As in Article 1238 of the Civil Code, one of the defaults of a debtor is that the debtor cannot do what he is willing to do as he has promised. Therefore the actions of the Defendant who did not pay the debt, the Defendant is deemed to have committed a default. Because it is included in the criteria described in Article 1238 of the Civil Code, namely the debtor does not do what he is willing to do, the debtor must be responsible. The case settlement process is an action in a problem or problem that arises because of a certain problem related to finding an answer or result of the problem. In the process of settling cases of default on debt agreements in court, all litigants face each other to defend their rights before the court through the stages determined by law.

In Dutch, the meaning of Default means bad performance or like the attitude of someone who does not carry out his obligations previously specified in the agreement between the two parties. Default in the matter of debts and credit is mentioned in Article 1238 of the Civil Code, which reads "The debtor is negligent, if he has been declared negligent by a warrant or by a similar deed, or for the sake of his own engagement, if this stipulates that the debtor must be considered negligent with the lapse of the specified time.

Against the default committed by the debtor raises a legal responsibility that must be accepted, namely the debtor is required to pay compensation for the non-fulfillment of the debtor's achievements. According to Articles 1243 and 1244 of the Civil Code, the notion of civil

compensation focuses more on compensation due to non-fulfillment of an agreement, namely the debtor's obligation to compensate the creditor for losses due to the negligence of the debtor who defaulted. The compensation includes: Costs or fees that have been incurred; Compensation for the fault of the Defendant (debtor); Expected interest or profit.

### **Collateral of Dependent Objects in the Governance of Debt Agreements in the Village Scope**

Debt and credit agreements are not only carried out in the banking sector, but also in rural areas and at several other points, people in their lives are more often bound by personal agreements from party to party. The debt agreement itself can be made with anyone who has the ability to do so. Where in the activities of accounts payable is part of people's lives. And in this case lending and borrowing activities are often required by the existence of guarantees of goods (goods) so that they can be delivered with material guarantees. This material guarantee can be a form of debt guarantee in the form of an individual guarantee. Where material guarantees are material rights to the guarantee holder.

It needs to be clarified in more depth regarding material guarantees contained in Article 1131 of the Civil Code which reads "All movable and immovable objects belonging to the debtor, whether existing or will be collateral for the debtor's individual engagements." Where the lending and borrowing of money that occurs in rural areas and the scope of the community guarantees material in the form of control of agricultural land. The implementation of this lending and borrowing activity has been regulated as a form of implementing mortgage rights over land. Arrangements regarding mortgage rights are regulated in Law no. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land and its implementing regulations. According to Article 1 point 1 of Law no. 4 of 1996 concerning Mortgage over Land, the definition of Mortgage is as follows: "Mortgage over land and objects related to land, hereinafter referred to as Mortgage, is a security right that is charged to land rights as referred to in the Law Number 5 of 1960 concerning Basic Agrarian Regulations, including or not along with other objects that are an integral part of the land, for the settlement of certain debts, which gives priority to certain creditors over other creditors.

The granting of land rights that can be used as collateral according to Article 4 number (1) and Article 27 of Law no. 4 of 1996 concerning Mortgage Rights over Land, namely as follows: Article 4 number (1) reads: Land rights that can be burdened with Mortgage are: Property rights; Cultivation Rights; Building rights. Borrowing money with material guarantees in the form of land ownership as collateral objects is often used by creditors to carry out business activities. Where in this case the debtor often controls or even owns land from the debtor which is usually agricultural land, and this in the rural area is a form of fairness and has often happened even across history to the present. Based on *das sollen*, the debt agreement process should have requirements, namely the existence of a clear time period, so that the collateral object will be returned according to the agreement that should be, but based on *das sein* and things that occur within the community that this period does not apply clearly, can change at any time and is flexible.

So because of this, the collateral object will still be controlled by the creditor who has not been able to fulfill the obligation to pay off his debt. Indeed, based on *das sollen* this should not happen, because it causes harm to the party who owes money, but based on *das sein* this matter is not regulated more specifically so that the source of the law cannot be clearly stated, because the basis of the agreement was not made properly. To be able to take back the dependent object, the party concerned must immediately pay off the debt and return the collateral object to the debtor, so that the obligations of the debtor who make the payment have been fulfilled, and vice

versa. Where the fulfillment of these achievements is the goal of an agreement that should be, and the purpose of the agreement has been achieved properly.

Because this is not based on a binding agreement and there is an element of freedom that provides comfort to both parties as a creditor and also a debtor to carry out debts, this is normalized for the rural scope. And the assumption that the requirements contained in the bank are still too difficult to fulfill needs more quickly, making villagers more often choose the route of borrowing between neighbors or parties who are considered to have this ability.

## **CONCLUSION**

The debtor's default action will have a legal impact that sticks out because one party's rights are not fulfilled which causes loss. As a form of accountability as a result of the impact that arises and harms one of the parties, the other party that causes default or violates the mutually agreed agreement is obliged to accept the sanctions that have been decided, one of which is in the form of administrative sanctions to pay off all debts that have been borrowed by The Defendant or the party who defaulted on the Plaintiff as the aggrieved party. Based on the results of the research, it was concluded that the verdict that had been determined by the Panel of Judges, that from the several assessments and considerations that had been carried out, the Plaintiff's lawsuit was declared maximum.

Actions on the execution of mortgage guarantees on credit agreements that are not yet due are not permitted, due to the basis of Article 20 number (3) of the Mortgage Law. Then this contradicts Article 1238 of the Civil Code which reads, "The debtor is negligent, if he has been declared negligent by a warrant or by a similar deed, or for the sake of his engagement. allowed, due to the basis of Article 20 point (3) of the Mortgage Law. Then it will conflict with Article 1238 of the Civil Code which reads, "The debtor is negligent, if he has been declared negligent by a warrant or by a similar deed, or for the sake of his own engagement, if this stipulates that the debtor must be considered negligent with the passage of time which is determined".

Suggestion: The position of the additional agreement (accessoir) to the debt agreement as the main agreement is a combination that is beneficial for the debtor as a guarantor with the form of a credit agreement in Articles 1754 - 1755 of the Civil Code. Where in this article it has shown the position of the additional agreement (accessoir) to the debt agreement. Addressed to creditors who must pay more attention to the laws and regulations governing debtors' rights in paying off debts. It is aimed at the community, especially the people who carry out the engagement, to pay more attention to the clarity of the agreement that will be made between the creditor and the debtor as well as to the Panel of Court Judges who handle debt and credit issues so that they can prioritize justice, both justice from a juridical and philosophical point of view.

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