



© 2022 Authors. This work is licensed under a Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0). All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

VOLUME 3 ISSUE 3, JULY-December 2025

ISSN (Online): 3030-895X

History of Article

Submitted: Agustus 2025

Revised: September 2025

Accepted: Oktober 2025

Avalis Legal Relations In The Credit Agreement Reviewed Based On The Principle Of Freedom Of Contract

Berry Aprido Putra¹

¹ Universitas Bangka Belitung, 

✉ corresponding author email: berryaprindo@gmail.com

ABSTRACT

Banks in carrying out credit distribution are bound by civil provisions, namely the law of obligations in which the legal relationship is established between the Bank as the Creditor and the Customer as the Debtor, in the credit distribution scheme is a general scheme that we often see in banking practices, the parties are subject to the credit agreement made by the Bank. However, outside the general scheme of credit distribution, the Bank acts as the Creditor and the Customer acts as the Debtor, there are other parties who can act outside the legal relationship and act as parties who guarantee the debtor's debt, known as avalis. How is the legal relationship between the avalis (Debt Guarantor) in the position of the parties in a credit agreement where the avalis (Debt Guarantee) does not act as parties in the credit agreement and what is the legal position of the avalis in the perspective of freedom of contract.

Keywords: *Credit agreement, Avalis, Principle of freedom of contact*

INTRODUCTION

Banks are business entities that collect funds from the public in the form of savings and distribute them to the public in the form of credit and/or other forms in order to improve the standard of living of many people¹. The Bank's business activity is to distribute credit, credit is the provision of money or bills that can be equated with it, based on a loan agreement or agreement between the bank and another party which requires the borrower to repay the debt after a certain period of time with the provision of interest².

The legal relationship between the Bank and the Customer is that the Bank acts as a creditor and the Customer acts as a debtor, the mechanism used by the bank in distributing credit is by binding the parties, the Creditor (Bank) and the Debtor (Customer) in a Credit Agreement, in principle all provisions regarding the valid conditions of the agreement have been included in the Credit Agreement and are binding on those who make it³.

Article 1754 of the Civil Code (KUHPerduta) states that: "A loan agreement is an agreement whereby one party gives another party a certain amount of goods which are used up due to use, on the condition that the latter party will return the same amount of the same type and condition." Based on Article 1313 of the Civil Code, an agreement is an act in which one or more people bind themselves to one or more other people. An agreement contains the meaning of "a promise must be kept" or "a promise is a debt." An agreement is a bridge that will bring the parties to realize what is the purpose of making the agreement, namely achieving protection and justice for the parties. With an agreement, it is expected that each individual will keep their promises and carry them out. Based on the 2 (two) provisions above, the fulfillment of the performance (promise) of the party receiving the loan and/or the party in debt is a consequence of the Credit Agreement that has been made and agreed upon by each party, however, the fulfillment of the performance (promise) becomes a legal problem in the future if the debtor is negligent in fulfilling his performance and for that reason the debtor can be held responsible for default (broken promise).

In general, the fulfillment of performance obligations is carried out by the party deemed negligent in fulfilling its obligations in legal relationships related to the provision of loans/credit. If the negligence in fulfilling the obligations is due

¹ Pasal 1 angka 2 Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 10 Tahun 1998

² Pasal 1 angka 11 Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 10 Tahun 1998

³ Nethania Aurelia Madelin, Angelina Jacqueline Sugiarto dan Jessica Chua, ANALISIS PERLINDUNGAN HUKUM TERHADAP BANK DALAM KASUS WANPRESTASI PEMBAYARAN UTANG OLEH NASABAH: STUDI KASUS PUTUSAN NOMOR 7/PDT.G.S/2023/PN BTA, Jurnal Hukum Lex Generalis. Vol.6. No.4 (2025) Tema/Edisi : Hukum Perdata (Bulan Keempat) <https://jhlgr.wangrencang.com/>

to the debtor's negligence in repaying all or part of the debt, the debtor can be held legally responsible for default.

Some credit distribution activities by banks to customers do not apply in general, where the legal relationship established is the bank as creditor and the customer as debtor. There are other parties who enter as parties, although never explicitly stated in the credit agreement, these parties can replace the debtor in fulfilling their obligations in repaying the debt, and these parties are usually referred to as guarantors.

How is the legal relationship between the guarantor as a debt guarantor related to the legal relationship between the bank as creditor and the customer as creditor in executing the credit agreement, and how is the position of the guarantor related when viewed from the principle of freedom of contract? Therefore, the author will examine the legal status of the guarantor (credit guarantor) in a credit agreement reviewed based on the principle of freedom of contract.

Problem Formulation

1. What is the legal status of the guarantor as a party outside the credit agreement between the creditor and debtor?
2. What is the scope of the guarantor's responsibility for default by the debtor?
3. How is the legitimacy of a party outside the credit agreement reviewed from the principle of freedom of contract?

METHOD

We employed normative juridical research, which focused more deeply on secondary information in the form of literature reviews and related laws and regulations. This description aims to accurately describe the characteristics of a particular individual, condition, phenomenon, or group, or to determine whether there is a relationship between these phenomena and other phenomena in society. The data used in this study is secondary data, consisting of information from documents, books, research reports, and the like.

RESULT & DISCUSSION

3.1. The legal relationship between the guarantor as a party outside the credit agreement between the creditor and the debtor

Simply put, legal relations, or legal relations, are relationships that occur between legal subjects. A more specific and comprehensive definition can be found in the following definitions of legal relations according to experts.

Peter Mahmud Marzuki defines a legal relationship as a relationship governed by law. In other words, a relationship not governed by law is not considered a legal relationship. Furthermore, according to L.J. Van Apeldoorn, a legal relationship is a relationship governed by law.

What is regulated by law is a relationship arising from social interaction, where there is a boundary between rights and obligations.

Requirements for a Legal Relationship

1. Legal Basis

It must be based on legal regulations governing the relationship. This means that specific rules in the law must govern how this relationship is formed, implemented, or resolved.

2. Giving Rise to a Legal Relationship

This relationship must create or give rise to a legal relationship between the parties involved. In other words, there must be an event or action that triggers or creates this relationship.

Types of Legal Relationships

1. One-Sided Legal Relationships

In this type, only one party has the authority to provide something, perform an action, or refrain from performing a certain action. The other party only has obligations. An example is when one party has an obligation to repay a debt to another party.

2. Two-sided Legal Relationship

This type involves two parties who each have their own rights and obligations. Both parties have the right to request something from the other party and are also obliged to provide something to the other party. common example is the employment relationship between an employer and an employee or laborer.

3. Relationship Between One Legal Subject and All Other Legal Subjects

This type of relationship is generally related to property rights. An individual or legal entity has rights to an object in question, such as property or assets.

Banks as banking institutions have the function of collecting and distributing public funds⁴. As intermediary institutions, banks play a vital role in a country's economy by facilitating the flow of funds from those with excess funds (surplus units) to those in need (deficit units). This process begins with the collection of public funds in various forms of savings, such as deposits, time deposits, and checking accounts. The collected funds are then carefully analyzed by the bank before being redistributed in the form of credit to qualified individuals or companies.

⁴ Pasal 3 Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 10 Tahun 1998

The legal relationship that exists between the customer and the Bank in the credit distribution activity is that the Bank acts as a Creditor/lender and the Customer acts as a Debtor/borrower, this legal relationship gives rise to rights and obligations for each party, this relationship is based on an agreement between the debtor and creditor that binds both. The agreement becomes an instrument to accommodate or bring together different interests between 2 (two) or more parties. Through the agreement, these differences are accommodated and then framed with legal instruments so that they bind the parties. In business contracts, questions regarding the side of certainty and justice will actually be achieved if the differences between the parties are accommodated through a contractual relationship mechanism that works proportionally⁵.

In order to ensure that debtors/customers who are given loans/credit can fulfill their obligations (obligations), both in making installments and paying off the loan/credit, banks always ask for additional guarantees (collateral)⁶. before the credit is approved to be given, There are 2 (two) types of guarantee, namely :

1. Personal Guarantee

A personal guarantee is an agreement between a creditor and a person who guarantees the fulfillment of the debtor's obligations.

2. Material Guarantee

A guarantee consisting of movable or immovable property specifically intended to secure the debtor's debt to the creditor in the event of the debtor's future default.

Based on its nature, credit guarantees are divided into two forms under the Civil Code (KUH Perdata)⁷:

- a. General Guarantee. Regulated in Article 1131 of the Civil Code, which states that "all property of the debtor, both movable and immovable, whether existing or future, shall be collateral for all personal obligations." This guarantee is automatic and legally binding. This means that this provision applies generally according to the law without requiring a special agreement. All of the debtor's assets, whether currently owned or acquired in the future, serve as collateral for all debts.
- b. Special Guarantee. Regulated in Articles 1820 to 1850 of the Civil Code, which state that "this guarantee arises from an agreement between the parties, whether in the form of material collateral or personal collateral." Special guarantees require an agreement between the creditor and the debtor, so the type, form, and value of the guarantee are determined in a special agreement mutually agreed upon by the parties.

⁵ LETTERLIJK: JURNAL HUKUM PERDATA Vol.1Issue 2,December 2024

⁶ Pasal 1 angka 27 Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 10 Tahun 1998

⁷ Husnia Hilmi Wahyuni*, Purwanto, Analisis Hukum Terhadap Jaminan Kredit Dalam Perspektif Pencegahan Kredit Macet, Binamulia Hukum, Volume 13, Nomor 2, Desember 2024 (297-311)

Avalis is included in the category of Personal Guarantee, and based on its nature, Avalis is classified as a Special Guarantee, Avalis, or insurance, usually referred to in cooperation contracts or reciprocal agreements, especially in credit agreements where the creditor requests additional guarantees, beyond property guarantees, for the debtor's funds⁸.

The provisions regarding guaranty or guarantee are regulated in Article 1820 of the Civil Code, which states, "Guarantee is an agreement whereby a third party, for the benefit of the creditor, binds itself to fulfill the debtor's obligations if the debtor fails to fulfill their obligations."

There are three elements included in the components of guarantee, namely:

- a. Debt protection provided for the benefit of the creditor;
- b. The guaranteed debt is a legal obligation or commitment;
- c. The guarantor's obligation to fulfill or settle the debtor's obligations occurs when the debtor defaults.

A guarantor, or third party, guarantees payment for a security such as a bill of exchange, check, or promissory note by signing the security. This is called an aval, which functions similarly to a guarantor (*borgtocht*). The concept of an aval stems from European trade practices that recognized securities as an important means of payment in commerce, fostering trust between business actors.

In addition to being regulated in the Civil Code, the guarantee itself is also regulated in the Commercial Code (*WvK*), which is regulated in Articles 115 to 120 of the Commercial Code, which regulates bills of exchange and guarantees.

The forms of guarantee or guarantee itself can be:

- 1) Corporate guarantee
- 2) Personal guarantee
- 3) Bank guarantee.

The guarantee or guarantee must comply with the rules outlined in Articles 1320 and 1338 of the Civil Code. Generally, the guarantee is included in the main credit agreement, but it is also usually included in additional agreements (*accessoir*). The guarantee or guarantee is similar to a third party acting as guarantor for the main credit agreement made by the debtor to the creditor.

The position of avails in a credit agreement depends on the Bank's assessment when it will distribute credit, whether in addition to the material guarantee that is always included in the additional agreement (*accessoir*) to guarantee that when credit is distributed to the debtor, the debtor will always fulfill his/her performance in accordance with the debtor's obligations as stated in the Credit Agreement⁹.

The guarantor (guarantor) acts outside the credit agreement, meaning he is not directly bound by the agreement between the Bank as Creditor and the Customer as Debtor. However, the guarantor voluntarily includes himself to guarantee and/or

⁸ Letezia Tobing, SH.,Mkn, <https://www.hukumonline.com/klinik/a/tentang-borgtocht--lt5175201097ce4/>, diakses pada tanggal 15 Juni 2016 Pukul 23.13 Wib

⁹ Husnia Hilmi Wahyuni*, Purwanto, Analisis Hukum Terhadap Jaminan Kredit Dalam Perspektif Pencegahan Kredit Macet, *Binamulia Hukum*, Volume 13, Nomor 2, Desember 2024 (297-311)

guarantee the smooth provision of credit to the debtor in terms of installment payment obligations and credit repayment within a certain period.

In practice, the guarantor's position is contained in an additional agreement (accessoir) in which the guarantor's obligations and responsibilities as guarantor/debt guarantor are stated in detail, and the additional agreement (accessoir) is an integral part of the Credit Agreement (main agreement)¹⁰.

3.2. Scope of the guarantor's responsibility for defaults committed by the debtor

As a Credit Agreement, just like other agreements, the parties who bind themselves must be based on good faith in carrying out the agreement, as well as the debtor who has agreed and signed the credit agreement immediately the debtor is bound by the agreement that has been agreed upon, the debtor agrees to all the provisions stated in the credit agreement, which in essence contains the credit facilities provided, credit ceiling, interest, provisions, installments and the term of the credit agreement.

Contract law recognizes the principle of *pacta sunt servanda*, which simply means "pacta sunt servanda," meaning that agreements must be fulfilled. In a legal context, this principle affirms that every legally entered into agreement must be respected and implemented by all parties involved, as if the agreement were law. Legal experts agree that this principle is the foundation of legal certainty in agreements, both in civil law and international law.

The principle of good faith plays a crucial role in any agreement. This is based on the premise that if an agreement is based on the principle of good faith and is consistently complied with and implemented by the legal entities that make it, then the agreement is guaranteed to not give rise to legal issues such as disputes caused by one of the parties' breach of contract¹¹.

Despite the importance and role of the principle of good faith, it is not supported by clear legal provisions regarding this principle. This is because the legal provisions governing the principle of good faith are quite vague, reflected in the lack of a clear formulation of the principle of good faith. Furthermore, regarding the application of the principle of good faith, when the agreement is made or executed, or both. This issue has certainly given rise to various interpretations among legal theorists and practitioners. Referring to Gustav Radbruch's legal objectives, namely justice, legal certainty, and benefit, clear regulations are needed regarding the principle of good faith in agreements

Article 1338 paragraph (3) of the Civil Code states that all agreements must be made in good faith. Good faith when making an agreement means honesty. A

¹⁰ Andyna Susiawati Achmad1 , Astrid Athina Indradew, Kedudukan dan Akibat Hukum Perjanjian Tambahan yang Tidak Diperbaharui dengan Perjanjian Pokoknya, jurnal ilmu hukum, humaniora dan politik (JIHHP) Vol. 4, No. 6, September 2024

¹¹ Afif Khalid, Analisis Itikad Baik Sebagai Asas Hukum Perjanjian, Jurnal Legal Reasoning Vol. 5, No. 2, Juni 2023, Halaman 109-122

person acting in good faith places complete trust in the other party, whom they deem honest, and does not conceal anything that could later cause difficulties.

The principle of good faith has two meanings¹²:

1. Good faith in the objective sense, meaning that an agreement must be executed in accordance with the norms of propriety and morality, meaning that the agreement must be implemented in such a way as not to harm either party.
2. Good faith in the subjective sense, meaning that good faith lies in a person's inner attitude. In property law, this good faith can be interpreted as honesty.

The consequence of not carrying out an agreement in good faith is of course a denial of the agreement made, in other words, one of the parties to the agreement is negligent in carrying out its performance and gives rise to disputes in the future. Negligence by one of the parties to the agreement in carrying out its performance is called an act of breach of contract¹³.

In the Civil Code, there are at least two provisions that address default, namely:

- 1) Article 1234 of the Civil Code: "Compensation for costs, losses, and interest due to failure to fulfill an obligation shall be required if the debtor, despite being declared in default, continues to fail to fulfill the obligation, or if something that must be given or done can only be given or done within the time limit."
- 2) Article 1238 of the Civil Code: "A debtor is in default if he is declared in default by a written order or by a similar deed, or for the sake of his own obligation, if he determines that the debtor will be deemed in default upon the expiration of the specified time limit."

Furthermore, regarding the elements of default, there are four elements of default, including:

1. Failure to perform what was promised or failure to perform what was promised.
2. Performing what was promised but not as promised.
3. Performing what was promised but late.
4. Doing something that according to the agreement cannot be done

The legal consequences or consequences of a breach of contract are that the party committing the breach of contract is obliged to compensate the party who has suffered losses in the implementation of the agreement. This form of compensation provides compensation for costs, losses and interest ,for some or all of the achievements specified in the agreement.

Default in a credit agreement is usually caused by the debtor's negligence in fulfilling his obligations, in this case the obligation (obligation) is to repay the debt/loan/credit to the creditor within the specified time period, with the creditor first issuing a warning letter or other similar letter reminding and reprimanding the debtor to fulfill his obligation to repay the debt/loan.

¹² Andoko, SH.I., M.Hum Salman Paris Harahap, SH.I., MH, Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian, Jurnal Hukum Responsif UNPAB

¹³ Nur Azza Morlin Iwanti , Taun, Akibat Hukum Wanprestasi Serta Upaya Hukum Wanprestasi Berdasarkan Undang-Undang Yang Berlaku, Jurnal Ilmu Hukum "THE JURIS" Vol. VI, No. 2, Desember 2022

In the case of default due to the debtor's negligence in fulfilling his obligations (obligation) to repay the debt/loan/credit to the creditor (bank), the creditor (bank) based on the credit agreement can demand accountability from the debtor. However, if after being reminded and reprimanded the debtor remains negligent in fulfilling his obligations, the creditor (bank) can continue the execution stage of the debtor's collateral that is pledged to the creditor (bank).

Accountability for fulfilling the debtor's performance in paying off debts/credit loans/to the creditor, there are options/choices of accountability outside of executing the collateral belonging to the debtor which is guaranteed to the creditor (Bank), namely by requesting accountability from the guarantor as an individual guarantor (personal guarantee) to fulfill the debtor's performance (obligations) to the creditor (Bank)

Avalis who has been bound by an additional agreement (*accessoir*) which is an inseparable part of the credit agreement (main agreement) and specifically in the additional agreement (*accessoir*) it is stated and stated explicitly that the avalis voluntarily becomes the guarantor of the debtor's performance in paying off the debt to the creditor (Bank) then *mutatis mutandis* the avalis can also be asked to be responsible for fulfilling the debtor's performance in paying off the debt/loan/credit to the Creditor (Bank).

CONCLUSION

The legal relationship between the creditor (bank), the debtor (customer), and the guarantor begins at the pre-agreement stage, when the guarantor declares their willingness to participate in the agreement between the creditor and debtor as a guarantor, including a personal guarantor and a corporate guarantee as confirmation of their role as guarantor.

The guarantor is not directly included in the credit agreement between the creditor and debtor. Instead, it is included in a separate, additional agreement (*accessories*) and is integral to the credit agreement. The guarantor's participation as a guarantor has the same status as a physical guarantee.

Avalis as a debt guarantor is fully responsible if the debtor is negligent in carrying out his obligations, and if the debtor has been notified through official letters which in essence inform him of his obligation to pay the debt but the debtor does not carry out his obligations, then in such conditions the debtor's actions are qualified as an act of default (break of promise) in addition to being able to fulfill the obligation to pay the debt directly to the debtor, the creditor can directly ask the avalis as the debt guarantor to fulfill the debtor's obligations in paying off his debt. Avalis, as the guarantor of debt in the legal relationship between creditors and debtors, reflects the principle of freedom of contract. Freedom of contract means the freedom to choose and enter into contracts, the freedom to make or not make

contracts, the freedom of the parties to determine the content and promises they make, and the freedom to choose the subject of the agreement. In contract law, freedom of contract has both positive and negative connotations. Positive means the parties have the freedom to enter into contracts that reflect their free will, and negative means the parties are free from any obligation as long as the binding contract does not regulate it.

In contract law, specifically in contract law, the parties are free to choose to enter into an agreement that is not limited to any object of the agreement as long as it does not conflict with the provisions of laws and regulations. Similarly, the parties are free to choose to include the parties in the agreement.

A debtor's failure to fulfill its obligations is a logical consequence of the agreement. The parties to the agreement can choose and agree on alternative dispute resolution methods, including the involvement of a party outside the agreement as a party responsible for fulfilling the debtor's obligations, namely the presence of a debt guarantor/valis.

To fulfill the obligations of a debtor who has been declared in default, the assets, whether existing or future, belonging to the guarantor as a debt guarantor can be substituted for payment of the debtor's debt after the debtor is declared in default, as long as this is expressly stated in the agreement.

The presence of an guarantor as a debt guarantor between the debtor and creditor provides legal certainty for the creditor, ensuring the debtor fulfills its obligations under the credit agreement, namely repaying the debtor's loan/debt to the creditor.

As the party guaranteeing the debt, the guarantor demonstrates the debtor's good faith in carrying out the credit agreement

REFERENCES

Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 10 Tahun 1998.

Kitab Undang-Undang Hukum Perdata

Madelin. Nethania Aurelia, Angelina Jacqueline Sugiarto dan Jessica Chua, Analisis Perlindungan Hukum Terhadap Bank Dalam Kasus Wanprestasi Pembayaran Utang Oleh Nasabah: Studi Kasus Putusan Nomor 7/PDT.G.S/2023/PN BTA, Jurnal Hukum Lex Generalis. Vol.6. No.4 (2025) Tema/Edisi : Hukum Perdata (Bulan Keempat) <https://jhlg.rewangrencang.com/> Letterlijk: Jurnal Hukum Perdata Vol.1Issue 2,December 2024

Andyna Susiawati Achmad, Astrid Athina Indradew, Kedudukan dan Akibat Hukum Perjanjian Tambahan yang Tidak Diperbaharui dengan Perjanjian Pokoknya, jurnal ilmu hukum, humaniora dan politik (JIHHP) Vol. 4, No. 6, September 2024

- Afif Khalid, Analisis Itikad Baik Sebagai Asas Hukum Perjanjian, *Jurnal Legal Reasoning* Vol. 5, No. 2, Juni 2023, Halaman 109-122
- Andoko, SH.I., M.Hum Salman Paris Harahap, SH.I., MH, Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian, *Jurnal Hukum Responsif UNPAB*
- Nur Azza Morlin Iwanti , Taun, Akibat Hukum Wanprestasi Serta Upaya Hukum Wanprestasi Berdasarkan Undang-Undang Yang Berlaku, *Jurnal Ilmu Hukum "THE JURIS"* Vol. VI, No. 2, Desember 2022
- Rosmawati,S.H.,M.H. (2018). "Pokok-Pokok Hukum Perlindungan Konsumen". Depok. Penerbit Prenada Media. Hal. 34
- Husnia Hilmi Wahyuni*, Purwanto, Analisis Hukum Terhadap Jaminan Kredit Dalam Perspektif Pencegahan Kredit Macet, *Binamulia Hukum*, Volume 13, Nomor 2, Desember 2024 (297-311)
- Letezia Tobing, SH.,Mkn, <https://www.hukumonline.com/klinik/a/tentang-borgtocht--lt5175201097ce4/>, diakses pada tanggal 15 Juni 2016 Pukul 23.13 Wib