



Syndication Leader's Responsibility Towards Syndication Participants in The Event of Debtor Default

Tri Urifiantini ^{1*}, Endang Retnowati ², Fries Melia Salviana ³

¹⁻³ Faculty of Law, Wijaya Kusuma Surabaya University, Indonesia

* Corresponding Author: Tri Urifiantini

Article Info

ISSN (online): 2583-6536

Volume: 04

Issue: 05

September - October 2025

Received: 12-08-2025

Accepted: 14-09-2025

Published: 08-10-2025

Page No: 62-68

Abstract

This study, entitled "The Form of Responsibility of Syndicate Leaders to Syndicate Participants in the Event of Debtor Default," addresses the following issues: 1. To improve theoretical understanding by providing additional documentation in the form of written works, literature, and scientific materials relevant to the legal realm, particularly regarding syndicated creditors; 2. To improve legal knowledge, particularly the legal dimensions of obtaining and implementing agreements as a creditor. Therefore, the findings of this study are expected to be useful and increase understanding for related practitioners, especially banks as collateral recipients and notaries who authenticate and prepare mortgage documents. This research is legal research. Legal research is a process of discovering legal rules, principles, norms, and doctrines to address the legal issues faced. This study will address and discover legal findings by addressing legal issues related to Syndicate Agreements. Therefore, it concludes that the legal relationship between agent and creditor is that of principal and attorney. Therefore, if a conflict arises between the agent and the parties involved in the syndicated loan agreement, the resolution will depend on the provisions of the power of attorney contained in the syndicated loan documents. The loan agreement clearly outlines the decisions or actions the agent can take without consulting or obtaining the approval of the syndicated members, as well as matters that require the prior instruction or approval of a majority of the syndicated members. The agent is not responsible for the completion of the loan documents, as it is the responsibility of each party to ensure that they are completed in accordance with their respective requirements.

DOI: <https://doi.org/10.54660/IJL.2025.4.5.62-68>

Keywords: Responsibility, Syndicated Loan Principal, Debtor Default

Introduction

Indonesia's rapid economic progress in the era of globalization, coupled with free trade, has created significant opportunities for businesses, thus impacting public welfare. This is closely related to the need for financing, with the primary source of economic assistance coming from banking institutions, particularly credit.

Given this high demand, a reassessment of bank funding is necessary. Furthermore, the function of a bank, as defined by its definition, is to act as an intermediary between entities with a cash surplus and entities experiencing a cash deficit, while still observing the principle of prudence ^[1].

Collateral can mitigate the risks associated with providing credit. Credit agreements are legally binding and set a deadline for the borrower to repay the loan to the bank, as stated in the agreement.

¹ Zainal Asikin, 2015, *Pengantar Hukum Perbankan Indonesia*, Raja Grafindo Persada, Jakarta, p. 17.

An agreement, as defined in Article 1313 of the Civil Code, is an act in which one or more persons bind themselves to one or more other persons. An agreement is considered valid if it meets the criteria set out in Article 1320 of the Civil Code, specifically: a. Agreement. All parties to the agreement must agree to every provision of the agreement. This agreement must be free from coercion, fraud, or error; b. Competence. The parties to the agreement must be legally competent, specifically adults (21 years of age or married) and not under guardianship; c. A specific subject (Een Bepaald Onderwerp). The agreement must explicitly define the subject of the agreement. This must be ascertainable or, at the very least, identifiable; d. Legitimate cause (Een Geoorloofde Oorzaak). The agreement must have a legally valid purpose or cause. The agreement must not contradict each other.

According to the Republic of Indonesia Banking Law Number 10 of 1998, Article 1 paragraph (2), "A bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit or other forms to improve the standard of living of the wider community."

Credit is crucial to the economy because it supports businesses facing financial challenges. This is evident in the two primary functions of banks: accepting deposits and disbursing loans. Customers expect interest, while banks generate profits by reallocating funds as credit. Credit is essentially the primary lending mechanism, providing funds for economic activities. Banks can grant credit based on a thorough assessment of the debtor's integrity, capacity, and competence to meet and repay their obligations as stipulated in the agreement. To ensure this, before granting a credit facility, banks must conduct a thorough evaluation of the debtor's character, capacity, capital, collateral, and business prospects. Large loans can be provided to businesses through syndication. Syndication is a credit mechanism that has provided substantial benefits to the trade, property, and other industries that require revolving capital and crucial financing in the banking sector. Syndication essentially involves providing credit to borrowers through the collaboration of several banks or financial institutions to provide capital loans and mitigate the risks faced by each institution relative to the loan amount.

This is achieved through a single credit agreement between the client and the participating banks, which serves as a cohesive foundation for all syndicate members. Syndicated loans typically involve a leader, commonly known as the lead arranger. The syndicate leader plays a crucial role in organizing the syndicate participants.

Banking regulations protect banks through the Legal Lending Limit (LLL), currently regulated by Financial Services Authority Regulation (POJK) Number 32/POJK.03/2018, which addresses the Legal Lending Limit and Large Fund Providers for Commercial Banks. This regulation aims to mitigate substantial risks associated with individual borrowers. This applies if the creditor is a foreign bank or non-bank institution.

Providing bank credit facilities with collateral, such as those involving land and building rights as collateral, is crucial for mortgage institutions, which can guarantee legal certainty for creditors. Law Number 4 of 1996 concerning Mortgage Rights on Land and Related Assets (hereinafter referred to as UUHT) was enacted to serve the needs of the public. The provision of bank credit facilities with collateral is implemented based on the principle of balance to protect the

interests of both debtors and creditors. In its implementation, banking syndicated credit will form a principal agreement in the form of a credit agreement, which binds the creditor and the applicant as debtor. In providing syndicated credit facilities, the syndicate participants, hereinafter referred to as the credit syndicate, are required to bind themselves to a principal agreement made before a notary, which is then supplemented by a credit agreement and its derivative agreements, especially the Deed of Granting of Mortgage Rights (hereinafter referred to as APHT), in the case of collateral in the form of immovable goods, such as land and buildings, which is evidenced by a certificate of ownership. Article 8 of the Mortgage Rights Law stipulates that: 1. The Mortgage Grantor is a legal entity or legal entity authorized to carry out legal acts related to the object burdened with the mortgage right; 2. The authority to carry out legal acts related to the object burdened with the mortgage right, as referred to in paragraph (1), must be with the mortgage grantor at the time of mortgage registration.

Article 9 of the Mortgage Law stipulates that the holder of a mortgage is an individual or legal entity acting as a creditor. Articles 8 and 9 of the aforementioned Mortgage Law stipulate that a credit agreement from the debtor and a document granting the mortgage are required for mortgage registration.

Furthermore, PT. OB holds collateral in the form of two land ownership certificates, each for a building registered in the name of Budi Guna, for working capital financing from PT. Bank SL Surabaya in the amount of IDR 3,800,000,000.00. PT. OB, in its capacity as debtor, applied for a working capital loan with a monthly interest obligation for one year. PT. Bank SL formed a syndicate of three collaborating banks: 1. PT. Bank Syariah L Surabaya, IDR 1.8 billion; 2. PT. Bank Syariah B Kediri, IDR 1 billion; 3. PT. Bank Syariah C Malang, IDR 1 billion.

PT. OB used a credit facility through a checking account, with monthly interest payments of Rp 38,000,000.00 as stipulated in the credit agreement. In the third month, a principal reduction of Rp 200,000,000 (two hundred million rupiah) was mandated. The credit facility was used to purchase imported medical equipment. This created problems in the ninth month, marked by late interest payments and a decrease in principal due to rising commodity import prices (a strengthening dollar exchange rate). The medical equipment was sold to a government hospital, with the payment method using a budget that did not match the purchase price. The underlying issue of late payments resulted in a demand letter and an on-site audit by the board of directors.

As the leader of the syndicate, PT. Bank SL has substantial responsibility to comply with Law No. 4 of 1996 concerning Mortgage Rights on Land and Land-Related Assets, which is formalized through a notarial agreement between the participants and the syndicate, which outlines the terms and conditions regarding the loan amount, interest rate, and term applicable to the debtor. This mortgage guarantee complies with Article 8 of the Mortgage Law.

Problem Formulation

Based on this background, the formulation of the problem in the thesis is: What is the form of responsibility of the syndicate leader towards syndicate participants in the event of debtor default?

Purpose

This article is expected to provide the following benefits: 1. To improve theoretical understanding by providing additional documentation in the form of written works, literature, and scientific materials relevant to the legal realm, especially regarding syndicated creditors; 2. To improve legal knowledge, especially the legal dimensions in obtaining and implementing agreements as a creditor. Therefore, the findings of this study are expected to be useful and increase understanding for related practitioners, especially banks as collateral recipients and notaries who authenticate and prepare mortgage documents.

Methods

This research is a legal research. Legal research is a process of discovering legal rules, legal principles, legal norms, and legal doctrines to address the legal issues faced [2] This research will answer and find legal findings by addressing legal issues related to the Syndication Agreement. This legal research utilizes a statutory approach, a conceptual method, and a jurisprudential approach. A statutory approach often involves a review of all relevant laws and regulations. Therefore, the methodology used in this thesis adopts a statutory approach, which includes the examination and analysis of interrelated laws and regulations; the findings from this analysis are then used to address the legal issues identified in this research [3]. The case approach involves utilizing several cases as reference material to discuss a legal issue [4]. Simultaneously, the conceptual approach draws from established perspectives and doctrines in legal studies that help clarify legal definitions, as well as concepts and principles relevant to the legal challenges discussed in this research.

Discussion

A. Responsibilities of Syndicated Credit Managers If the Debtor Experiences Default

In syndicated loans, if a debtor defaults, the syndicate leader or lead bank is responsible for managing the situation, along with the other syndicated creditors. This includes legal proceedings, collaboration with the debtor, and recovery initiatives.

Elaboration:

1. **Functions of the Syndicate Leader:** The syndicate leader, sometimes known as the lead bank, plays a crucial role in syndicated loans. They act as an intermediary between the borrower and the other syndicated creditors. In the event of default, the syndicate leader is responsible for: a. Arranging actions with all syndicated creditors; b. Interacting with the

borrower to identify solutions or resolve issues; c. Managing existing collateral (if applicable) for loss recovery; d. Initiating legal proceedings to protect creditors' interests.

2. **Shared Liability:** Despite the syndicate leader's primary role, all syndicated creditors share responsibility for any losses resulting from the default. The syndication agreement will regulate the allocation of responsibility and risk among the creditors.
3. **Default Resolution:** The syndicate leader will attempt to resolve the default through: a. Negotiating with the borrower to modify the loan or seek alternative solutions; b. Debt collection through legal proceedings if negotiations are unsuccessful; c. Enforcing collateral in cases where the borrower has provided collateral.
4. **Legal Protection:** The syndicated loan agreement must explicitly outline the rights and obligations of the parties, including the steps that can be taken in the event of default. This is essential to protect the interests of all creditors and facilitate efficient recovery procedures.

Important to note: The syndicated loan agreement should include a section explicitly detailing the steps to be taken in the event of default, identifying the individuals authorized to carry out these actions, and the methodology for mitigating losses.

The syndicate leader and lenders must collaborate effectively to address default scenarios and mitigate potential losses.

B. Responsibilities of Syndicated Credit Agents in the Event of Debtor Default

Banking in Indonesia strives to drive national growth through equity, improvement, and stability, thereby improving public welfare, in accordance with Law Number 10 of 1998. Banks are intermediary institutions that collect funds from the public and distribute credit to individuals and businesses [5]. Credit distribution is a fundamental and significant banking function. Income from credit interest is the primary source of bank revenue [6]. Bank income is largely derived from credit interest, thus encouraging banks to continuously strive to increase their credit distribution. Bank income, in addition to credit interest, also comes from service income, known as fee-based income.

From a macroeconomic perspective, bank credit distribution is crucial as a source of capital for companies. A growing business sector will drive economic growth. At the micro level, credit is a significant source of income for banks. Financial institutions constantly face risks when disbursing credit. Therefore, banks must adhere to prudential principles in their operations, including credit distribution, to limit these risks [7].

² Peter Mahmud Marzuki, 2021, *Penelitian Hukum*, Edisi 15, Kencana, Jakarta, p. 47.

³ *Ibid.*, p. 133.

⁴ *Ibid.*, p. 134.

⁵ Handayani, P. (2016). "Prinsip Kehati-Hatian Bank Dalam Pemberian Kredit Ditinjau Dari Undang-Undang No.10 Tahun 1998 tentang Perbankan". *Jurnal Dimensi*, 4(2), 1–12. <https://doi.org/10.33373/dms.v4i2.39>

⁶ Murwadi, T. (2013). "Transformasi Jaminan Kebendaan Menjadi Jaminan Tunai Dalam Penjaminan Kredit Sindikasi Internasional". *Jurnal Hukum Ius Quia Iustum*, 20(1), 98–118. <https://doi.org/10.20885/iustum.vol20.iss1.art6>

⁷ Handayani, P. (2016). "Prinsip Kehati-Hatian Bank Dalam Pemberian Kredit Ditinjau Dari Undang-Undang No. 10 Tahun 1998 tentang Perbankan". *Jurnal Dimensi*, 4(2), 1–12. <https://doi.org/10.33373/dms.v4i2.39>, Handayani, T., & Abubakar, L. (2018). "Regulasi Pengelolaan Likuiditas Bank melalui Kewajiban Penerapan Net Stable Funding Ratio (NSFR) sebagai Upaya Menciptakan Perbankan yang Sehat". *Varia Justicia*, 14(1), 10–20. <https://doi.org/10.31603/variajusticia.v14i1.2039>, Mulyati, E., & Dwiputri, F. A. (2018). "Prinsip Kehati-Hatian Dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan". *Acta*, Handayani, T., & Abubakar, L. (2018). "Regulasi Pengelolaan Likuiditas Bank melalui Kewajiban Penerapan Net Stable Funding Ratio (NSFR) sebagai Upaya Menciptakan Perbankan yang Sehat". *Varia Justicia*, 14(1), 10–20. <https://doi.org/10.31603/variajusticia.v14i1.2039>

Bank credit quality is categorized into current loans and non-performing loans. Current loans are loans that are consistently repaid to the bank. Loans that are problematic or late in repayment are referred to as non-performing loans.

A syndicated loan is a type of loan. Syndicated loans are generally used to finance large-scale projects^[8]. Syndicated or consortium loans can be offered in multiple currencies, called multicurrency loans, based on the borrower's preferences. Syndicated loans can be offered by both conventional and Islamic financial institutions^[9].

Syndicated loans are facilitated by multiple banks, including various institutions, throughout the process until the loan agreement is finalized. Syndicated loans involve several stages that require careful consideration, particularly regarding the relationships with potential institutions involved in the syndication. The relationships between banks are mutually beneficial to avoid difficulties for all potential participants in the syndicated loan.

Syndicated loans are used to circumvent the Legal Lending Limit (BMPK) requirements. When a project requires substantial financing, such as the construction of a toll road or other large-scale initiative, it is impossible for a single bank to provide the necessary funds. Syndicated loans facilitate the progress of projects with substantial financing needs while ensuring that banks comply with the relevant Legal Lending Limit (BMPK) regulations^[10].

In syndicated loans, the arranger manages all administrative tasks, requiring the client to provide only essential data for the syndication. Once the arranger or management group, led by the lead manager, has completed their responsibilities and the syndicated loan agreement is signed, their duties are delegated to the agent. This agent can be an independent bank, either a member of the syndicate or a lender, or one of the banks involved in the syndicated loan. The agent in a syndicated loan oversees the administrative affairs of the syndicate throughout the loan term^[11]. The agent's responsibilities begin upon signing the loan documents. Syndicate participants consider the agent's role crucial. The trust placed in the banks involved in the syndication becomes problematic if the loan has been received, executed, and disbursed to the borrower, but the borrower defaults or neglects to repay the loan. What are the agent's obligations in the event of a syndicated loan default? This study aims to examine the agent's obligations in the event of a syndicated loan default.

The current policy direction of the financial services sector (FSS), including banking, refers to the 2005-2025 National Long-Term Development Plan (RPJPN) and the 2015-2019 National Medium-Term Development Plan (RPJMN). These development plans aim to improve the FSS, including

banking, to stimulate economic growth through sustainable financing, particularly through the development of the industrial sector^[12]. Credit is a loan, whether in monetary or other forms, granted based on an agreement specifying the term and interest rate. Banks adhere to the principle of prudence by complying with applicable laws and regulations, both at the institutional and product levels^[13].

Syndicated credit refers to the allocation of credit from multiple banks to a borrower for project financing, governed by the same terms as a standard credit agreement, and managed by a designated agent (the designated bank). This is documented in a single credit agreement between the borrower and all banks involved, and serves as a reference for all syndicate members.

Syndicated credit in Indonesia is used to circumvent Bank Indonesia's Regulation on the Maximum Lending Limit (PBI), which limits the maximum credit a commercial bank can extend to 20% for an individual or 25% for a bank's capital group^[14]. Syndicated credit emerged in Indonesia due to the influence of Contract Law, specifically the Principle of Freedom of Contract as outlined in Article 1338 of the Civil Code.

Agreements must meet the valid criteria outlined in Article 1320 of the Civil Code, specifically the subjective requirements (agreement and capacity) and the objective requirements (certainty of the principal and a valid reason). Agreements, which reflect the Principle of Consensus, can be made in writing, orally, or implied, with the parties complying without explicit documentation^[15].

All actions taken by the bank require a legal basis. Syndicated loans, although not regulated by law, are influenced by: a) Bank Indonesia Regulation No. 7/3/2005 concerning the Maximum Credit Limit; b) Bank Indonesia Circular Letter No. 6/33/UPK dated October 3, 1973 concerning Joint Financing by State-Owned Banks; c) Bank Indonesia Circular Letter No. 11/26/UPK dated January 12, 1979 concerning Consortium Financing by State-Owned Banks; d) Bank Indonesia Circular Letter No. 16/1/UKU dated June 1, 1983 concerning Financing to Syndicated Banks. The laws and procedures governing syndicated loan agreements are outlined in Articles 1320 and 1338 of the Civil Code. Article 1320 outlines the prerequisites for a valid agreement, while Article 1338 regulates the autonomy of the parties in forming the agreement. These Bank Indonesia regulations form the basis for syndicated loans in Indonesia. This encourages the need to formulate regulations that explicitly regulate syndicated loans. This legislation will provide legal certainty for all parties involved in syndicated credit agreements. This legislation has encouraged the rapid expansion of syndicated loans. Syndicated loans are regulated by various laws and

⁸ Cita, R. H., Abubakar, L., & Mulyati, M. (2018). "Kedudukan Hukum Kreditur Baru Penerima Pengalihan Piutang Tanpa Persetujuan Agen Dan Peserta Sindikasi Lainnya". *Jurnal Bina Mulia Hukum*, 3(1), 1–14. <https://doi.org/10.23920/jbmh.v3n1.3>; Tirana, G., Abubakar, L., & Handayani, T. (2019). "Perlindungan Hukum Terhadap Pembeli Piutang Atas Jaminan Hak Guna Bangunan Dalam Perjanjian Kredit Sindikasi". *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An*, 2(2), 267. <https://doi.org/10.24198/acta.v2i2.244>; Angraeni, K. D., & Nasution, K. (2019). "Kekuatan Hukum LoU Sebagai Jamanian Dalam Kredit Sindikasi". *Jurnal Hukum Bisnis Bonum Commune*, 2(2), 185. <https://doi.org/10.30996/jhbhc.v2i2.2521>

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¹³ Handayani, T., & Abubakar, L. (2018). "Regulasi Pengelolaan Likuiditas Bank melalui Kewajiban Penerapan Net Stable Funding Ratio (NSFR) sebagai Upaya Menciptakan Perbankan yang Sehat". *Varia Justicia*, 14(1), 10–20. <https://doi.org/10.31603/variajusticia.v14i1.2039>.

¹⁴ Bank Indonesia, 2006.

¹⁵ Meilala, 2012.

regulations, including: 1) Circular Letter No. 21/11/BPPP issued to all Banks and Non-Bank Financial Institutions in Indonesia on October 27, 1988, concerning the provision of loans to managers and shareholders; 2) Circular Letter No. 21/18/BPPP issued to all Banks and Non-Bank Financial Institutions in Indonesia on March 25, 1989, concerning the Legal Lending Limit (BMPK) for individual and group debtors, as well as managers, shareholders, and their families; 3) Law No. 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia No. 31 of 1992, Supplement to the State Gazette No. 3472); 4) Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992; 5) Decree of the Board of Directors of Bank Indonesia No. 26/21/KEP/DIR dated May 29, 1993, concerning the Lending Limit (BMPK).

This syndicate is formed through the efforts of institutions, primarily banks, known as arrangers. These banks generally become members or participants after the syndicate is formed. The main manager is centralized in the loan syndicate.

The agent acts as the official representative of the banks involved in the syndication. The agent disburses funds from the creditors to the borrowers in accordance with the syndicated loan agreement. The arranger's or group's responsibilities end upon the signing of the syndicated loan agreement and the binding agreement. The agent bank's function begins upon the agreement's finalization. The agent bank fully assumes the arranger's duties. If the lead manager is a commercial bank, or if multiple lead managers are involved, one of the lead managers, the commercial bank, is appointed as the agent. This agent can sometimes be an independent bank, a bank not affiliated with the syndicate, or a lender.

Once the syndicated loan agreement is signed, the participating banks facilitate the disbursement of the agreed-upon funds to the borrowers into an escrow account designated and overseen by the agent. The agent then allocates the funds to the borrowers' accounts. The agent does not represent the borrowers; rather, it represents the parties involved in the syndicated loan (participants/banks) and is responsible for managing the loan's utilization over the agreed-upon term. An agent's role is particularly beneficial if the bank also serves as the documentation bank, as the bank will use these documents for the loan's administrative management. The agent's role is considered crucial for syndicated participants.

The most important legal document in a syndicated loan is the loan agreement, which serves as the basis for all loan administration procedures. The agent's responsibilities extend until the loan term expires. Their administrative responsibilities include overseeing the use of the loan on behalf of and for the purposes of the syndication. This document confirms the agreement between the parties regarding the syndicated loan and verifies loan disbursement. The loan signing ceremony is the moment the parties sign the document.

The agent's responsibilities begin upon signing the loan agreement. The bank's legal obligations include enforcing the rights and obligations granted to the legal entity through punitive and preventive legal instruments, whether stated orally or in writing. In legal terms, liability encompasses all duties and risks, whether certain, contingent, or potential, including threats, crimes, costs, conditions, losses, or non-

compliance with laws. Responsibility encompasses accountability for a task, including judgment, competence, talent, and legal requirements. The agent's obligations in a syndicated loan extend throughout the loan term.

The agent's role is typically granted as a token of appreciation to the primary credit source or arranger in the syndicated loan process. The agent is responsible for coordinating all payments, collections, negotiations, and other administrative tasks related to the loan. The agent acts as a representative of the syndicate or as legal counsel for the parties (banks). The difference between an arranger and a bank agent lies in the fact that the arranger's responsibilities continue until the signing of the syndicated loan agreement (formation of the syndicate), while the agent's responsibilities include the operation and administrative management of the syndicated loan after the agreement is signed. The facility agent's primary role is to administer the loan and disburse interest and related fees. The facility agent is required to ensure that the borrower meets all requirements specified in the condition's precedent clause. The loan agreement should define the facility agent's responsibilities. The facility agent is responsible for overseeing the borrower's financial condition.

The loan agreement may explicitly contain a clause allowing the agent to maintain further business contact with the borrower, beyond the syndicated loan agreement. In this case, the bank agent must distinguish between their responsibilities as agent under the syndicated loan agreement and their role under other loan agreements with the borrower. Unless expressly stated in the loan agreement, the bank agent is not obligated to verify the authenticity of the documents received^[16].

The agent is responsible for organizing and directing all loan payment, collection, negotiation, and administration activities after the loan agreement is signed. The agent manages the syndicated loan, designated through a special power of attorney specified in the syndicated loan agreement. This ensures that the syndicated loan procedures are efficient and comprehensively coordinated, providing equity for both the borrower and the lender (borrower and creditor). Their functions are limited, as defined in the agreement and agreed to by all parties involved in the syndicated loan.

After the syndicated loan agreement is signed, the syndicated bank disburses the funds and transfers the specified amount to the borrower's escrow account, which is overseen by the agent. The agent then deposits the funds into the borrower's account.

The agent represents the syndicated loan participants (banks), rather than the borrower, and is tasked with overseeing the loan's utilization over the specified period. This is particularly advantageous if the agent is a bank that also serves as the bank's documentation agent, as they will later use the documentation to oversee the loan's administration. The agent's function is considered crucial for syndicated loan participants.

Debtors on syndicated loans interact solely with the agent, who represents the institutions involved in the syndication. The banks involved in the syndication have a common interest. Based on this interest, they form a syndicate, within which they have a single vote; therefore, it can be asserted that one syndicate is equal to one vote.

Articles 1365, 1366, and 1367 of the Civil Code mandates

¹⁶ Munir, 2017.

that compensation must be provided if someone commits an unlawful act. If someone violates an agreement or commitment, they can be subject to sanctions for breach of contract or provide compensation for the breach.

The agent's duties in syndicated loans are divided into two categories: 1. Agents involved in the syndication as creditors; 2. External agents of syndicated loan participants; 3. The agent is also a creditor in a syndicated loan. If a debtor defaults, the agent is liable.

The agent's responsibility is to manage all interactions between the debtor and creditors, including implementing corrective and preventive measures to ensure the completion of the syndicated loan agreement within the specified timeframe, free from obstacles such as default or other issues that could hinder the syndicated loan process. In the event of a default, legal action through the agent is not necessary. Each creditor has the authority to file a case directly with the court, as their obligations under the syndicated loan agreement are not joint or several.

This is in accordance with Sjahdeini's statement^[17]: "Each participating bank is fully responsible for a small portion of the loan amount allocated to it." Each bank's obligations in a syndicate do not serve as collateral for the other banks. This applies if the agent is not a participant in the syndicated loan, indicating that the agent is not a creditor.

Creditor rights are stipulated in a bilateral agreement in the event of a debtor's default, which also applies to syndicate members. However, in a syndicate, the consequences are more complex. The increased number of syndicate participants reduces the likelihood of reaching unanimous consensus among members regarding potential conflicts. If a lawsuit is filed against a defaulting debtor, the collection agent is the responsible party. The agent must obtain formal approval from the majority of creditors and take certain steps, including issuing several summonses to the debtor to immediately fulfill its obligations as stipulated in the syndicated credit agreement. The role of the syndicate credit agent, which is independent of the syndicate members and does not act as a creditor, is solely to serve as an intermediary between the creditor and the debtor. The agent's responsibilities relate to the utilization of the credit after the loan agreement is signed. The agent is responsible for managing administrative tasks and overseeing the utilization of the syndicated credit^[18]. Agents typically exhibit a passive attitude and lack initiative. Consequently, agents must carry out their responsibilities in accordance with the instructions of the primary creditor. However, agents may remain active as long as their actions do not violate the syndicated loan agreement.

Agents are required to transparently disclose all information related to defaults, and this duty should be outlined in the syndicated loan agreement. This facilitates the implementation of preventative or early enforcement measures.

Creditors may demand money from the debtor. Any payments received through the agent must be distributed among the other creditors. The distribution clause stipulates that all principal and interest payments from the debtor must be remitted through the agent, rather than directly to each syndicate member. This is unless the syndicated loan

agreement stipulates that creditors can collect directly without the agent. This prohibits the debtor from directly repaying the entire loan to any one syndicate member, regardless of whether the payments made by the syndicated creditor are proportional to the level of participation offered. This provision indicates that creditors face little disadvantage in their ability to demand direct payment or enforcement from the debtor without the agent's intervention. In cases of default, creditors typically resort to direct collection from the debtor as a last resort. This is because the creditor had previously received payment through the agent, but the agent failed to do so. The agent refrained from acting because he believed he needed to first obtain approval from the majority creditor. The majority creditor is the entity that holds the dominant portion of the receivables^[19].

Closing

Conclusion

The legal relationship between an agent and a creditor is that of a principal and attorney. Therefore, if a conflict arises between the agent and the parties involved in the syndicated credit agreement, the resolution will depend on the provisions of the power of attorney contained in the syndicated credit agreement. The credit agreement clearly outlines the decisions or actions the agent can take without consulting or obtaining the approval of the syndicate members, as well as matters that require the prior instruction or approval of a majority of the syndicate members. The agent is not responsible for the completion of the credit agreement, as it is the responsibility of each party to ensure its completion complies with their requirements.

Suggestion

Syndicated loan agreements should explicitly outline the agent's rights and obligations, as formalized in a written agency agreement. This will protect the agent's interests in the event of default. Legislation regarding syndicated loans is expected to be drafted soon.

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¹⁷ Sutan Remy Sjahdeini, 1997, *Kredit Sindikasi: Proses Pembentukan dan Aspek Hukum*, Pustaka Utama Grafiti, Jakarta.

¹⁸ *ibid.*

¹⁹ *ibid.*

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How to Cite This Article

Urifiantini T, Retnowati E, Salviana FM. Syndication leader's responsibility towards syndication participants in the event of debtor default. *Int J Judicial Law*. 2025;4(5):62-68. doi:10.54660/IJLL.2025.4.5.62-68

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