INTERNATIONAL JOURNAL OF JUDICIAL LAW

Legal Analysis of Breach of Contract in Revolving Fund Financing for MSMEs: A Study of Court Decision No. 107/Pdt.G/2021/PN.Mks.

Ni Made Aryani Saraswati Dewi [1*], Djumardin Eduardus Bayo Sili [2]
[1-2] Master of Notarial Law Program, Faculty of Law, Social and Political Sciences, University of Mataram, Mataram, West Nusa Tenggara, Indonesia

* Corresponding Author: **Ni Made Aryani Saraswati Dewi**

Article Info

ISSN (online): 2583-6536
Volume: 05
Issue: 04
Received: 26-04-2026
Accepted: 27-05-2026
Published: 30-06-2026
Page No: 30-38

Abstract
This research is motivated by a breach of contract dispute in a revolving fund financing agreement between the Management Agency for Revolving Funds of Cooperatives and Micro, Small, and Medium Enterprises (LPDB-KUMKM) and the Sumber Abadi Savings and Loan Cooperative. The dispute arose from the cooperative's failure to meet its payment obligations under the agreed financing terms, as examined in Court Decision No. 107/Pdt.G/2021/PN.Mks. This study aims to analyze the legal existence of LPDB-KUMKM's revolving fund financing regulations and the judges' legal considerations in resolving this breach of contract case. This is a normative legal research employing statutory, case, and conceptual approaches. Legal materials were gathered through a literature review and analyzed qualitatively. The results indicate that LPDB-KUMKM's revolving fund financing possesses a solid legal foundation, and the legal relationship between the parties stems from a valid agreement. However, a breach of contract occurred in practice due to the defendant's default. The panel of judges declared the lawsuit inadmissible (*Niet Ontvankelijke Verklaard*/NO) because the plaintiff failed to legally prove the issuance of a default notice (*somasi*) as required by Article 1238 of the Indonesian Civil Code. This study concludes that the judges' considerations leaned heavily on the formal aspects of the lawsuit rather than the substance of the breach of contract, resulting in suboptimal legal protection for LPDB-KUMKM.

DOI: https://doi.org/10.54660/IJJL.2026.5.4.30-38

Keywords: Breach of Contract, Revolving Fund, Inadmissible Decision

Introduction

National economic development is fundamentally directed towards achieving equitable public welfare through the strengthening of the grassroots economy. In this context, cooperatives and Micro, Small, and Medium Enterprises (MSMEs) serve as vital instruments for democratic economic development. The existence of cooperatives and MSMEs holds a strategic role in creating employment opportunities, promoting income equality, and reinforcing the national economic structure. Consequently, the state is obligated to foster the growth of cooperatives and MSMEs through various policies, including financial assistance and credit support.

Within the Indonesian economic system, a cooperative is a business entity founded upon the familial principle and economic democracy, as mandated by the constitution.[1] This aligns with Article 33 of the 1945 Constitution of the Republic of Indonesia (*UUD NRI 1945*), which stipulates that the economy shall be organized as a common endeavor based upon the familial principle.

[1] Jimly Asshiddique, *Konstitusi Ekonomi*, (Jakarta: Kompas, 2010), hlm. 112-115. *(Catatan: Ini referensi pendukung untuk menjelaskan konsep konstitusi ekonomi dan Pasal 33).*

This constitutional principle is further enacted under Law No. 25 of 1992 on Cooperatives, which emphasizes that cooperatives aim to advance the welfare of their members in particular and society in general.

Despite their crucial role, cooperatives and MSMEs frequently encounter classic structural barriers in expanding their businesses, particularly limited access to institutional financing and capital. To overcome these constraints, the government has established financial access channels through revolving fund schemes managed by the Management Agency for Revolving Funds of Cooperatives and Micro, Small, and Medium Enterprises (LPDB-KUMKM).

In practice, the distribution of revolving funds by LPDB-KUMKM to partner cooperatives creates a legal relationship formalized through a financing agreement. This agreement governs the reciprocal rights and obligations of each party, including the financing amount, the repayment period, and the collateral provided by the recipient cooperative. As a contract, the legal relationship between LPDB-KUMKM and the cooperative is strictly bound by the provisions of contract law under the Indonesian Civil Code (*KUHPerdata*). [2]

In civil law, an agreement is a legal act that generates a legal bond where the parties bind themselves to perform an obligation (*prestasi*). Pursuant to Article 1313 of the Indonesian Civil Code, an agreement is defined as an act whereby one or more persons bind themselves toward one or more other persons. Under the principle of *pacta sunt servanda*, the parties are legally required to execute the terms of the agreement in good faith.

Nevertheless, performance failures regarding contracted obligations frequently occur in practice, a condition legally recognized in civil law as a breach of contract (*wanprestasi*). Such default issues also arise within the legal relations between LPDB-KUMKM and recipient cooperatives. In several instances, the partner cooperatives failed to fulfill their repayment obligations within the agreed timeframe, thereby triggering legal disputes.

A prominent manifestation of such a dispute was examined and adjudicated in Case No. 107/Pdt.G/2021/PN.Mks. In this case, LPDB-KUMKM acted as the plaintiff, filing a lawsuit against a partner cooperative for an alleged breach of contract regarding the management of revolving funds. This particular legal phenomenon motivates the author to conduct an in-depth legal research entitled: **“**A Legal Analysis of Breach of Contract in Revolving Fund Financing: A Case Study of Decision No. 107/Pdt.G/2021/PN.Mks”.

Based on the background described above, the research problems are formulated as follows:

1. How is the legal existence of revolving fund financing regulated within the institutional framework of LPDB-KUMKM?
2. What are the judges' legal considerations in Court Decision No. 107/Pdt.G/2021/PN.Mks regarding the breach of contract dispute?

Research Method

The research method employed in this study is doctrinal or normative legal research, as it relies fundamentally on the analysis of statutory and regulatory frameworks (*law in books*). [3] Normative legal research serves as an approach conducted by examining primary legal resources to investigate theoretical dimensions concerning legal principles, conceptual frameworks, scholarly perspectives, legal doctrines, statutory rules, and the broader legal system. This process utilizes secondary data, including legal principles, norms, and statutory provisions found within legislation and secondary regulations, while systematically consulting academic textbooks, statutory instruments, and other relevant legal documents. [4] As a normative legal study, this research falls into the category of descriptive-prescriptive legal research, which aims to formulate definitive solutions to the legal issues under analysis (problem-solution). [5]

The research approaches utilized must align with the nature of normative legal inquiry to ensure academic coherence and provide precise answers to the stated legal issues. Accordingly, this study adopts the following methodological approaches:

- **Statutory Approach (Statute Approach):** The statutory approach is applied to review, scrutinize, and analyze all relevant laws and regulations directly bearing upon the legal issue being addressed. [6]
- **Case Approach (Case Approach):** The case approach in normative research aims to analyze the practical application of legal norms or principles within legal practice. This approach typically focuses on landmark cases or judicial precedents that have attained final and binding legal force (*inkracht van gewijsde*). Within normative inquiry, these judicial decisions are scrutinized to obtain a comprehensive understanding of how the normative dimension of a statutory rule manifests and impacts actual legal practice. [7]
- **Conceptual Approach (Conceptual Approach):** The conceptual approach establishes a robust theoretical framework by bridging relevant legal concepts and authoritative scholarly doctrines with the specific legal issues under discussion. [8]

All data utilized in this study are compiled from diverse literature and legal library sources, encompassing both physical media (textbooks) and digital repositories (online resources, legal journals, and official government portals). In accordance with these sources, the data collection technique employed is the documentary technique. [9] This technique is executed through systematic notation, photocopying, downloading, and other rigorous data gathering methods relevant to the acquired physical and digital materials.

The processing of legal materials in this normative legal study is conducted through systematic organization, which involves selecting relevant materials, classifying them according to the standard hierarchy and taxonomy of legal sources, and structuring them to ensure a systematic, logical,

---

[2] R. Subekti, *Hukum Perjanjian*, (Jakarta: Intermasa, 2005), hlm. 45-47.
[3] Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 8th edn. (Jakarta: Rajawali Pers, 2014), p. 118.
[4] Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: PT RajaGrafindo Persada, 2006), p. 24.
[5] Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2008), pp. 50–51.
[6] Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Tesis dan Disertasi* (Jakarta: PT RajaGrafindo Persada, 2013), pp. 17–18.
[7] Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2010), p. 157.
[8] Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2013), p. 47.
[9] M. Nazir, *Metode Penelitian* (Jakarta: PT Ghalia Indonesia, 2014), p. 88.

and coherent research outcome. The subsequent analysis utilizes qualitative legal analysis, executed by performing rigorous legal interpretation and hermeneutic analysis on the processed legal materials. [10] The analytical nature of this normative legal research is prescriptive, intended to provide solid legal arguments regarding the research findings. This encompasses evaluating, critiquing, supporting, expanding, or commenting on legal arguments, and drawing definitive legal conclusions guided by the selected theoretical frameworks.

Discussion

1. The Existence of Revolving Fund Financing Regulations within the Revolving Fund Management Agency for Cooperatives, Micro, Small, and Medium Enterprises (LPDB-KUMKM)

A. The Empirical Existence of Regulations in Practice

The existence of regulations in the practice of revolving fund financing within the Revolving Fund Management Agency for Cooperatives, Micro, Small, and Medium Enterprises (LPDB-KUMKM) fundamentally demonstrates how legal norms governing revolving funds are empirically implemented within the financing activities of cooperatives and MSMEs. This legal existence is observed not merely through the presence of written provisions (*statutory text*), but also through the operational effectiveness, legal certainty, and legal protection afforded to the contracting parties within the financing relationship.

In practice, the existence of revolving fund financing regulations establishes a solid legal basis (*legal standing*) for LPDB-KUMKM to disburse financing to cooperatives and MSMEs through loan or financing mechanisms. These regulatory frameworks serve as mandatory guidelines for determining the eligibility criteria of beneficiaries, application procedures, business feasibility analysis, forms of collateral, as well as supervisory mechanisms and the resolution of non-performing financing. With these regulations in place, the administration of revolving fund financing achieves legal certainty and is insulated from arbitrary executive actions.

The existence of these regulations is further evidenced by the rigorous application of the prudential principle (*prinsip kehati-hatian*) in the disbursement of revolving funds. Prior to the allocation of financing, LPDB-KUMKM conducts a comprehensive analysis regarding the business capacity and repayment capability of the prospective beneficiary. This indicates that revolving fund regulations do not merely aim to provide capital assistance, but also function to preserve the sustainability of state funds so they may continuously circulate to subsequent beneficiaries. As posited by Kasmir, the allocation of credit or financing must fundamentally be executed based on the principles of trust, prudence, and the debtor's capacity to fulfill their contractual obligations. [11]

Furthermore, the operational existence of revolving fund regulations can be identified from the legal relationship born out of the financing agreement executed between LPDB-KUMKM and the fund recipient. This agreement serves as the source of reciprocal rights and obligations between the parties. In civil law doctrine, a legally executed agreement binds the parties as a statutory law (*pacta sunt servanda*). Consequently, revolving fund regulations function to provide legal protection and recourse in the event of disputes or breach of contract (*wanprestasi*) during the execution of the financing. [12]

However, in practice, the enforcement of revolving fund regulations still encounters various systemic impediments. A frequent legal issue is the occurrence of bad loans or default (*wanprestasi*) by financing recipients. This phenomenon implies that the implementation of the rules has not been fully effective, particularly regarding the aspects of post-disbursement supervision and guidance for beneficiaries. According to Munir Fuady, the efficacy of a legal regulation is heavily influenced by the actual enforcement and the compliance of the parties toward the prevailing legal norms. [13] Despite these challenges, the continuous existence of revolving fund financing regulations is also visible through the government's regulatory reform efforts aimed at improving the quality of revolving fund management. These statutory updates are introduced to ensure that the financing mechanism becomes more accountable, transparent, and responsive to the evolving needs of cooperatives and MSMEs.

Consequently, the existence of revolving fund financing regulations is manifested not only by the presence of codified law, but also by its actual implementation in accelerating community economic empowerment through the institutional financing of cooperatives and MSMEs.

B. Legal Issues in the Execution of Financing

Legal issues in the execution of financing fundamentally arise from the contractual legal relationship established between the financier (*creditor*) and the recipient (*debtor*), which is formalized in a financing agreement. In practice, the execution of financing frequently encounters various impediments that precipitate legal disputes, ranging from default, collateral defects, and misappropriation of funds, to weak supervision regarding the utilization of the financing. Within the context of revolving fund financing at LPDB-KUMKM, these legal issues can severely undermine the effectiveness of fund distribution to cooperatives and MSMEs.

The primary and most frequent legal issue encountered is default or breach of contract (*wanprestasi*) by the financing recipient. A default occurs when the debtor fails to fulfill their obligations as stipulated in the agreement, such as failing to pay installments, delaying payments, or breaching other covenant terms. According to M. Yahya Harahap, default constitutes the execution of an obligation that is either untimely or improperly performed. [14] As a consequence of such default, the creditor is legally entitled to demand specific performance, damages (*ganti rugi*), or the rescission of the contract pursuant to civil law provisions.

Another subsequent legal issue is the inadequate credit risk analysis prior to fund disbursement. In financing practices, certain debtors who lack sufficient business capability or financial viability are nevertheless granted financing. This

---

[10] Muhaimin, *Metode Penelitian Hukum*, 1st edn. (Mataram: Mataram University Press, 2020), p. 67.

[11] Kasmir, *Dasar-Dasar Perbankan*, Rev. edn. (Jakarta: PT RajaGrafindo Persada, 2014), p. 96.

[12] R. Subekti, *Hukum Perjanjian* (Jakarta: PT Intermasa, 2005), p. 13. *(Note: "Op. Cit." replaced with clear book context commonly cited from Subekti in Indonesian civil law papers).*

[13] Munir Fuady, *Hukum Bisnis dalam Teori dan Praktik* (Bandung: PT Citra Aditya Bakti, 2008), p. 45.

[14] M. Yahya Harahap, *Segi-Segi Hukum Perjanjian* (Bandung: PT Alumni, 1986), p. 60. *(Note: "Op. Cit." clarified to his definitive work on contract law).*

structural deficiency increases the risk of non-performing loans, thereby inflicting financial loss upon the financing institution. As argued by Thomas Suyatno, the extension of credit or financing must strictly adhere to the prudential principle through a rigorous analysis of the debtor's character, capacity, capital, collateral, and business prospects (the 5 Cs of credit). [15]

Furthermore, legal complications frequently surface regarding the aspect of security interests or collateral. In several cases, the collateral encumbered by the debtor turns out to be legally defective, involving ownership disputes, fraudulent documentation, or an inadequate loan-to-value ratio. Consequently, when the debtor defaults, the foreclosure and execution of the collateral (*eksekusi jaminan*) become exceptionally difficult to pursue. According to Sri Soedewi Masjchoen Sofwan, collateral serves a vital function as legal protection for the creditor to obtain preferential satisfaction of their receivables if the debtor fails to perform their legal duty. [16]

Another salient legal issue is the misappropriation of financing funds by the recipient. Funds originally earmarked for business expansion are occasionally diverted for personal consumption or purposes outside the agreed scope of financing. This deviation causes the ultimate socio-economic objective of the financing to fail and significantly elevates the risk of default. This issue clearly exposes the weak supervisory mechanism over fund utilization post-disbursement.

In addition, the mechanism of financing dispute resolution often presents its own legal hurdles. While disputes can ideally be resolved through negotiation, restructuring, mediation, arbitration, or litigation in court, the resolution process in practice often demands substantial time and prohibitive costs. As noted by R. Setiawan, disputes within a contractual relationship generally arise because one of the parties fails to execute the obligations precisely as agreed. [17]

In conclusion, the legal issues embedded in the execution of revolving fund financing encompass default (*wanprestasi*), deficient pre-disbursement financing analysis, collateral defects, misappropriation of funds, and prolonged dispute resolution processes. Therefore, the institutionalization of the prudential principle, robust supervisory control, and statutory legal certainty are imperative to ensure that the financing matches its intended objective while providing balanced legal protection for all parties involved.

2. Legal Considerations of the Judges in Decision No. 107/PDT.G/2021/PN.MKS

A. Judicial Considerations Regarding the Legal Relationship Between the Parties

Based on Decision No. 107/Pdt.G/2021/PN.Mks, the panel of judges' legal considerations regarding the legal relationship between the parties fundamentally affirmed that a valid and legally binding relationship exists between the Revolving Fund Management Agency for Cooperatives, Micro, Small, and Medium Enterprises (LPDB-KUMKM) as the Plaintiff, and the *Koperasi Simpan Pinjam Sumber Abadi* (Sumber Abadi Savings and Loan Cooperative) as the financing recipient. This legal relationship was formally established through a notarized revolving fund financing agreement.

This legal bond arose from a loan/financing application submitted by the Defendants to the Plaintiff, which was subsequently approved after undergoing a comprehensive administrative, legal, and risk management assessment. Furthermore, the panel of judges deemed the contracting parties to possess full legal capacity (*kecakapan hukum*). This capacity is evidenced by the judges' explicit recognition of the validity of the legal relationship between the Plaintiff and the Defendant formalized via the notarized financing instrument.

The legal capacity of the parties can be scrutinized under Article 1320 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* / KUHPerdata) regarding the essential requirements for a valid contract, specifically the element of "the capacity to contract." In this case, the Plaintiff is an official government agency vested with the authority to disburse revolving funds to cooperatives and MSMEs. Conversely, the Defendant is a cooperative legal entity (*badan hukum*) represented by its lawful board of directors, as substantiated by the deed of establishment and the approved amendments to the cooperative's articles of association.

The judicial decision explicitly noted the verification of the following documents:

1. The cooperative's deed of establishment (*akta pendirian koperasi*);
2. The official corporate legal entity approval (*pengesahan badan hukum*);
3. The amendments to the articles of association (*perubahan anggaran dasar*);
4. The business operational license (*izin usaha*);
5. The corporate taxpayer identification number (*NPWP*); and
6. The legal credentials confirming the authority of the board of directors.

These credentials demonstrate that the Defendants did not act in their personal capacities, but lawfully represented the cooperative legal entity in executing the financing agreement with LPDB-KUMKM. Consequently, the judges determined that the requirement of legal capacity had been fully satisfied, rendering the financing agreement valid and enforceable.

According to contract theory, legal capacity denotes the ability of an individual or legal entity to perform legal acts that give rise to reciprocal rights and obligations. As posited by R. Setiawan, legally capable persons are those whom the law declares competent to execute legal actions and who are not under conservatorship or subject to specific legal prohibitions. [18] Since no evidence was presented to suggest that the parties lacked capacity, the court presumed all executed agreements and deeds to hold binding legal force.

The panel of judges verified the legal relationship through several authentic instruments: Loan/Financing Agreement Deed No. 67 dated February 24, 2011; Addendum Deed No. 223 dated April 25, 2012; and Loan/Financing Agreement Deed No. 224 dated April 25, 2012 all executed before Notary H. Warman, S.H. in Jakarta. The relationship was further reinforced by a debt acknowledgment deed (*akta*

[15] Thomas Suyatno *et al*., *Dasar-Dasar Perkreditan* (Jakarta: PT Gramedia Pustaka Utama, 2003), p. 74.
[16] Sri Soedewi Masjchoen Sofwan, *Hukum Jaminan di Indonesia: Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan* (Yogyakarta: Liberty, 1980), p. 31.
[17] R. Setiawan, *Pokok-Pokok Hukum Perikatan* (Bandung: Bina Cipta, 1987), p. 18.
[18] R. Setiawan, *Pokok-Pokok Hukum Perikatan* (Bandung: Bina Cipta, 1987), p. 17.

pengakuan utang), a fiduciary security deed (*akta jaminan fidusia*), and personal guarantees (*borgtocht*).

In its ratio decidendi, the court concluded that the four essential criteria for contract validity under Article 1320 of the Indonesian Civil Code were met. The voluntary execution of the various financing and security deeds demonstrated mutual consent. Legal capacity was established because the Defendants acted as authorized cooperative administrators. The object of the contract was explicit: the disbursement of revolving fund facilities amounting to Rp10 billion and Rp1 billion, with specific tenors and interest rates. Finally, a lawful cause (*sebab yang halal*) was demonstrated by the intended utilization of the funds, namely to augment the cooperative's working capital, disburse financing to micro and small enterprises, develop cooperative business systems, upgrade IT infrastructure, and expand cooperative services.

The judges also considered that the financing operation adhered strictly to the regulatory procedures of LPDB-KUMKM. Prior to fund disbursement, the Plaintiff had conducted a rigorous internal vetting process consisting of:

- administrative and document legality analysis,
- legal/juridical analysis,
- risk management assessment,
- monitoring and evaluation,
- credit committee review,
- issuance of a Commitment Letter (*Surat Persetujuan Prinsip* / SP-3),
- issuance of the Board of Directors' decree, and
- the final execution of the notarized deeds.

Therefore, the court held that the interaction between the parties constituted a valid civil law relationship governed by a binding contract. This position aligns with contract theory and the principle of *pacta sunt servanda* as codified in Article 1338 of the Indonesian Civil Code, which dictates that all legally executed agreements operate as statutory law for the contracting parties. Consequently, the Defendants are legally bound to fulfill the repayment obligations stipulated in the financing deeds.

The specific contractual terms highlighted by the panel of judges were as follows:

1. Loan/Financing Agreement Deed No. 67 (February 24, 2011): A principal facility of Rp10 billion with a 36-month tenor and an interest rate of 9% per annum.
2. Addendum Deed No. 223 (April 25, 2012): Amending the principal ceiling to Rp20 billion, maintaining the 36-month tenor and a 9% annual interest rate.
3. Primary Loan/Financing Agreement Deed (i) No. 224 (April 25, 2012): A separate facility of Rp1 billion with a 36-month tenor and an interest rate of 2% per annum.

Contractually, a clear maturity date was established (36 months from the date of execution). This structural timeline triggered a judicial analysis regarding Article 1238 of the Indonesian Civil Code: whether a debtor is automatically placed in default upon the expiration of a contractually agreed period, or if a formal default notice (*somasi*) remains a mandatory prerequisite.

B. Judicial Considerations Regarding Default (*Wanprestasi*)

Under Decision No. 107/Pdt.G/2021/PN.Mks, the court's analysis of default (*wanprestasi*) focused on whether the Defendants had failed to fulfill their repayment duties and whether the formal legal prerequisites to declare a debtor in default had been satisfied specifically concerning the issuance and receipt of a default notice (*somasi*).

The panel of judges first affirmed that a valid contractual relationship bound the Plaintiff and the Defendants under Loan/Financing Agreement Deed No. 67 of 2011 and its subsequent addenda. Under these instruments, the Defendants bore an absolute obligation to repay the loan in accordance with the agreed amortization schedule. Factually, the court found that the Defendants had failed to meet their payment obligations, accumulating principal, interest, and penalty arrears totaling Rp19,310,493,172 based on the accounts receivable ledger.

Furthermore, the judges noted that although the agreed financing tenor was 36 months, the Defendants had failed to liquidate the debt by the time the lawsuit was filed. Substantively, there was an indisputable failure of performance on the part of the debtor.

The Plaintiff grounded its breach of contract claim on Article 1238 of the Indonesian Civil Code, which states that a debtor is declared in default either by a warrant or a similar authentic instrument, or by virtue of the expiration of the period stipulated in the obligation. The Plaintiff also cited Subekti's doctrine that a default occurs when a debtor: (1) fails to perform their obligation; (2) performs the obligation late; or (3) performs the obligation improperly.

In civil law doctrine, a party is typically deemed in default only after being formally placed in default (*in mora*) through a notice (*somasi*) dispatched by the creditor. Therefore, the serving of a *somasi* is a vital procedural element in determining when a debtor is legally in default.

The Plaintiff asserted that it had deployed numerous debt collection and warning mechanisms, including:

- a notice of payment arrears in 2012,
- warning letters in 2015, and
- a formal legal notice (*somasi*) served via legal counsel in 2016.

However, in its legal evaluation, the panel of judges determined that the Plaintiff failed to present valid evidence proving that these notices were actually received by the Defendants. The court held that a formal notice is a strict statutory prerequisite to place a debtor in default under Article 1238 of the Indonesian Civil Code. Because the delivery and receipt of the *somasi* could not be conclusively proven, the state of legal default was deemed unestablished.

The legal consequence of failing to prove the receipt of the *somasi* was that the Plaintiff's lawsuit was deemed premature. Consequently, the panel of judges rendered an inadmissible judgment (*Niet Ontvankelijke Verklaard* / NO). This ruling demonstrates the application of the principle of legal certainty: a declaration of default cannot rest solely on the existence of financial arrears, but must satisfy the strict procedural steps mandated by law. In the context of Article 1238 of the Indonesian Civil Code, a *somasi* functions as a procedural safeguard, ensuring that a debtor is granted a final opportunity to remedy their non-performance before facing litigation.

C. Judicial Considerations Regarding Evidence

The court's evaluation of evidence focused on assessing the probative value (*kekuatan pembuktian*) of the items submitted by the Plaintiff to substantiate the legal relationship, the repayment obligations, the outstanding arrears, and the alleged default. The evidence consisted of documentary evidence, notarized deeds, security instruments, accounting records, demand letters, and witness testimony.

The panel of judges first assessed the documentary evidence consisting of Loan/Financing Agreement Deed No. 67 (2011), Addendum Deed No. 223 (2012), and Loan/Financing Agreement Deed No. 224 (2012). The court ruled that these notarized instruments constituted valid written evidence holding absolute probative value (*kekuatan pembuktian sempurna*) because they were executed as authentic deeds before a public official (a notary). From these instruments, the court conclusively established the existence of a valid financing relationship.

Beyond the primary contracts, the court evaluated complementary security and financial deeds, including:

1. The Debt Acknowledgment Deed (*Akta Pengakuan Hutang*);
2. The Fiduciary Security Deed (*Akta Jaminan Fidusia*);
3. The Amendment to the Fiduciary Security Deed;
4. The Personal Guarantee Deed (*Akta Borgtocht*); and
5. The Certificate of Pledge over Time Deposits (*Akta Gadai Deposito*).

These deeds were accepted as conclusive proof that the Defendants acknowledged the underlying debt, that the facilities were backed by collateral, and that the individual guarantors assumed personal liability for the revolving fund repayment. The court also admitted internal corporate records, such as legal analyses, risk opinions, credit committee memoranda, Commitment Letters (SP-3), Board decrees, and disbursement memos, to confirm that the loan was granted in accordance with internal compliance protocols.

Regarding the default quantum, the court admitted the accounts receivable ledger showing total outstanding arrears exceeding Rp19 billion. This document administratively proved that the Defendants had fallen behind on their schedule.

Finally, the court reviewed monitoring and evaluation reports, site-visit notes, warning letters, and the formal demand notices from 2012, 2015, and 2016. However, the court ruled that the evidence for the *somasi* was legally deficient. Because the Plaintiff could not produce proof of delivery confirming receipt by the Defendants, the judge ruled that the evidence failed to satisfy the statutory requirements for placing a debtor *in mora* under Article 1238 of the Indonesian Civil Code.

D. Judicial Considerations Regarding the Foreclosure of Collateral

The court's considerations regarding the foreclosure of collateral (*eksekusi jaminan*) were tied to the proof of default and the formal requirements of the lawsuit. The Plaintiff had requested the court to authorize the foreclosure of the assets secured under the Fiduciary Security Deed, the Amendment to the Fiduciary Security Deed, the Pledge over Time Deposits, and the personal guarantees (*personal guarantee*).

The judges acknowledged that these security interests formed an integral part of the contractual arrangement. The Plaintiff successfully proved that the Defendants had voluntarily encumbered these assets to guarantee repayment. In its pleadings, the Plaintiff requested that the court declare the collateral enforceable by the State Receivables Affairs Committee (*Panitia Urusan Piutang Negara* / PUPN) to recover the outstanding debt of over Rp19 billion.

The court recognized the validity of these security instruments as protective mechanisms for the creditor. The fiduciary security granted the creditor a proprietary security interest (*jaminan kebendaan*) yielding a preferential right (*hak preferen*) over the secured collateral in the event of a default. Concurrently, the personal guarantee expanded liability beyond the cooperative's corporate veil to the personal assets of its directors.

However, before evaluating the merits of the foreclosure request, the court had to ensure that the procedural requirements for the breach of contract claim were satisfied. Because the Plaintiff failed to legally prove that a *somasi* was successfully served, the underlying default was deemed incomplete under Article 1238 of the Indonesian Civil Code. As the lawsuit was dismissed as premature (*Niet Ontvankelijke Verklaard* / NO), the court could not examine the merits of the foreclosure request.

This ruling underscores that even when a creditor holds valid collateral, the right to foreclose cannot be exercised if the lawsuit fails to meet formal procedural standards. While a fiduciary security protects a creditor against credit risk, the enforcement of that right must still follow correct procedural channels and rest upon a valid judgment on the merits.

The legal consequence of an NO ruling on collateral is that:

- the underlying security interest is not extinguished;
- the creditor's preferential right over the collateral remains intact;
- but foreclosure cannot proceed because there is no adjudication on the merits confirming a legal default.

Consequently, the Plaintiff remains legally entitled to file a new lawsuit after remedying the procedural deficiency by properly serving and proving a *somasi*.

E. Author's Analysis of the Judicial Considerations

Based on Decision No. 107/Pdt.G/2021/PN.Mks, the author notes that the panel of judges' legal reasoning regarding the default provisions under Article 1238 of the Indonesian Civil Code rests on a solid formalistic basis. However, several aspects require closer analysis concerning formal law enforcement, creditor protection, and the balance between legal certainty and substantive justice.

The court dismissed the lawsuit as inadmissible (*NO*) because the delivery of the *somasi* could not be verified. Normatively, this aligns with Article 1238 of the Indonesian Civil Code. From the perspective of legal certainty theory, the judges' approach can be deemed consistent with statutory procedures. As argued by Utrecht, legal certainty requires that the law provide clear rules so that society understands its rights and obligations while being protected against arbitrary actions. [19] In this case, the court refused to declare a default based solely on financial arrears, upholding the *somasi* as a procedural safeguard for the debtor.

However, the author contends that the court prioritized formal requirements over the substantive realities of the case. Materially, the Plaintiff successfully established a valid legal relationship, a notarized financing agreement, fiduciary and

[19] E. Utrecht, *Pengantar dalam Hukum Indonesia* (Jakarta: Ichtiar, 1983), p. 27.

personal guarantees, the actual disbursement of funds, and a multi-billion rupiah delinquency. The Plaintiff also demonstrated persistent collection efforts through monitoring reports and warning letters.

From the perspective of contract theory, the parties were bound by the principle of *pacta sunt servanda* under Article 1338 of the Indonesian Civil Code. As Subekti observes, a contract is an event where one person promises another, or where two persons mutually pledge to perform a certain act, giving rise to a legal relationship in the form of an obligation.[20] Therefore, when the Defendants failed to make payments according to the agreed schedule, there was a clear substantive default.

The author further argues that the requirement for a *somasi* should not be interpreted too narrowly in commercial or institutional financing contexts. In civil law practice, when an agreement specifies a definitive deadline for payment, the expiration of that period can place the debtor in default automatically, without requiring an additional formal notice. This aligns with the concluding clause of Article 1238 of the Indonesian Civil Code, which states that a debtor can be deemed in default by the nature of the obligation itself once the stipulated period has lapsed.

From the standpoint of legal protection theory, this judgment reveals that the protection afforded to LPDB-KUMKM as a custodian of state funds remains sub-optimal. Satjipto Rahardjo defines legal protection as an effort to safeguard human rights and legal interests injured by others so that society can enjoy the rights conferred by law.[21] In this matter, despite possessing a comprehensive legal package—including financing deeds, fiduciary security, debt acknowledgments, personal guarantees, and accounting evidence—the Plaintiff was denied effective remedy due to a formal evidentiary flaw regarding the *somasi*. This rigid formalism ultimately impedes the recovery of state funds and can disrupt the continuity of public financing programs for cooperatives and MSMEs.

Regarding the theory of justice, the author argues that the decision prioritized formal legal certainty over substantive justice for a creditor facing a multi-billion rupiah loss. Gustav Radbruch states that the law must serve three core values: justice, legal certainty, and expediency.[22] By allowing an undisputed financial default to escape civil liability on purely formal grounds, the court created an imbalance that favors procedural compliance over contractual accountability.

F. Analytical Conclusion

In conclusion, the court's reasoning in Decision No. 107/Pdt.G/2021/PN.Mks focused heavily on the formal requirements of the lawsuit, specifically the strict proof of delivery for a default notice (*somasi*) under Article 1238 of the Indonesian Civil Code. The court held that although the Plaintiff proved the existence of the legal relationship, the contractual breaches, and the resulting financial losses, the default was not legally perfected because receipt of the *somasi* could not be verified.

In default theory, a debtor's breach involves a failure to perform as agreed whether through non-performance, delayed performance, or defective performance. As Yahya Harahap notes, a default can generally only be legally asserted once the debtor has received an official warning or default notice (*somasi*), unless the contract explicitly provides that the debtor is placed in default automatically by the mere lapse of time.[23] Therefore, the court's emphasis on the *somasi* is doctrinally accurate under general Indonesian civil law.

As a result of this formal deficiency, the court dismissed the claim as premature, rendering an inadmissible (*Niet Ontvankelijke Verklaard* / NO) judgment. This type of dismissal indicates that the merits of the case were not fully adjudicated due to a procedural defect, leaving the Plaintiff free to refile the lawsuit once proper proof of delivery is established.

From the perspective of legal certainty, this ruling represents a strict and consistent application of procedural law. Soerjono Soekanto emphasizes that legal certainty provides essential protection against arbitrary actions, fostering order and predictability within society.[24] Here, the court treated the *somasi* procedure as a mandatory safeguard to protect the debtor's rights before they could be declared in default.

Nevertheless, the author maintains that the court focused on evidentiary formalities at the expense of contractual substance. Materially, the key elements of the transaction the valid financing contract, the fund disbursement, the secured collateral, and the massive payment delinquency were fully proven. Under contract theory, a valid agreement generates legally binding duties. Subekti underscores that a contract gives rise to a legal relationship that obligates the parties to execute its terms in good faith.[25] When the debtor failed to maintain the payment schedule, it substantively breached the principle of *pacta sunt servanda*.

Importantly, because an NO judgment does not touch the merits of the dispute, the underlying legal relationship and the outstanding debt remain valid and unextinguished. The fiduciary security, pledged deposits, and personal guarantees also retain their legal force as protective instruments for the creditor. Legal protection theory requires the law to balance the competing interests of both parties. Philipus M. Hadjon defines legal protection as the safeguarding of human dignity and the recognition of legal rights held by legal subjects under the law.[26] While LPDB-KUMKM possessed the necessary legal instruments to secure its position, their enforcement was temporarily blocked by the procedural dismissal.

From the perspective of legal philosophy, this outcome prioritizes formal legal certainty over substantive justice and social expediency. L.J. van Apeldoorn notes that the purpose of law is not merely to establish certainty, but also to achieve justice and societal utility.[27] In this case, the large volume of non-performing revolving funds directly threatens public resources intended for community empowerment. A highly formalistic judicial approach weakens the protection of state

[20] R. Subekti, *Hukum Perjanjian* (Jakarta: PT Intermasa, 2005), p. 1.
[21] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2000), p. 54. *(Note: "Op. Cit." corrected to Rahardjo's definitive work on legal science).*
[22] *Ibid.*, p. 19.
[23] M. Yahya Harahap, *Segi-Segi Hukum Perjanjian* (Bandung: PT Alumni, 1986), p. 60.
[24] Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: PT RajaGrafindo Persada, 2008), p. 7.
[25] R. Subekti, *Hukum Perjanjian*, p. 123.
[26] Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987), p. 25.
[27] Supreme Court of the Republic of Indonesia Judgment No. 852 K/Sip/1972.

funds and delays contractual resolution.

In summary, the court's decision is procedurally justifiable under civil procedure law and Article 1238 of the Indonesian Civil Code. However, from the standpoint of substantive justice and economic expediency, the ruling remains open to debate due to its formalistic focus on the delivery mechanics of the *somasi* rather than the material facts of non-performance.

Ultimately, the core rationale for the dismissal was that the breach of contract claim was deemed premature because the Plaintiff could not conclusively prove it had served a *somasi* prior to initiating litigation. Under Articles 1238 and 1243 of the Indonesian Civil Code, a debtor is generally not in default until a formal warning has been served. The court reinforced this stance by citing Supreme Court Precedent (*Yurisprudensi*) No. 852 K/Sip/1972, which establishes that a default claim filed without a prior *somasi* must be declared inadmissible.[28] While LPDB-KUMKM maintained that it had sent the required warnings, it failed to produce the corresponding proof of service during the evidentiary phase. Consequently, the court ruled that the exact date of default could not be determined, leading to the following final order:

1. The Plaintiff's lawsuit is declared inadmissible (*niet ontvankelijke verklaard*);
2. The provisional claim (*provisi*) is denied; and
3. The Plaintiff is ordered to pay all court costs.

Conclusion

The normative existence of revolving fund financing regulations within the Revolving Fund Management Agency for Cooperatives, Micro, Small, and Medium Enterprises (LPDB-KUMKM) rests upon a robust legal foundation. This framework is securely anchored in the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), Law No. 25 of 1992 concerning Cooperatives, Law No. 20 of 2008 concerning MSMEs, and specific technical regulations governing LPDB-KUMKM's operational fund management. In practice, the legal relationship between LPDB-KUMKM and its financing beneficiaries is established through validly executed financing agreements that hold binding legal force under the fundamental principle of *pacta sunt servanda*. Furthermore, legal protection for the creditor is systematically provided through mechanisms such as fiduciary security interests, pledges over time deposits, personal guarantees (*borgtocht*), and post-disbursement monitoring alongside formal default notices (*somasi*). Nonetheless, the empirical enforcement of these regulatory instruments remains sub-optimal, as evidenced by the persistent recurrence of non-performing financing and contractual defaults (*wanprestasi*) by debtors.

The judicial reasoning (*ratio decidendi*) in Decision No. 107/Pdt.G/2021/PN.Mks was strictly predicated upon the formalistic and procedural dimensions of the lawsuit, specifically regarding the standard of proof required to verify the serving of a default notice (*somasi*) under Article 1238 of the Indonesian Civil Code. The panel of judges determined that although the underlying legal relationship, the financing contracts, and the multi-billion rupiah payment arrears had been factually established, the legal state of default (*in mora*) was not perfected because the Plaintiff failed to legally prove that the *somasi* was successfully delivered to and received by the Defendants. Consequently, the court rendered an inadmissible judgment (*Niet Ontvankelijke Verklaard* / NO). This ruling underscores a judicial disposition that prioritizes formal legal certainty over substantive justice, which ultimately restricts the optimal implementation of legal protections available to LPDB-KUMKM in its capacity as a custodian and manager of public state funds.

References

1. Asshiddique J. *Konstitusi ekonomi*. Jakarta: Kompas; 2010.
2. Subekti R. *Hukum perjanjian*. Jakarta: Intermasa; 2005.
3. Asikin Z. *Pengantar metode penelitian hukum*. 8th ed. Jakarta: Rajawali Pers; 2014.
4. Soekanto S. *Penelitian hukum normatif*. Jakarta: PT RajaGrafindo Persada; 2006.
5. Soekanto S. *Pengantar penelitian hukum*. Jakarta: UI Press; 2008.
6. Salim HS, Nurbani ES. *Penerapan teori hukum pada tesis dan disertasi*. Jakarta: PT RajaGrafindo Persada; 2013.
7. Fajar M, Achmad Y. *Dualisme penelitian hukum normatif & empiris*. Yogyakarta: Pustaka Pelajar; 2010.
8. Amiruddin, Asikin Z. *Pengantar metode penelitian hukum*. Jakarta: Rajawali Pers; 2013.
9. Nazir M. *Metode penelitian*. Jakarta: PT Ghalia Indonesia; 2014.
10. Muhaimin. *Metode penelitian hukum*. 1st ed. Mataram: Mataram University Press; 2020.
11. Kasmir. *Dasar-dasar perbankan*. Rev. ed. Jakarta: PT RajaGrafindo Persada; 2014.
12. Fuady M. *Hukum bisnis dalam teori dan praktik*. Bandung: PT Citra Aditya Bakti; 2008.
13. Harahap MY. *Segi-segi hukum perjanjian*. Bandung: PT Alumni; 1986.
14. Suyatno T, *et al*. *Dasar-dasar perkreditan*. Jakarta: PT Gramedia Pustaka Utama; 2003.
15. Sofwan SSM. *Hukum jaminan di Indonesia: Pokok-pokok hukum jaminan dan jaminan perorangan*. Yogyakarta: Liberty; 1980.
16. Setiawan R. *Pokok-pokok hukum perikatan*. Bandung: Bina Cipta; 1987.
17. Utrecht E. *Pengantar dalam hukum Indonesia*. Jakarta: Ichtiar; 1983.
18. Rahardjo S. *Ilmu hukum*. Bandung: PT Citra Aditya Bakti; 2000.
19. Soekanto S. *Faktor-faktor yang mempengaruhi penegakan hukum*. Jakarta: PT RajaGrafindo Persada; 2008.
20. Hadjon PM. *Perlindungan hukum bagi rakyat Indonesia*. Surabaya: Bina Ilmu; 1987.
21. Supreme Court of the Republic of Indonesia. Judgment No. 852 K/Sip/1972.
22. van Apeldoorn LJ. *Pengantar ilmu hukum*. Jakarta: Pradnya Paramita; 2001.

[28] L.J. van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Pradnya Paramita, 2001), p. 11.

23. Republic of Indonesia. Law No. 25 of 1992 concerning Cooperatives. State Gazette of the Republic of Indonesia. 1992;(116):Supplement No. 3502.
24. Republic of Indonesia. Minister of Finance Regulation No. 100/PMK.05/2016 concerning Service Tariffs of the Revolving Fund Management Institution for Cooperatives and Micro, Small and Medium Enterprises at the Ministry of Cooperatives and Small and Medium Enterprises.
25. Republic of Indonesia. Minister of Cooperatives and Small and Medium Enterprises Regulation No. 4 of 2020 concerning Revolving Fund Distribution.

How to Cite This Article

Dewi NMAS, Sili DEB. Legal analysis of breach of contract in revolving fund financing for MSMEs: a study of Court Decision No. 107/Pdt.G/2021/PN.Mks. Int J Judic Law. 2026;5(4):30-38. doi:10.54660/IJJL.2026.5.4.30-38.