

**LEGAL PROTECTION FOR CREDITORS WHO HAVE DEFAULTED IN
UNSECURED CREDIT AGREEMENTS ACCORDING TO LAW NUMBER 8 OF 1999
CONCERNING CONSUMER PROTECTION**

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ABSTRACT

In the era of globalization and the rapid development of information technology, access to financial services is getting easier. Unsecured Loans (KTA) are one of the solutions for people who need quick funds for various purposes, such as education, health, or business capital. However, this convenience is also accompanied by risks that cannot be ignored, especially related to default. Defaults can occur due to a variety of factors, such as unstable economic conditions, poor financial management, or even fraud. This study aims to find out the form of legal protection for creditors who have defaulted in the KTA based on Law Number 8 of 1999 concerning Consumer Protection (UUPK), the factors causing defaults, and the effectiveness of these regulations in providing protection for creditors. The research method used is a normative juridical method with a legislative approach and a conceptual approach. The data used included primary legal materials in the form of laws and regulations and secondary legal materials in the form of related literature. The results of the study show that legal protection for creditors in the KTA can be in the form of preventive protection through clear and transparent agreement arrangements, as well as repressive protection through dispute resolution mechanisms both in litigation and non-litigation. Factors that cause default include the debtor's economic condition, lack of good faith, and weak creditworthiness analysis from creditors. Although the UUPK focuses more on the protection of consumers (debtors), this law also provides a legal framework to achieve a balance of rights and obligations between creditors and debtors in order to achieve justice for both parties.

Keywords: Legal Protection, Creditors, Default, Credit Agreement.

**PERLINDUNGAN HUKUM BAGI KREDITUR YANG MENGALAMI WANPRESTASI
DALA PERJANJIAN KREDIT TANPA AGUNAN MENURUT UNDANG-UNDANG
NOMOR 8 TAHUN 1999 TENTANG PERLINDUNGAN KONSUMEN**

ABSTRAK

Di dalam era globalisasi dan perkembangan teknologi informasi yang pesat, akses terhadap layanan keuangan semakin mudah. Kredit Tanpa Agunan (KTA) menjadi salah satu solusi bagi masyarakat yang membutuhkan dana cepat untuk berbagai keperluan, seperti pendidikan, kesehatan, atau modal usaha. Namun, kemudahan ini juga diiringi dengan risiko yang tidak dapat diabaikan, terutama terkait dengan wanprestasi. Wanprestasi dapat terjadi karena berbagai faktor, seperti kondisi ekonomi yang tidak stabil, pengelolaan keuangan yang buruk, atau bahkan penipuan. Penelitian ini bertujuan untuk mengetahui bentuk perlindungan hukum

bagi kreditur yang mengalami wanprestasi dalam KTA berdasarkan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen (UUPK), faktor-faktor penyebab wanprestasi, serta efektivitas regulasi tersebut dalam memberikan perlindungan bagi kreditur. Metode penelitian yang digunakan adalah metode yuridis normatif dengan pendekatan perundang-undangan dan pendekatan konseptual. Data yang digunakan meliputi bahan hukum primer berupa peraturan perundang-undangan dan bahan hukum sekunder berupa literatur terkait. Hasil penelitian menunjukkan bahwa perlindungan hukum bagi kreditur dalam KTA dapat berupa perlindungan preventif melalui pengaturan perjanjian yang jelas dan transparan, serta perlindungan represif melalui mekanisme penyelesaian sengketa baik secara litigasi maupun non-litigasi. Faktor-faktor penyebab wanprestasi antara lain kondisi ekonomi debitur, kurangnya itikad baik, serta lemahnya analisis kelayakan kredit dari pihak kreditur. Meskipun UUPK lebih fokus pada perlindungan konsumen (debitur), undang-undang ini juga memberikan kerangka hukum untuk mencapai keseimbangan hak dan kewajiban antara kreditur dan debitur guna mencapai keadilan bagi kedua belah pihak.

Kata Kunci: *Perlindungan Hukum, Kreditur, Wanprestasi, Perjanjian Kredit.*

INTRODUCTION

Along with the increase in national development activities, the role of the private sector in national development activities. The role of the private sector in development activities is also being increased. In a company, financing and capital equipment are often carried out through the banking system and non-bank financial institutions, for example with the availability of credit services (loans) from banks. Problems regarding the use of this service arise, for example in newly established companies that do not have assets to be used as *collateral* for loans to be obtained from banks. Therefore, with the absence of collateral to guarantee the loan, the decision to grant Unsecured Loans (KTA) is based on the credibility of the loan applicant personally, such as the job he has related to the ability later in carrying out loan payment obligations, the background in question is whether he (the customer) can be trusted or not, because this Unsecured Loan Loan (KTA) agreement can be said to be an agreement with the system trust. Therefore, a person's good name is also included in the substitute for the guarantee given by the bank to the customer.

In civil law in the third book about agreements in general. The emergence of the Unsecured Credit (KTA) facility is an attractive alternative for entrepreneurs because at this time it is difficult to get rupiah funds for the medium and long term. Meanwhile, through Unsecured Loans (KTA) they (entrepreneurs) and individuals can obtain funds to finance the purchase of capital goods or also for consumption activities with a return period between 1 year to 3 years (or up to 5 years) with light terms.

Unsecured Loans (KTA) are one of the financing products that are in great demand by the public, especially for individuals who need quick funds without having to provide collateral in the form of assets. However, even though it does not require collateral, this loan product still has a number of certain simple requirements. The bank also did not immediately make a decision on the disbursement for the KTA application. Customers will be assessed first based on credit history. And in general, the history will be seen from other credits, such as mortgages, cars, motorcycles (ADIRA leasing) and up to online loans divided into 2, namely those registered with the OJK (Kredivo application, Akulaku, Adakami, EasyCash), online loans that are not registered with the OJK (KilatKredit application, Pocket Cash).

It is hoped that with this Unsecured Credit (KTA) facility, in addition to increasing business financing options (as an alternative to bank credit facilities in general and leasing financing facilities), it is also aimed at encouraging the credit industry in Indonesia. However, in the implementation of this credit, it turns out that there is a violation of the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Civil Code (KUHPercivil). The violation is related to the violation of restrictions in the principle of freedom of contract. In practice, there is a form of standard agreement contract from the Unsecured Credit (KTA) form which contains standard clauses, and there is no openness in making agreements (signing agreements). In the Unsecured Credit (KTA) form, there are standard clauses that are small in form and cannot be read clearly and tend to cause laziness to read them. One of the clauses in the Unsecured Credit (KTA) form reads:

By signing this form, I/we are bound by the general terms and conditions for the attached Unsecured Credit (KTA) so that these terms and conditions are a binding and inseparable agreement between me/us, the debtor and the Bank. The existence of these additional terms and conditions is not explained to the customer's debtor at the time the agreement is made (at the time of signing). In this paper, it is discussed about possible problems that may arise in the practice of implementing Unsecured Loans (KTA), efforts to protect banks from default (considering that this credit is uncollateral) and the possibility of bad loans and protection efforts for customers/debtors related to consumer protection.

And it can be understood that in a banking credit book, it must be based on a loan agreement or agreement, or in other words, it must be preceded by a Credit Agreement. Debt and receivables agreements between creditors (lenders) and debtors (borrowers) are a reality in today's economic

development. And in the legal relationship that occurs between creditors and debtors, there can be a default that results in one party suffering losses. And with the occurrence of such default, the creditor can demand that the debtor fulfill the agreement or provide compensation.

In a legal context, a default can cause significant losses to creditors, potentially disrupting the financial stability of financial institutions. Therefore, legal protection for creditors who have defaulted is very important. Law Number 8 of 1999 concerning Consumer Legal Protection provides a legal framework that regulates the relationship between creditors and debtors, including the rights and obligations of each party. However, in practice, there are often legal loopholes that can be exploited by debtors to avoid liability for default. In Indonesia, Law Number 8 of 1999 concerning the Protection of Consumer Law provides an important legal basis in protecting the rights of consumers, including debtors. However, this law also has implications for creditors, especially in the context of the protection of their rights when the debtor does not meet payment obligations. Although these laws aim to create a balance in the relationship between creditors and debtors, there are often imbalances that are detrimental to creditors, especially when it comes to the enforcement of their rights.

On the other hand, existing legal protections do not always guarantee that creditors will get their rights fairly. Many creditors do not have a sufficient understanding of their rights in the face of default, making it difficult for them to claim damages or resolve disputes that arise. This shows the need for a more in-depth study of the legal protection of creditors in the context of the KTA, as well as how the Consumer Protection Law can be applied to protect the rights of creditors. On the other hand, existing legal protections do not always guarantee that creditors will get their rights fairly. Many creditors do not have a sufficient understanding of their rights in the face of default, making it difficult for them to claim damages or resolve disputes that arise. This shows the need for a more in-depth study of the legal protection of creditors in the context of the KTA, as well as how the Consumer Protection Law can be applied to protect the rights of creditors.

Based on the background description that has been explained, in this legal research the author compiled a legal writing with the title: "Legal Protection for Creditors Who Have Defaulted in Unsecured Loans Reviewed from Law Number 8 of 1999 concerning Consumer Protection.

LITERATURE REVIEW

a. Definition of Legal Protection



Legal protection is interpreted as a representation of the implementation of a legal function in order to realize legal objectives in the form of justice, utility, and legal certainty. The definition of legal protection can also be interpreted as a protection given to every legal subject in accordance with positive law, which is preventive (preventive), and in a repressive form (coercion) in order to enforce the rule of law. 16 In Law Number 8 of 1999 concerning Consumer Protection in providing a legal framework to protect consumer rights in transactions, including in the context of credit. Although the Act focuses more on the protection of debtors as consumers, it is important to note that creditors also have rights that need to be protected.

b. Definition of Default

Default is a term from the Dutch language, namely "wanprestatie" which means not fulfilled achievements or obligations in an agreement. According to KBBI, default is one of the parties who agree in the agreement by having poor performance due to its negligence. Default is a legal term that refers to a situation in which one of the parties to the agreement is unable to fulfill its obligations in accordance with the agreement. In the context of Unsecured Loans, default occurs when the debtor fails to make installment payments according to the specified schedule. According to article 1238 of the Civil Code, a debtor is considered a default if he does not meet the agreed achievements, either because he does not make achievements, is late or makes inappropriate achievements. Default is one of the risks that must be faced by the parties involved in the agreement, especially since the agreement involves money, which before making an agreement on a stamp, must be careful in choosing colleagues to cooperate and but if you are already trapped in an agreement with a high potential for default, you can file a default lawsuit in the civil court. Article 1243 of the Civil Code (KUHPperdata) states that:

Reimbursement of costs, losses and interest due to non-performance of an undertaking shall be compulsory, if the debtor, even if it has been declared negligent, is still negligent in fulfilling this undertaking, or if something to be given or done by him can only be given or done within a time beyond the specified time. So, default is an act of breach of promise committed by one of the parties to the agreement on the stamp as a result of its negligence so that it cannot fulfill its obligations.

c. Creditors

Creditors are parties or institutions that provide loans or credit to debtors. And in a financial context, a creditor can be a bank, financial institution, company or individual who provides funds

to another party in the hope that the funds will be returned within a certain period of time, usually with additional interest or other fees.

d. Definition of Unsecured Credit (KTA)

Unsecured Loans (KTA) are loans that are given without asset collateral. In the case of default by creditors, the debtor may file a lawsuit to demand the fulfillment of obligations or compensation, in accordance with the provisions of applicable law. Several legal steps can be taken to resolve this dispute. Unsecured Credit is one of the banking products in the form of providing loan facilities without an asset that is used as collateral for the loan. Because there is no guarantee that guarantees the loan, the decision to provide credit is solely based on the credit history of the credit applicant personally or in other words that the ability to carry out loan repayment obligations is a substitute for collateral.

RESEARCH METHODS

This type of research is a normative law and the nature of this research is descriptive analysis. The data collection technique is carried out by means of library research, the data used is secondary data obtained from primary legal materials, secondary legal materials and tertiary legal materials. The results of this study use a qualitative analysis method which will later be compiled systematically to answer the problems that have been formulated.

RESULTS AND DISCUSSION

Legal protection for creditors who have defaulted in the Unsecured Credit agreement can be realized in the following forms:

- a. Preventive protection, which is protection provided through the regulation of contractual clauses in credit agreements, such as provisions regarding late fines, payment terms, the right to unilateral termination, and penalty provisions. This clause can serve as a preventive measure against the risk of default, while still paying attention to the principle of prudence and the principle of balance in the agreement.
- b. Repressive protection, which is legal protection provided after the occurrence of a default, includes through:
 - 1). Sending a warning letter (summons) to the debtor;
 - 2). Settlement through alternative dispute resolution institutions, such as the Consumer

- Dispute Resolution Agency (BPSK) or mediation.
- 3). Settlement through alternative dispute resolution institutions, such as the Consumer Dispute Resolution Agency (BPSK) or mediation.
 - 4). Billing through a third party (debt collector) while still paying attention to the legal limits and collection ethics as stipulated in the provisions of the Financial Services Authority (OJK).

In an effort to obtain legal protection, creditors must not act arbitrarily or contrary to the principles of consumer protection, such as the principles of justice, legal certainty, and balance. Creditors who commit acts of intimidation or violate the debtor's privacy can be categorized as violating the provisions of the law, as stipulated in Article 18 and Article 19 of the Consumer Protection Law, thus, the form of legal protection for creditors is not solely retributive, but must be understood as a form of protection that ensures reciprocal justice in the legal relationship between creditors and debtors. In this framework, the Consumer Protection Law can be used as one of the normative bases that bridges the legal interests of both parties proportionately.

In the context of Law No. 8 of 1999 concerning Consumer Protection, legal protection for creditors who have defaulted can include the right to file claims for compensation, as well as the right to settle disputes through legal channels.⁵⁰ In addition, creditors also have the right to receive clear and transparent information about their rights and obligations in credit agreements.⁵¹ Legal protection for creditors who have defaulted in unsecured credit agreements It is very important to safeguard the interests of creditors. With the provisions in Law Number 8 of 1999 and the Civil Code, creditors have various rights and mechanisms to protect themselves from losses incurred due to the debtor's default.

According to Law Number 8 of 1999 concerning Consumer Protection, legal protection for creditors who have defaulted in an unsecured credit agreement can be carried out in several ways, such as:

1. Direct billing to debtors
2. Send a warning letter to the debtor
3. File a lawsuit with the Court

Creditors can also rely on provisions on the liability of the debtor in accordance with the agreed credit agreement. ⁵⁴ However, it should be remembered that Law No. 8 of 1999 focuses more on consumer protection, so creditors need to pay attention to other provisions that are more

relevant, such as the Civil Code (KUHPperdata). In addition, creditors can also negotiate with debtors to achieve restructuring or debt settlement. If the debtor is uncooperative. Then the creditor can apply for the execution of the court decision. Creditors also need to understand the terms of the credit agreement and applicable legal procedures to optimize legal protection, as well as pay attention to the provisions on creditors' rights and debtors' obligations in credit agreements, such as provisions on interest, fines and miscellaneous charges.

In Law Number 8 of 1999 concerning Consumer Protection, creditors are categorized as business actors. This is stated in Article 1 number 3 of the Law, which states that business actors are any individual or business entity, whether in the form of a legal entity or non-legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement to carry out business activities in various fields. As a business actor, creditors not only have obligations, but also legal rights that need to be protected by the state, including in situations when there is a default by the debtor. 57 This protection is provided to maintain a balance in the legal relationship between creditors and debtors and to provide legal certainty for the rights of creditors. The Consumer Protection Law (UUPK) is indeed intended to provide protection for consumers (debtors), but this protection does not necessarily eliminate the rights of creditors. In fact, in some of its provisions, this Law also provides protection for business actors if consumers do not have good faith, for example by committing a deliberate default or providing false information."

In article 7 of the Consumer Protection Law, it is stated that business actors are obliged:

1. Good faith in carrying out their business activities;
2. Provide true, clear, and honest information about the condition of goods/services;
3. Ensuring the quality of goods/services;
4. Giving consumers the opportunity to test, try, or enjoy certain goods/services.

However, business actors also have the right to the fulfillment of achievements by consumers as stated in Article 4 letter c of this Law, which states that consumers are obliged to pay according to the agreement. Thus, if the consumer (debtor) defaults, the creditor still has the legal right to demand the fulfillment of the agreement. Normatively, legal protection for creditors in default cases does not conflict with the spirit of consumer protection, as long as the business actor does not abuse his contractual power. Legal protection is provided through civil norms in the Civil Code and is strengthened by the Consumer Protection Law as a special law (*lex specialis*) that

regulates the interaction between business actors and consumers, and in this case. The Consumer Protection Act must be interpreted proportionately: consumers remain protected from adverse business practices, but cannot take refuge behind these laws to avoid legal obligations to creditors.

CONCLUSION

Based on the results of the discussion, it can be concluded that legal protection for creditors in unsecured credit agreements (KTA) refers to two main mechanisms; preventive and repressive protection. Although Law No. 8 of 1999 (UUPK) focuses more on the protection of consumers (debtors), this law still provides a framework for balancing rights and obligations to achieve justice for both parties. In civil terms, this protection is strengthened by article 1338 of the Civil Code regarding the binding power of agreements and article 1131 of the Civil Code which makes all of the debtor's assets as collateral for his debts.

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