

RECONSTRUCTION OF THE PROCEDURE FOR ENFORCING DECISIONS ON COLLATERAL IN SYNDICATED LOANS BASED ON THE PRINCIPLE OF EQUALITY BEFORE THE LAW

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ABSTRACT

The Indonesian constitution stipulates that Indonesia is a country based on the rule of law. In Indonesia, every citizen has equal standing before the law. This study analyses the problems of executing decisions on collateral in syndicated loans based on the principle of equality before the law. The legal issues examined in this dissertation are as follows. First, how is the legal construction of executing decisions on collateral in syndicated loans? Second, what are the legal consequences of the execution of judgments against collateral in syndicated loans for other creditors in the syndicate structure? Third, what is the appropriate legal reconstruction to overcome the obstacles to the execution of judgments against collateral in syndicated loans based on the principle of equality before the law? The research method used in this dissertation is a legal-normative research method. The results of the research are as follows. First, the execution of a judgment against collateral in syndicated loans is not in accordance with the provisions of civil procedural law as regulated by HIR/RBg. Second, in the context of the execution of a judgment against collateral in syndicated loans, there is a legal vacuum (law). Third, the legal vacuum in the regulation of the execution of judgments against collateral in syndicated loans results in the execution not complying with the principle of equality before the law, thereby causing losses to certain parties, especially in terms of the distribution of the proceeds of the execution. In relation to the three conclusions above, the author can offer the following suggestions. First, in every credit agreement deed, the facility agent and guarantor agent must be regulated in the credit agreement deed as a single entity. Second, the HIR/RBg civil procedure law needs to be amended and a national civil procedure law needs to be established in accordance with societal developments. Third, the new civil procedure law must be guided by the principle of equality before the law.

Keywords: Principle of Equality Before the Law, Enforcement, Security Rights, Syndicated Loans, Debt Fragmentation, Legal Reconstruction

Introduction

According to the Indonesian constitution, Indonesia is a constitutional state.¹ In Indonesia's constitutional state, every citizen receives recognition and protection from the state (government). The recognition and protection provided by the state to every citizen is stipulated in the constitution and laws. The legal protection provided by the state to every citizen is realised in concrete terms in the form of protection of the rights of each citizen. In other words, in accordance with or based on the nature of the rule of law as stated above, every citizen receives protection from the state. The legal protection provided by the state to every citizen is based on the principle of equality before the law (the principle of legal equality). This is regulated in the provisions of Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that *"every person shall have the right to recognition, security, protection and certainty before the law and equal treatment before the law."* In accordance with or based on the principle of equality before the law, every citizen has the same legal status before the law and the government. To protect the rights of citizens, the state has formulated laws that regulate fairly so that every citizen receives equal recognition and protection from the state. The law regulates fairly so that every citizen receives equal treatment before the law by referring to or based on the principle of equality before the law so that there is no discrimination or harm.²

The principle of equality before the law is a general legal principle. In accordance with its nature as a general legal principle, the principle of equality before the law applies to or is applied in all areas of law in the positive legal system in force in Indonesia. The principle of equality before the law is the foundation of all areas of law contained in the positive legal system of Indonesia. In other words, all fields of law within the positive legal system of Indonesia are based on or founded upon the principle of equality before the law as a general legal principle within the legal system of the Indonesian nation. As a general legal principle, the principle of equality before the law applies to both substantive and procedural law. This means that substantive law, which governs all areas of law within the Indonesian legal system and/or applicable in Indonesia, is guided by or based on the principle of equality before the law. In addition to serving as the foundation for all substantive legal systems within the Indonesian positive legal system, the principle of equality before the law also serves as the foundation for procedural law within the Indonesian positive legal system. From the perspective outlined above, as a general legal principle, the principle of equality before the law demonstrates its very important position and function for the Indonesian positive legal system.

One area of procedural law that is discussed specifically in the dissertation is civil procedural law. To date, the regulations relating to civil procedural law that apply in Indonesia are the HIR/RBG. The civil procedural law of the Indonesian people that currently applies is a product and legacy of the Dutch who once colonised Indonesia. The civil

¹ Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

² This is in accordance with the mandate of Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

procedural law produced by the Dutch (colonial) people was a product of its time. This means that, as a product of its time, the Dutch-inherited Indonesian civil procedural law reflects the legal awareness and ideas that characterised the era of its growth and development, namely the colonial era, which ended several decades ago. As a result, after several decades, the weaknesses of this Dutch procedural law will naturally emerge or come to the surface. Dutch civil procedural law can be said to have fallen behind the developments of the present era. Dutch colonial civil procedural law, which is still in force today and is outdated, will be evident in the case discussed as the focus of this dissertation, as described below in the context of the execution of a judgment against collateral in syndicated loans.

One form of financing that has emerged and developed in the banking world is syndicated loans. Syndicated loans are chosen because they offer several advantages and benefits to the parties bound by the syndicated loan agreement. In general, a syndicated loan is a loan or credit provided by a number of banks and/or financing institutions to a specific debtor using the same terms, conditions and provisions for all banks or financing institutions as creditors.³

⁴ If the bank feels that the risk is too great for the bank if the entire request of a particular customer is borne alone, even though it may not exceed the bank's *legal lending limit* or maximum credit limit (BMPK), the bank will attempt to form a syndicate to finance its customers.

Syndicated loans are not only for sharing risks but also so that each bank can avoid violating the maximum credit limit (BMPK) set by Bank Indonesia. ⁵ In the provision of credit facilities by banks, collateral is a very important element and plays a role in determining credit analysis. The explanation of Article 8 paragraph (1) of Law No. 7 of 1992 concerning Banking, as amended by Law No. 10 of 1998, states that collateral is one of the factors and conditions considered by banks in providing credit facilities. The collateral provided can be in the form of a *personal guarantee* or a *corporate guarantee*, which is a company guaranteeing the debt of another company.⁶

⁷ Generally, one of the creditors acts as the *Lead Creditor/Lead Bank*. Creditors in a syndicated loan are members of a "credit syndicate," which is a syndicate whose participants consist of founding credit institutions and which is formed for the purpose of financing a project.⁸

⁹ Syndicated loans can be a solution for loans that exceed the maximum lending limit (BMPK) specified in legislation. The Maximum Lending Limit or *Legal Lending Limits*

³ Gunawan Widjaja, *Reconstructing Civil Partnerships to Meet the Needs of Modern Legal and Business Practice (Part II)*. Law Review Journal, Faculty of Law, Pelita Harapan University Vol. IV, No. 2. p.127.

⁴ Sutan Remy Sjahdeni, *Syndicated Loans: Formation Process and Legal Aspects*, 2nd ed. (Jakarta: Pustaka Utama Grafiti, 1997), p. 7.

⁵ Fenty Fauziah, *Bank Health, Dividend Policy and Company Value: Theory and Empirical Study*. (Samarinda: Pustaka Horizon, 2017), p. 34.

⁶ Garin Tirana, Lastuti Abubakar, and Tri Handayani. "Legal Protection for Debt Purchasers on Building Use Rights Guarantees in Syndicated Loan Agreements." *ACTA DIURNAL Journal of Notarial Law* 2, no. 2 (June 2019), pp. 267-285, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/213>

⁷ Rachmadi Usman, *Legal Aspects of Indonesian Banking*, 3rd ed. (Jakarta: Gramedia Pustaka Utama, 2003), p. 243.

⁸ Sutan Remy Sjahdeini, *Syndicated Loans: Formation and Legal Aspects*, p. 2

⁹ Rasjim Wiraatmadja, *Legal Lending Limits*, (Jakarta: Bankers' Club Indonesia, 1989), p. 2

are intended to prevent large amounts of bank/non-bank financial institution (LKBB) funds from being lent to certain individuals or companies. It is also intended to secure public funds entrusted to banks/non-bank financial institutions. The MCL for commercial banks was previously regulated in Bank Indonesia Regulation Number: 7/3/PBI/2005 concerning the Maximum Credit Limit for Commercial Banks as amended by BI Regulation No. 8/13/PBI/2006 concerning Amendments to Bank Indonesia Regulation No. 7/3/PBI/2005 concerning Maximum Limits on Credit Provision by Commercial Banks. However, **the Financial Services Authority (OJK)** subsequently took over the function of regulating and supervising banking from Bank Indonesia based on **Law No. 21 of 2011. As a consequence**, various old BI Regulations were revoked and replaced with **OJK Regulations (POJK)**. Therefore, the BMPK regulations for commercial banks now refer to POJK No. 32/POJK.03/2018 concerning Maximum Credit Limits and Large Fund Provision for Commercial Banks, which also applies to conventional and Islamic commercial banks. This POJK regulates credit/financing limits for related and unrelated parties. POJK Number 32/POJK.03/2018 concerning Maximum Limits on Credit Provision and Large Fund Provision for Commercial Banks was then last amended through POJK Number 38/POJK.03/2019 concerning Amendments to POJK 32/POJK.03/2018 on Maximum Limits for Credit Granting and Large Fund Provision for Commercial Banks (POJK 38/2019). The BMPK for commercial banks is divided into: 1) BMPK to Related Parties of the Bank is set at a maximum of 10% (ten per cent) of the bank's core capital (Article 5); 2) BMPK to parties other than Related Parties, whether 1 (one) Borrower or 1 (one) group of Borrowers, is set at a maximum of 25% (twenty-five percent) of the Bank's core capital (Article 16).

BMPK was established in order to avoid bank failures as a result of concentration of fund provision, because concentration of bank fund provision to borrowers or a group of borrowers is one of the causes of bank failures. The greater the funds disbursed by banks in fund provision activities, the greater the risk faced by banks. Based on these factors, syndicated loans are not only an effort to provide funds in excess of the BMPK, but also involve more than one lender. Syndicated loans are a technique for banks to spread the risk in lending.¹⁰

A syndicated loan agreement is an agreement in which a group of banks or financial institutions (lenders) jointly provide financing facilities to a borrower. Due to the nature of the risk being spread across many lenders, this agreement has a complex governance structure.¹¹

Syndicated loan agreements typically involve a *lead bank (manager)* that oversees the following processes: (i) creditworthiness assessment, (ii) *due diligence*, (iii) drafting of the *offer letter*, (iv) formation of the syndicate and allocation of loan portions to each syndicate member, (v) negotiation of loan terms, (vi) appointment of an agent to facilitate

¹⁰ Sutan Remy Sjahdeini, *Syndicated Loans: Formation and Legal Aspects*, p. 7

¹¹ Kevin Florentino Akbar, Tarsisius Murwadi, and Helza Nova Lita. "The Application of the Principle of Prudence in International Syndicated Loans." *ACTA DIURNAL Journal of Notarial Law* 8, no. 1 (December 2025), pp. 63-81, <https://doi.org/10.23920/acta.v8i1.1695>

the syndicated loan (*facility agent*) and an agent to manage collateral issues for all creditors (*security agent*), (vii) *closing* of the syndicated loan agreement.¹²

If we look closely, the essence of the agreement between the syndicate participants is an agreement to cooperate in distributing credit with the aim of obtaining mutual benefits from the distribution of credit. From this explanation, the question arises as to whether such an agreement can be equated with an agreement to establish a civil partnership (*maatschap*).

The characteristics of a civil partnership (*maatschap*) can be seen from its purpose, which is cooperation for the sake of obtaining material benefits for the participants of the *maatschap* together (Article 1618 of the Civil Code). Furthermore, the participants of the *maatschap* must contribute (*inbreng*) something of an economic nature to the partnership. Finally, the participants of the *maatschap* essentially have equal standing in the sense that there is no superior-subordinate relationship.

If these characteristics are applied to the agreement between the syndicate participants, then the main point is the same. The agreement between the syndicate participants is clearly a cooperation to seek mutual benefits and the participation of participants, by taking a certain share in the credit, can be considered as the participants' *contribution* to the cooperation they have agreed upon. In line with this, the drafting of a cooperation agreement between syndicate participants can be equated with the articles of association of the *maatschap* they establish. It can therefore be concluded that the agreement between syndicate participants is essentially an agreement to establish a civil partnership (*maatschap*).¹³ Therefore, according to legal experts, the provisions of the Civil Code regarding *maatschap* are binding on syndicate participants.

Issues surrounding syndicated loans have been complex since syndicated loan agreements were first implemented. Problems can arise during the loan disbursement process, with collateral pledged and debtors defaulting on their obligations to repay loans to syndicated creditors. If a debtor fails to make payments to syndicated creditors, the problem may end up in court, resulting in the enforcement of a final and binding decision, known as execution.

Enforcement mechanism, namely the procedures and mechanisms activated in the event of a default by the borrower. Enforcement is a follow-up procedure to the examination of a case, which aims to provide legal certainty for the winning party to obtain their legal rights. Therefore, enforcement is an integral part of the civil procedure law system regulated in the *Herzien Inlandsch Reglement* (HIR) or *Rechtreglement voor de Buitengewesten* (RBG).¹⁴

¹² Arief Surowidjojo, *Legal Aspects to Consider in Syndicated Loans, Paper in a Series of Limited Workshops on Bankruptcy Law and Other Business Law Insights*. (Jakarta: Collaboration between the Centre for Legal Studies & the Supreme Court of the Republic of Indonesia, 2002), p. 53

¹³ J. Satrio. *Several Legal Aspects of Internal Relations Among Syndicate Participants and Pre-contractual Relations Between the Syndicate and Prospective Debtors, Paper in the Limited Workshop Series on Bankruptcy Law and Other Business Law Perspectives*. (Jakarta: Collaboration between the Centre for Legal Studies & the Supreme Court of the Republic of Indonesia, 2002), p. 96

¹⁴ Zainal Asikin. *Civil Procedure Law in Indonesia*. (Jakarta: Prenada Media, 2019), p. 32

Enforcement can only be carried out against decisions that have permanent legal force. The purpose of enforcement is to provide justice and legal certainty as well as benefits for the aggrieved party who has won the case. Recently, the term enforcement has also changed to the execution of court decisions, which in principle and essence remains the same, only the use of the term in practice is different. This is also in line with what was stated by Prof. Subekti and Retnowulan Sutantio.¹⁵ In addition, it is also in accordance with the rules in Chapter Ten, Part Five of the HIR or Title Four, Part Four of the RBG, which explains that execution is the same as the act of "carrying out a decision" (*ten uitvoer legging van vonnissen*).

Thus, enforcement is not merely about "signing a contract" (*execution of the instrument*), but rather about the act of enforcing a judgment () in the event of a violation that is detrimental to the creditor. Enforcement is only carried out or implemented against decisions that have permanent legal force, but it must also be understood that only *condemnatory* (punitive) decisions have an executory nature. Meanwhile, *constitutive* and *declaratory* decisions cannot be enforced.

Initially, the manner of enforcing court decisions, often referred to as execution, was regulated in Articles 195 to 224 of the HIR or Articles 206 to 258 of the RBG. However, over time, several provisions have changed, rendering them ineffective. The provisions that are still in force are Articles 195 to 208 and Article 224 of the HIR or Articles 206 to 240 and Article 257 of the RBG. Meanwhile, Articles 209 to 223 of the HIR or Articles 242 to 257 of the RBG, which regulate hostage-taking (*gijzeling*), are no longer in force. If the provisions of the HIR are followed during the execution, the party that can file for execution is only the party that filed the lawsuit, namely a specific party that won the dispute. In fact, in syndicated loans, the creditors who have the right to file a claim against a defaulting debtor consist of several parties. However, some of these parties are not involved in filing a lawsuit against the debtor. It goes without saying that if execution occurs, the other creditors will suffer losses.

There are basically two forms of enforcement in terms of the objectives to be achieved by the legal relationship set out in the court decision. Sometimes the objective of the legal relationship to be fulfilled is in accordance with the court order, namely to perform a "concrete action" or "real action", so this type of enforcement is called "real enforcement". Sometimes the legal relationship that must be fulfilled in accordance with the court order is to make a "payment of a certain amount of money". This type of enforcement is called "payment enforcement".¹⁶

The enforcement of a judgment can be carried out in two ways. First, the enforcement of a judgment (execution) is carried out voluntarily by the party subject to the court's judgment or the losing party. Second, the enforcement of a judgment (execution) is carried out by force if the losing party is unwilling to voluntarily comply with

¹⁵ Retnowulan Sutantio and Iskandar Oeripkartawinata, *Civil Procedure Law in Theory and Practice*, 10th edition, (Bandung: Mandar Maju, 2005), p. 129.

¹⁶ M. Yahaya Harahap, *Scope of Civil Enforcement Issues*, 2nd ed., 1st printing (Jakarta: Sinar Grafika, 2005), p. 23.

the judgment. If the losing party is reluctant to voluntarily comply with a judgment that requires them to pay a certain amount of money, and if a security attachment has been made prior to the judgment being handed down, the security attachment is declared valid and valuable. In other words, the security attachment becomes or automatically has the power of execution, which is called an executory attachment. Enforcement is then carried out by auctioning off the property of the party defeated by the court decision, so as to cover the amount of money to be paid according to the judge's decision, plus all costs to be borne by the losing party that are necessary to carry out the court decision.

In this study, the main focus of discussion relates to and/or concerns the execution of decisions on collateral in syndicated loans. There is one case study involving seven creditors bound by a syndicated loan agreement, where the collateral consists of three plots of land and buildings registered in the Building Use Rights Certificate, which have been encumbered with security rights registered in the names of the seven creditors. However, in the course of events, the debtor defaulted on its debt payments, and the creditors attempted to collect through facility agents and collateral agents but were unsuccessful. Ultimately, the creditors transferred their receivables one by one through assignment, and some entered into a bank restructuring programme due to their *Bank Take Over* (BTO) status. The problem arose because one of the creditors who transferred their receivables through *assignment* filed a lawsuit for default with the District Court and won the case up to the Second Review level. Based on the final and *binding* decision, the creditor filed for enforcement of the decision until an execution auction was held, which was successfully carried out despite there being no bids (TAP). However, there were other creditors bound by the syndicated loan structure, and the object being executed was still encumbered with a lien.

The issues mentioned or raised above demonstrate that the construction and/or procedure for executing judgments against objects encumbered with security rights in syndicated loans still raise questions regarding fairness and legal protection for other creditors in such syndicated loans. This issue is clearly interesting to discuss in research and review from the perspective of substantive civil law as well as formal civil law or civil procedural law applicable in Indonesia.

Research Method

The legal research method used in writing this dissertation is normative jurisprudence, which is research conducted by inventorying positive law, discovering the principles and philosophy (dogma or doctrine) of positive law that are appropriate to apply in resolving a particular legal case.¹⁷ This research is descriptive in nature, aiming to provide data about people, circumstances or other phenomena, with the intention of confirming hypotheses in order to reinforce existing theories.¹⁸ This normative legal research will be supported by data from interviews with sources. The support of interviews with sources

¹⁷ E. Saefullah Wiradipradja, *Practical Guide to Research Methods and Scientific Research*, 2nd edition, (Bandung: CV Keni Media, 2016) p. 28.

¹⁸ Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: UI Press, 2015), p. 10.

is only to explain secondary data. Integrating the normative juridical method with interview research is expected to effectively produce legal research that is not only strong in terms of theory but also relevant in practice, particularly in relation to reconstruction as an effort to resolve obstacles to the execution of syndicated credit case decisions against objects encumbered with collateral rights.

In addition, this research is multidisciplinary in nature because this is the first time such an incident has occurred in Indonesia. Therefore, the results of this research will produce in-depth analysis and may also lead to the application of legal theories from different legal systems that are compatible with the incident that occurred in the research object. The results of this research are also expected to provide input or suggestions regarding the discovery of legal loopholes concerning the execution process of cases against objects subject to encumbrances and the process of distributing the proceeds from the execution of cases filed by one of the creditors bound by a syndicated loan agreement against other creditors.

Results and Discussion

Procedures for the Enforcement of Judgments Against Objects Encumbered with Security Interests in Syndicated Loans according to Legislation

In discussing the procedures for executing judgments against objects encumbered with mortgage rights in syndicated loans according to legislation, the case that is the subject of this study is a case of a dispute over the execution of a judgment, but the object of the execution has been encumbered with mortgage rights in a syndicated loan, in this case in the form of the Kuta Paradiso Hotel, but the holders of these mortgage rights consist of several creditors who are members of the syndicated loan. In this case, what about legal protection and the principle of equality before the law, where there is a decision that already has binding and definitive legal force, for which an execution order has even been issued so that it can be auctioned, but if execution is carried out on the basis of the court decision, what about the rights of other creditors in the syndicate who did not file a lawsuit?

In the past, syndicated loans may not have been known and their presence could not have been predicted by legislators in the field of civil law at that time. This fact reflects the complexity of Indonesia's civil law system, particularly in the context of syndicated loans, which underwent a transformation as a result of the economic crisis. What began as a simple loan agreement in 1995 has developed into a multi-dimensional dispute involving various parties with conflicting interests.

This case also highlights the importance of more comprehensive regulations on the transfer of receivables in the context of syndicated loans, especially in the event of mass banking restructuring. The absence of clear regulations has created legal uncertainty that is detrimental to all parties, including creditors, debtors, and bona fide third parties.

The Legal Construction of Syndicated Loans and the Institutional Transformation of Creditors after the Monetary Crisis

The legal construction of syndicated loans in Indonesia contains a fundamental 'paradox' that has been the source of various legal conflicts in national banking practice. Although syndicated loans are designed as a collective financing instrument that allows risk sharing among creditors, the reality of their implementation shows structural fragmentation that weakens the effectiveness of collateral law. While the initial legal construction of syndicated loans was based on the principles of collectivity and coordination, the unforeseen fragmentation in the initial contracts and the absence of joint legal enforcement mechanisms have rendered collective collateral rights ineffective. This has been the root cause of various legal conflicts that have arisen in the wake of the 1998 economic crisis.

The fundamental weakness of syndicated loans lies in the inconsistency between theoretical concepts and practical realities. Conceptually, syndicated loans should provide collective strength to creditors in dealing with problematic debtors. However, in practice, the concept of a syndicate/consortium of creditors has resulted in processes that are overly procedural, lack independence, and are sometimes 'obstructive'. This procedural complexity is not merely an administrative issue, but reflects a structural weakness in the legal construction of syndicated loans, which fails to anticipate the dynamics of conflicts of interest between creditors when faced with loan defaults.

The *pari passu* concept, which is at the heart of syndicated loans, has backfired when faced with the reality of collateral enforcement. The agreement that the proceeds from the sale of collateral will be divided *pro rata* without regard to preferential rights has created a disincentive for creditors to act quickly in credit rescue.

The issue becomes even more complex when it involves the transfer of receivables (*cessie*) in syndicated loans. Although Article 613 of the Civil Code regulates the *cessie* mechanism, its implementation in the context of syndicated loans raises various legal issues. New creditors who enter through *cessie* often do not have the same understanding of the loan settlement strategy as the old creditors, creating further fragmentation in the syndicate. Ironically, the *assignment* mechanism, which is supposed to provide liquidity for creditors, has instead become a loophole for 'selling problems' without substantive resolution.

The 1998 economic crisis highlighted the fragility of the legal structure of syndicated loans in Indonesia. When large debtors experienced mass *defaults*, syndicated creditors became trapped in prolonged internal conflicts. Instead of acting collectively to maximise *recovery*, creditors scrambled to save their own interests, even at the expense of the syndicate as a whole.

One of the most glaring weaknesses was the absence of a legally recognised collective enforcement mechanism. When syndicated creditors began to transfer their receivables separately after the monetary crisis through a long chain of *cessie* and without coordination, the collective security rights attached to the collateral remained stagnant.

The fragmentation of debt ownership was not accompanied by adjustments in ownership and enforcement authority over collateral. This led to an 'absurd' legal situation, in which the holders of the debts did not have *legal standing* to file for enforcement, while the parties listed in the collateral rights certificate no longer held material rights to the debts.

The transfer of receivables through *cessie* is carried out based on the provisions of Article 613 of the Civil Code, which states that the transfer of receivables on behalf of another party is carried out by making an authentic deed or a private deed notifying the debtor of the transfer. However, in the context of syndicated loans, the partial transfer of receivables poses its own problems due to the complexity of the legal relationship between the creditors who originally acted collectively through a facility agent.

This complexity is further compounded by the fact that the collateral, consisting of three plots of land with encumbrances, is still registered in the collective name of the seven syndicated banks. Meanwhile, ownership of the receivables has been fragmented among various parties. This situation creates a fundamental legal problem: how to execute collateral that was originally intended to secure the collective interests of all syndicated creditors, when ownership of the receivables has been fragmented and each party is making separate collection efforts?

The Dynamics of Judgment Enforcement and the Problems of Syndicated Creditors' Rights in the Civil Procedure Law System

The Indonesian civil procedural law system stipulates that the party that obtains a final and binding court decision has the right to carry out enforcement exclusively. In the context of syndicated loans, one of the syndicated creditors who has carried out the enforcement procedure up to the auction stage is *de jure* entitled to the entire auction proceeds, without any obligation to share with other syndicated creditors.

This demonstrates the rigidity of the civil procedural law system in dealing with the complexities of modern syndicated loans. More fundamentally, the civil procedural law system does not provide a mechanism to protect the interests of other syndicated creditors when one creditor executes, so it is clear that the current civil procedural law does not comply with the principle of equality before the law.

The problems revealed in the Kuta Paradiso Hotel syndicated loan case demonstrate fundamental weaknesses in Indonesia's civil procedural law system. The current system is designed for simple bilateral disputes, not for the complexities of syndicated loans with *multiple* creditors and institutional transformations. When one creditor obtains a judgment and executes it, the other creditors effectively lose their rights without having the opportunity to participate in the execution process.

The absence of this protection mechanism forces other creditors to file separate lawsuits, which means they must go through a lengthy litigation process from the first instance to cassation or even review. This approach is clearly inefficient and contrary to the principle of collective justice that should be the spirit of syndicated loans. Even more problematic is that even if other creditors succeed in obtaining a ruling, they may face a

situation where the collateral has already been executed and the proceeds have been taken over by the creditor who executed first.

This case highlights the urgent need for reform of civil procedure law, particularly in handling the execution of judgments related to syndicated loans. A mechanism is needed that allows all syndicated creditors to participate in the enforcement process and share the proceeds proportionally. Without such reform, the Indonesian legal system will continue to fail to provide justice to the parties in increasingly complex modern financial transactions. The failure of this system not only harms individual creditors, but can also hamper the development of the financial industry, which requires legal certainty and justice in dispute resolution.

The Complexity of Enforcement of Security Rights and Third Party Opposition in the Context of Multi-Layered Debt Assignment

In Gustav Radbruch's theory of the purpose of law, law must be able to realise three basic values, namely legal certainty (*Rechtssicherheit*), justice (*Gerechtigkeit*), and expediency (*Zweckmäßigkeit*).¹⁹ These three values should be in harmony, but in the practice of enforcing collateral rights in syndicated loan cases involving fragmented ownership, there is a conflict between these values. Formal legal certainty, as embodied in court decisions that have the force of law, conflicts with the demand for distributive justice for all creditors who have the same rights to collateral.

The fundamental problem that arises is how the Indonesian civil procedural law system handles the execution of collateral that was originally intended for the collective interests of all syndicated creditors, when the ownership of receivables has been fragmented and each creditor is attempting to execute individually. According to the current rules of civil procedure, once an execution order has been issued and the auction process has been completed, all proceeds from the auction become, *de jure*, the right of the creditor requesting the execution.

Consequently, other creditors have no legal recourse to obtain a share of the proceeds of the enforcement, except by filing a separate lawsuit or legal action. This situation creates tremendous inefficiency and has the potential to undermine the principle of collective justice that should be a characteristic of syndicated credit.

From Radbruch's perspective, legal certainty has four fundamental elements: (1) the law is positive, meaning it is legislation; (2) the law is based on facts; (3) the facts must be formulated in a clear manner; and (4) positive law cannot be easily changed.²⁰

In the context of legal protection, Satjipto Rahardjo developed the idea that the purpose of law is to integrate and coordinate various interests in society by regulating the protection and restriction of these interests.²¹ However, in the case of fragmented

¹⁹ Dwi Nurhandini and E. Mulyati, "Legal Consequences of Lawsuits and Opposition to Foreclosure Auctions," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019), pp. 35-52

²⁰ Juhaya S. Praja, *Legal Theory and Its Application* (Bandung: Pustaka Setia, 2011), p. 12

²¹ Afrizal Mukti Wibowo, et.al. *Introduction to Indonesian Law: Theory, Practice, and Transformation*, (Banten: Sada Kurnia Pustaka, 2025), p. 58

syndicated loan enforcement, the legal system fails to coordinate the interests of creditors who have equal legal rights.

This problem reveals systemic weaknesses in Indonesian civil procedure law when dealing with the complexities of modern syndicated loans. The existing system is designed for simple bilateral relationships between one creditor and one debtor, and does not anticipate situations involving *multiple* creditors with fragmented ownership of receivables on a single collateral object. The absence of a mechanism for consolidating enforcement or proportionally distributing the proceeds of enforcement creates an inefficient and potentially unfair situation.

Laksanto Utomo identifies that one of the problems in the execution of collateral rights is the absence of adequate mechanisms for complex situations.²² In the context of fragmented syndicated loans, this problem becomes even more acute because it involves *multiple stakeholders* with legitimate but potentially conflicting interests.

This problem shows that the legal construction of collateral rights enforcement in Indonesia is still fragmented and not integrated. There is no comprehensive legal framework to deal with the complexities arising from the institutional transformation of creditors and the fragmentation of debt ownership. As a result, the legal system fails to provide certainty and predictability, which are the essence of the function of security law.

From the perspective of utility theory in Radbruch's concept of the purpose of law, the law should provide the greatest benefit to society.²³ In the context of the enforcement of syndicated loan collateral rights, utility can be measured by the achievement of the purpose of enforcement, namely the repayment of creditors' receivables in an efficient and fair manner for all parties.

Fundamental reforms are needed in civil procedure law and security law to accommodate the realities of modern financial transactions. Pending such reforms, a pragmatic approach through agreements between creditors and comprehensive mediation can be a temporary solution. Most importantly, this case should serve as a lesson for the development of a legal system that is more responsive to the complexities of the contemporary business world.

Legal Consequences of the Enforcement of a Judgment on the Object of a Security Interest in a Syndicated Loan for Other Creditors

From the perspective of Gustav Radbruch's theory of the purpose of law, this case demonstrates the failure of the Indonesian legal system to harmonise the three basic values of law: certainty, justice, and utility. Formal legal certainty, as embodied in court decisions that have the force of law, is at odds with the demand for distributive justice for all creditors who have the same rights to collateral. The utility of the law is completely

²² Laksanto Utomo, "Mortgage Enforcement Procedures Are Difficult," Hukumonline, 15 January 2009, <https://www.hukumonline.com/berita/a/prosedur-eksekusi-hak-tanggungan-menyulitkan-hol20929/>, accessed 27 July 2025

²³ Satjipto Rahardjo, *Let the Law Flow* (Jakarta: Kompas, 2007), p. 81

absent, as evidenced by the repeated failure of foreclosure auctions and the inability to optimise productive assets for years. Furthermore, even if the auction is successful, only the winning party obtains rights from the auction sale, while other creditors in the syndicate structure receive no share and no certainty of payment for their receivables.

Theoretically, this case demonstrates the limitations of the civil procedural law paradigm, which is oriented towards simple bilateral relationships. The legal system does not yet have adequate instruments to deal with enforcement in the context of *multiple* creditors with the same collateral. Satjipto Rahardjo's progressive legal approach, which emphasises that "the law is for humans, not the other way around," should encourage the search for more substantive and equitable solutions.

The practical implications of this situation are very serious, namely that creditors who have carried out enforcement *de jure* are entitled to the entire proceeds of the auction, while other creditors lose the opportunity to obtain their rightful share. This creates a disincentive for cooperation between creditors and encourages unhealthy competition. The absence of a fair mechanism for distributing the proceeds of enforcement sends a negative signal to the syndicated credit market.

Therefore, the legal consequences of the execution of a judgment against collateral in a syndicated loan against other creditors include: the loss of access by other creditors to the proceeds of the execution of the judgment originating from the syndicated loan, the disruption of the *pari passu pro rata parte* principle in syndicated loans, the loss of the binding force of agreements between creditors, the occurrence of conflicting debt transfers and the ineffectiveness of the enforcement of collateral rights as joint security.

The Appropriate Form of Legal Reconstruction in Overcoming Obstacles to the Enforcement of Judgments against Collateral Objects in Syndicated Loans Based on the Principle of Equality Before the Law

Before discussing the appropriate form of legal reconstruction to overcome obstacles to the enforcement of judgments against collateral in syndicated loans and related to various problems and legal loopholes that occur. In essence, legal reconstruction is needed to help resolve problems and fill legal gaps, particularly regarding the mechanism for distributing the proceeds of enforcement in syndicated loan cases where the creditor with the highest claim () is the only creditor to enforce the judgment. Typically, the proceeds of enforcement only benefit the winning party without considering the interests of other syndicated creditors who also have the right to receive payment for their receivables.

This is also in line with Notonagoro's view of human nature. According to Notonagoro, human nature is monodualistic or compound-singular, meaning that humans consist of many elements, but these elements are not separate from one another; rather, they form a single, unified whole.²⁴

²⁴ Achmad Dardiri. Lecture with the theme: "Improving the Teaching and Learning Process: Philosophical, Social and Psychological Analysis" Sub-theme: "Humans and Education: A Philosophical Review". (Yogyakarta: FIP IKIP YOGYAKARTA). p. 2

The elements of human nature referred to are as follows: from the perspective of human nature, humans consist of two elements, namely as independent beings and as creatures of God. As an independent being, humans have *free will* within certain limits, which gives them independence and freedom. As a creature of God, humans cannot escape God's provisions (His destiny).

From a natural perspective, humans consist of physical and spiritual elements. The physical elements of humans include: inorganic, vegetative and *animal* elements. Inorganic elements are elements in the form of non-living objects, such as rocks, soil, and so on. The vegetative element is the element of growth, like plants in general that undergo a process of growth and development; and the *animal* element is the animalistic element that has *instincts*. Meanwhile, the spiritual elements include the elements of reason, feeling and will, which are often referred to as "creativity, feeling and intention". The element of reason is used to obtain reality/truth. The element of feeling is to obtain beauty, and the element of will is to obtain goodness.

Judging from their natural characteristics, humans are both individual and social beings. This means that humans are not only self-centred by nature, but also possess social characteristics. Therefore, the paradigm of civil procedural law regarding the distribution of the proceeds of a judgment, which has always been based on the concept of "*winner takes all*", must be changed to *equitable distribution* in the event of the execution of a judgment against an object that is subject to a syndicated loan. This is necessary so that other creditors also receive payment for their receivables. On this basis, the following forms of appropriate legal reconstruction can be presented and proposed:

Reconstruction Institutional Aspects in the Structure of Syndicated Loans and Dispute Resolution Systems Oriented towards the Effectiveness of Judgment Enforcement

The main problem lies in the absence of an explicit prohibition on unilateral enforcement in national regulations. The Mortgage Law and its implementing regulations do not clearly stipulate the need for collective enforcement in syndicated loans. The courts often only examine enforcement requests from applicants who have obtained a *final and binding* decision, without verifying whether the request has gone through a joint approval mechanism between creditors. This creates a situation where the collective interests of the syndicate are sacrificed for the sake of individual speed, even though, on the one hand, the collateral remains one and cannot be executed partially without the potential for legal conflicts.

This systemic failure not only creates legal uncertainty, but also opens up *moral hazard* for both creditors and debtors. Creditors acting individually will tend to pursue maximum recovery without considering the rights of other creditors, sometimes even "forcing" a settlement outside the joint mechanism. Debtors, on the other hand, can take advantage of this fragmentation to delay payments, file new lawsuits, or divide the creditors' strength by negotiating separate settlements.

The institutional reconstruction of syndicated loans in Indonesia cannot be separated from the values of Pancasila, which form the philosophical foundation of the national legal system.²⁵ In the context of the institutional execution of syndicated loans, each principle provides concrete guidance for building a more equitable and effective structure.

1. The First Principle (Belief in One God) in the institutional context mandates the establishment of a *security agent* institution that operates with high moral integrity. The principles of trust and fiduciary responsibility carried out by *security agents* are in line with the value of belief in God, which demands honesty and fairness in managing the interests of other parties. This means that *security agents* must not prioritise personal interests or certain affiliations, but must act as fair trustees for all creditors.
2. The Second Principle (Just and Civilised Humanity) opposes unilateral enforcement practices that disregard the rights of other creditors. In institutional reconstruction, this is realised through the formation of a *creditors committee* that ensures every creditor, regardless of the size of their participation, has a voice that is heard. The voting mechanism with minority rights protection reflects respect for the dignity and rights of each syndicate participant.
3. The Third Principle (Indonesian Unity) is the philosophical basis for requiring collective enforcement through a single institutional channel. The creditors' forum, united in the *creditors committee*, is a manifestation of unity in the context of modern business. The prohibition of unilateral enforcement and the obligation to act through a *security agent* prevent fragmentation that undermines the cohesion of the syndicate. This principle also supports the establishment of an integrated information system that connects all stakeholders.
4. The Fourth Principle (Democracy Led by the Wisdom of Deliberation/Representation) is reflected in the decision-making mechanism of the *creditors committee*. The 60% quorum requirement and 75% *voting threshold* for a unanimous decision on enforcement are an implementation of deliberative consensus tailored to the business context. The obligation to provide 14 days' notice prior to meetings and transparency of the agenda ensure a high-quality deliberative process, rather than merely mechanical voting.
5. The Fifth Principle (Social Justice for All Indonesian People) underpins a fair and transparent *distribution waterfall* mechanism. A clear payment priority sequence, a *pro rata* formula based on participation share, and a *clawback* obligation for payments received outside the collective mechanism all ensure distributive justice.²⁶ The establishment of a special execution account in court and the audit obligation reflect transparency and public accountability.

²⁵ Nofi Sri Utami and Kharisma Keysa Arsa Putri, "Implementation of the Values of Pancasila in the Indonesian State System," *International Journal of Social Science Research and Review* Vol. 6, No. 3 (March 2023), pp. 1-5

²⁶ Gregorius Yoga Panji Asmara, "Relevance of Protection in the Execution of Separate Creditors Based on Pancasila Justice," *Jurnal Akta* Vol. 8, No. 1 (2021), pp. 52-60.

Reflecting these practices in the framework of Indonesia's institutional reconstruction, the first step that must be taken is to reinforce the prohibition of unilateral execution in every syndicated agreement and to confirm the appointment of *a security agent* as the party entitled to represent all creditors in execution matters. *The security agent* must have explicit *legal standing* in the Mortgage Law, Banking Law, and OJK Regulations as the sole legal entity that can file an execution request with the court and receive auction proceeds from the KPKNL. In every enforcement petition, *the security agent* must attach proof of collective approval from the syndicate forum (*creditors committee*), with at least the majority *threshold* specified in the syndicate document.

In addition, the court must be equipped with an *ex officio* mechanism to verify the legality of collective approval documents and the structure of claim ownership before issuing an execution order. This is to ensure that there are no fictitious claims, *double assignments*, or execution requests on the same collateral by two or more parties. The KPKNL, as the executor of auction enforcement, is obliged to reject any auction request that is not supported by valid collective agreement documents, just as *security agents* in other countries must obtain written instructions from the syndicate forum before carrying out enforcement.

At the distribution stage, the proceeds received by *the security agent* must first be reduced by all execution costs, *security agent fees*, and tax obligations before being distributed to creditors on a *pro rata* basis according to each creditor's initial participation in the syndicated loan. All payments, whether principal, interest, penalties, or other costs, must be documented and auditable by the competent authorities. If there are creditors who *recover* outside the collective mechanism, they are required to deposit the proceeds into *a common pool* so that they can be distributed according to the principles of collectivity and fairness.

Equally important, institutional reconstruction must also ensure *a distribution waterfall*, which is a transparently determined, auditable, and non-negotiable order of priority for the distribution of execution proceeds. In practice, the " " means that after all execution costs and *security agent fees* have been paid, the proceeds of the execution must first be allocated to the payment of interest that has fallen due on a *pro rata* basis, then the principal debt on a *pro rata basis*, and only then *penalties* or fines. This model ensures that no creditor receives excessive *recovery* beyond their initial portion, as stipulated in the syndication documents and in accordance with international *best practices*.

Ultimately, this institutional reconstruction will rebuild market confidence in syndicated credit products in Indonesia. Creditors receive proportional protection, debtors avoid multiple enforcement issues, and the judicial system has stronger oversight and verification instruments for joint collateral enforcement practices.

Reconstruction of the Pre-Execution Decision Verification and Validation Mechanism

The civil judgment enforcement system in Indonesia, as regulated in the HIR and RBg, has a fundamental weakness in terms of the absence of a comprehensive verification mechanism prior to enforcement. An ideal pre-execution verification system must be designed to accommodate three interrelated fundamental aspects. The first aspect is *ownership verification* to ensure that the applicant for execution is the rightful holder of the rights to be executed. The second aspect covers object status *validation* to ensure that the object is not in dispute or has been previously executed. The third aspect involves *third party interest identification* to provide an opportunity for potentially aggrieved parties to submit their objections before the execution is carried out.

Reconstructing the pre-execution verification and validation mechanism for judgments is an urgent necessity to overcome the problems of judgment execution in syndicated credit cases. Without an adequate verification system, the full right to collect debts, which should provide legal certainty, can instead lead to conflict and injustice.

Reconstructing the enforcement system with a comprehensive pre-enforcement verification mechanism is not only an option but a necessity to achieve legal certainty and justice in the enforcement of civil court decisions, particularly in the context of syndicated loans involving multiple parties.

Reconstruction of the Mechanism for Executing Decisions on Collateral in the Context of Multi-Creditor Syndicated Loans

The reconstruction of procedural law norms for syndicated loans requires a holistic approach that integrates the principles of distributive justice, procedural efficiency, and legal certainty. In this context, the five interrelated elements of reconstruction need to be understood as a coherent system, rather than as separate partial improvements.

First Reconstruction: Transformation of the Distribution of Enforcement Proceeds Paradigm through the Integration of *Intercreditor Agreements*

The core of the problem lies in Articles 200-205 of the HIR, which textually only recognise the transfer of execution proceeds to the "winning party" without anticipating situations where *multiple* creditors have equal rights to one collateral object. The fundamental reconstruction required is not only the addition of new norms, but also the integration of the concept of *intercreditor agreements* into the structure of the syndicated loan agreement itself:

“In the event of foreclosure on collateral securing a syndicated loan, the proceeds from the auction shall be deposited into a special court account to be distributed to all syndicated creditors in proportion to their respective shares based on court verification. This distribution must refer to the *intercreditor* provisions integrated into the syndicated loan agreement, which has been registered and verified by the court at the time of registration of the collateral.”

The integration of the *intercreditor agreement* into the main credit agreement will create a single document that is legally binding and can be directly enforced without the need for interpretation or additional agreements. This approach has proven effective in

various ASEAN jurisdictions and is in line with the principles of efficiency and legal certainty.

Second Reconstruction: Comprehensive Pre-Enforcement Verification System

The success of proportional distribution depends on the accuracy of identifying all entitled parties. Therefore, the second reconstruction is the addition of a new article in the HIR/RBg that requires pre-execution verification for syndicated loans. This verification is mandatory and includes:

First, the identification of all Creditors based on the initial syndicated agreement. Second, the validation of valid *cessionnaires* through the examination of valid transfer evidence in accordance with the requirements of Article 613 of the Civil Code. Third, the confirmation of each Creditor's share in the syndicate structure. Fourth, the investigation of the existence of other final and binding decisions related to the same credit.

Failure to conduct comprehensive verification has strict legal consequences: the execution becomes null and void. This sanction is necessary to ensure compliance and prevent negligence that could harm other creditors. A court that executes without *proper* verification can be sued for unlawful acts for violating its *duty of care* in performing its judicial function.

Third Reconstruction: Redefining Standing and Representation in Syndicated Enforcement

The collective nature of syndicated loans requires a redefinition of the concept of *standing* in enforcement proceedings. The existing HIR/RBg only recognises individual applicants without regulating collective representation mechanisms. The third reconstruction proposes an explicit provision that in syndicated loans, enforcement may be sought by:

First, *the security agent*, if still active and having a valid mandate from the creditors. Second, creditors representing at least 75% of the total outstanding amount, acting for and on behalf of all creditors. Third, individual creditors, but limited to their respective shares, with the obligation to notify all other creditors at least 30 days before filing for enforcement.

Fourth Reconstruction: Implementation of the Equitable Distribution Principle and Duty to Account

The fourth reconstruction introduces the concept of "*equitable distribution*" inspired by the doctrine of *equity* in the English legal system. The proposed new norm reads:

"Creditors who have received payments in excess of their proportional share of the proceeds of enforcement are obliged to return the excess for distribution to other creditors (*duty to account*)."

This principle adopts the concept of *hotchpot* or *equitable sharing* in English bankruptcy law, whereby creditors who have received payments outside the collective mechanism are required to consolidate those payments into a common pool for fair redistribution.

Fifth Reconstruction: Consolidation of Enforcement Processes for Efficiency and Consistency

Fragmentation of the enforcement process not only creates inefficiency but also the risk of inconsistent decisions. The fifth reconstruction proposes the obligation to consolidate all enforcement processes related to the same collateral in a syndicated structure. The consolidation mechanism operates in several stages.

- a. The court is obliged to conduct an *ex officio* examination of whether the object of execution is syndicated credit collateral.
- b. If it is identified as syndicated collateral, the court is required to investigate whether there are other execution processes that are ongoing or will be carried out.
- c. All enforcement proceedings are combined in a single forum with a single panel of judges to ensure consistency.

The role of the Supreme Court is crucial in leading this transformation. Through comprehensive Supreme Court Regulations (PERMA), the technical details of implementation can be regulated with flexibility for adjustments based on lessons learned from practice. PERMA must include:

- a. Standard operating procedures for pre-enforcement verification, including a *checklist* of documents to be examined.
- b. Standardised notification format to creditors with a confirmation of receipt mechanism.
- c. Procedures for managing execution accounts, including audit procedures and transparency.
- d. Distribution calculation formulas with applicable examples.
- e. A mechanism for resolving distribution disputes through mediation or expedited adjudication.

In designing the new system, protection for bona fide auction buyers must be maintained to ensure the liquidity of the execution market. Article 200 paragraph (10) of the HIR needs to be reinforced with the following provision:

"Buyers of syndicated credit execution auctions obtain clear rights from any creditor claims as long as the auction is conducted in accordance with procedures and the buyer acts in good faith. Disputes over the distribution of auction proceeds do not affect the buyer's ownership rights."

This principle of *finality* is important to prevent *post-auction disputes* that could reduce the sale value of assets in execution. Buyers must be able to rely on *clean title* after the auction process is complete, while disputes between creditors are resolved in a separate forum without affecting the validity of the auction transaction.

CONCLUSION AND RECOMMENDATIONS

Based on the above discussion, several fundamental conclusions can be drawn that address the research questions.

1. The procedures for executing decisions on collateral in syndicated loans are not regulated in legislation, which indicates a fundamental weakness. The HIR/RBg, which was designed during the colonial era for simple bilateral transactions, has proven incapable of accommodating the complexity of multilateral legal relationships in syndicated loans. Articles 200-205 of the HIR, which state that "the proceeds from the sale shall be handed over by the bailiff to the winning party," reflect an individualistic paradigm that assumes one creditor against one debtor, without anticipating a situation where *multiple* creditors have proportional rights to the same collateral. In practice, this procedural arrangement creates a system that adheres to the principle of temporal priority or 'winner takes all', whereby the creditor who first obtains a judgment and files for enforcement is entitled to the entire proceeds of the auction, regardless of the fact that the collateral actually secures the interests of all creditors in the syndicate structure. This procedural arrangement disregards the fundamental principle of syndicated credit, namely *pari passu pro rata parte*, whereby all creditors should have equal standing and be entitled to a proportional share of the proceeds of enforcement.
2. The application of the procedure for the execution of judgments against objects encumbered with security rights in syndicated loans is clearly inappropriate and reflects a legal vacuum. This has resulted in five systemic legal consequences that are detrimental to creditors in the syndicate structure: First, conflicting court decisions that hinder the certainty of the execution of security rights. Second, the loss of access for other creditors to the proceeds of the execution of security rights from a legal protection perspective. Third, disruption of the *pari passu pro rata parte* principle in syndicated loans. Fourth, loss of the binding force of agreements between creditors. Fifth, fragmentation of debt ownership and the ineffectiveness of security rights as joint collateral.
3. Legal reconstruction regarding the procedures for enforcing judgments against collateral in syndicated loans must reflect the principle of equality before the law. This means that, in accordance with the principle of equality before the law, the enforcement of judgments against collateral in syndicated loans must accommodate the interests of all creditors. In addition, it must also be holistic and transformative, integrating the values of Pancasila to create an enforcement system that reflects the sovereignty of Indonesian law. Five (5) interrelated pillars of fundamental change are needed to transform the enforcement system from an individualistic colonial paradigm to a collaborative modern paradigm. The first reconstruction transforms the paradigm of distribution of enforcement proceeds from "winner takes all" to proportional distribution that reflects social justice. Articles 200-205 of the HIR, which only recognise

the "winning party", must be fundamentally revised by adding an explicit norm that in syndicated credit enforcement, the proceeds of the syndicated credit auction must be deposited into a special court account to be distributed to all creditors based on a fair mathematical formula. The second reconstruction establishes a comprehensive pre-enforcement verification system that requires the court to identify all *stakeholders* before enforcement is carried out. Verification includes identifying creditors based on the initial syndicated agreement, validating the *cessionnaire*, confirming each party's share, and tracing other relevant decisions. Failure to verify results in the enforcement being null and void. The third reconstruction redefines *standing* in syndicated enforcement by recognising three avenues: a security agent with a *valid* mandate, a majority creditor representing at least 75% of the *outstanding amount*, or an individual creditor with a 30-day notification obligation to other creditors. The fourth reconstruction implements the principle of *equitable* distribution with a *duty to account*, requiring creditors who receive excess payments to return them to the syndication pool. The fifth reconstruction requires the consolidation of all enforcement proceedings related to syndicated collateral in a single forum with a single panel of judges. The court conducts *ex officio* examinations to identify and consolidate all related proceedings, preventing fragmentation that creates injustice. These five reconstructions form a coherent system, rather than separate partial improvements. Its implementation requires synergy between legislative revisions to the HIR/RBg, comprehensive Supreme Court regulations, the establishment of a special court unit with trained judges, and the development of an integrated information system. With this comprehensive reconstruction, Indonesia not only resolves the technical issues of syndicated credit enforcement but also demonstrates its ability to develop a *sophisticated* yet authentic legal system.

Recommendations

Based on the above conclusions, the most urgent recommendation as a solution to the obstacles in the enforcement of judgments against objects encumbered with rights of liability in syndicated loans based on the principle of equality before the law, in order to create legal certainty and fair protection for the parties, is as follows:

1. Given the fundamental incompatibility between the HIR/RBg and the characteristics of modern syndicated financing, it is recommended that the Supreme Court immediately take progressive steps by establishing a special Supreme Court Regulation (PERMA) regarding the execution of judgments against objects encumbered with security rights in syndicated loans as a short-term solution while awaiting legislative revision of the HIR/RBg. This PERMA must explicitly stipulate that in interpreting Articles 200-205 of the HIR, judges must consider the specific characteristics of syndicated loans and cannot apply these norms *rigidly* without considering the multilateral context of the legal relationship in the specific sense of the execution of judgments against collateral in syndicated loans where there has

been a final and binding judgment prior to the enactment of this PERMA, the intended execution can still be carried out. The PERMA must also contain clear rules regarding the distribution of the proceeds from the auction of collateral in syndicated loans so that there is no "winner takes all" situation, but rather a distribution among the other syndicated creditors. This PERMA must also explicitly state that in the event of a conflict between colonial inheritance norms (HIR/RBg) and the principles of Pancasila justice, judges have the constitutional authority to prioritise substantive justice based on the noble values of the nation. This is not a defiance of positive law, but an affirmation that Pancasila, as the *grundnorm*, has the highest hierarchical position in the Indonesian legal system.

2. To overcome systemic legal consequences that could harm creditors, it is recommended that a preventive protection mechanism be established through a centralised syndicated loan registration system under the coordination of the Financial Services Authority (OJK), integrated with the court information system. This registration system must record all creditors in the syndicate structure, their respective shares, the status of *any* cessions that have occurred, and the collateral objects that serve as joint collateral. This system must also be designed with interoperability with similar systems in ASEAN countries in mind, given the increasing number of cross-border syndicated transactions in the region. Indonesia can lead the ASEAN Credit Registry Network initiative, which will become a model for technology-based regional financial integration, affirming Indonesia's position as a digital economy leader in Southeast Asia. This concept adopts the principle of trust but is adapted to the Indonesian legal system, in which the creditor requesting enforcement is considered to be acting not only in its own interests but also representing the collective interests of all creditors. The doctrine of *fiduciary duty* in the Indonesian context should be understood as a manifestation of the principles of kinship and mutual cooperation that characterise Indonesian society, not a mechanical transplantation of the *common law* system, but a crystallisation of values that have long existed in Nusantara society into modern legal language.
3. The implementation of the five pillars of reconstruction that have been identified requires a gradual and coordinated approach. It is recommended that a National Task Force for the Reform of Syndicated Loan Enforcement be formed, involving the Supreme Court, the Ministry of Law, the Financial Services Authority, the Banking Association, and legal academics. This Task Force is tasked with designing a detailed implementation roadmap, conducting *pilot projects* in several selected district courts, and conducting ongoing monitoring and evaluation. A 12-month *pilot project* in Class IA Special District Courts as centres of business activity can serve as a legal laboratory to test the effectiveness of the new system before it is implemented nationally. In the long term, it is recommended that the House of Representatives and the Government include HIR/RBg reform in the National Legislation Programme as a high priority, given its impact on the investment climate and economic growth. Legislative revisions must

be comprehensive, not only amending articles related to enforcement but also introducing a special chapter on enforcement in complex financial transactions, including syndicated loans, securitisation, and derivatives. While awaiting legislative changes, law schools are advised to include special courses on modern financing law in their curricula, preparing a new generation of legal practitioners who understand the complexities of contemporary financial transactions and are capable of developing innovative legal solutions while adhering to fundamental principles of justice.

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