

## Do Cross-Default and Cross-Collateral Clause Fulfill the Principles of Justice and Equality in Loan Agreement?(The Case of Indonesia)

Suwinto Johan<sup>a†</sup>, Amad Sudiro<sup>b</sup>, Ariawan Gunadi<sup>c</sup>

<sup>a</sup>Assistant Professor, Faculty of Law, Universitas Tarumanagara Faculty of Business, President University, Jl. Ki Hajar Dewantara, Jababeka Education Park, Cikarang

<sup>b</sup>Professor, Faculty of Law, Universitas Tarumanagara, Jl. Letjen S. Parman Kav. 1, Jakarta

<sup>c</sup>Associate Professor, Faculty of Law, Universitas Tarumanagara Jl. Letjen S. Parman Kav. 1, Jakarta

### ABSTRACT

**Purpose:** This research seeks to examine the cross-default and cross-collateral clauses in loan agreement that meet the principles of justice and the principle of balance, especially in developing countries such as Indonesia.

**Design/methodology/approach:** A legal normative review method is used in this study. The cross-default clause and cross-collateral clauses are discussed in relation to existing legal practices in this paper, and a new framework is proposed. The topic in the research centers on the principles of justice and equality for creditors and borrowers.

**Findings:** It concludes that the cross-default and cross-collateral clauses do not fulfill the principles of justice and balance. Cross-default clause shows injustice when associated with subsidiaries' performance. Cross-collateral clause does not fulfill the principle of equality because it has a higher collateral execution position than other non-bank creditors or non-cash management services bank. This study suggests that debtors reconsider the provision of cross-default and cross-collateral clauses. Cross-default can be limited to a minimum default value. Cross-collateral must be abolished to deliver justice to all creditors.

**Research limitations/implications:** The prelamination of this research is that it does not address the issue of negotiations between creditors and debtors. Finally, existing creditors are unlikely to change the rights they have already obtained. Further research can be developed by researching the types of businesses that provide a fixed asset guarantee value.

**Originality/value:** This study provides a novelty by rethinking principle of fairness and equality in cross-collateral and cross-default clauses in loan agreement, under insolvency.

*Keywords: Default, Equality, Justice, Loan Agreement*

## I. Introduction

A company is part of a business ecosystem (Azzam et al., 2017). If one business ecosystem is disrupted, the company's performance also will be disrupted. Creditors believe that disruption to the ecosystem

will risk the debtor's ability to repay debt (Hu et company's).

Creditors are also part of a company's ecosystem (Omarini, 2018). The disturbance of one creditor will affect the overall performance of the company. Creditors will ask for a correlation in the relationship between one loan and another loan. This is referred to as a cross-default clause (Olivares-Caminal, 2017).

Creditors view that disruption to a value chain will risk the company's ability to pay. Creditors must

Received: Sep. 12, 2021; Revised: Jan. 1, 2022; Accepted: Jan. 14, 2022

† Suwinto Johan

E-mail: [suwintojohan@gmail.com](mailto:suwintojohan@gmail.com), [suwinto.208211002@stu.untar.ac.id](mailto:suwinto.208211002@stu.untar.ac.id)

anticipate risks. Creditors view risk to the debtor as a systemic risk. Collateral on one loan can be netted off with other loans. Collateral on one loan can be used to cover other loans. This clause is a cross-collateral clause (Sriwati, 2021).

This research explicitly discusses cross-default and cross-collateral clauses in loan agreements related to the principles of justice and principles of equality. However, no research examines the relationship between loan agreements and the principle of justice and principles of equality. This research connects legal philosophy with business policies, especially loan agreement. It has the advantage of linking legal philosophy with firm loan policies.

The findings of this study will aid in the establishment of debtor-customer loan agreements and creditor-customer agreements. In the future, research will lead to improved commercial ties. The study will reveal how to establish a positive relationship between creditors and debtors, as well as creditors and creditors.

The interests of creditors and debtors are diametrically opposed. Creditors want to know that the loans they pay out are secure. Creditors will tie borrowers and supply loans at high interest rates, whereas debtors prefer flexible loan terms and low interest rates. On the other hand, debtor and creditor have mutualistic symbiotic relationship. Agency theory deals with the connection between debtors and creditors (Ria & Nuryanto, 2018).

Furthermore, the relationship between creditors and other creditors is a source of concern. All creditors desire to be treated equally, which is known as the principle of equality. Each creditor, on the other hand, wants to be in a better position than the others. Debtors must be treated equally by all creditors. This fairness will be reflected in a loan arrangement based on the notion of justice.

## II. Literature Review

Cross-default is a clause in a loan agreement between

a company and a financial institution regulating default conditions (Kogin et al., 2018). Cross-default is a condition of default of one agreement related to another agreement or to another company that has a business relationship with it. (Mursyida, 2017; Dawson, 2018). Creditors know the conditions of default earlier will provide better conditions. Cross-default clause will provide better conditions for creditors. Creditors will be able to act to secure their positions. This scheme is depicted in Figure 1.

The relationship between defaults and other companies occurs if one company has a close relationship with another company (Ams et al., 2018). The parent company guarantees the debts of the subsidiary. The creditor will collect the debt of the defaulting subsidiary to the parent company. Dependence on certain suppliers will put the company at risk. If the main supplier defaults, then the company will have difficulty supplying raw materials, resulting in a potential default. Cross defaults are caused by the relationship between the parent company and its subsidiaries, the relationship between the company and its principal supplier, and the relationship between one credit arrangement and another credit agreement (Beaver et al., 2019). Another

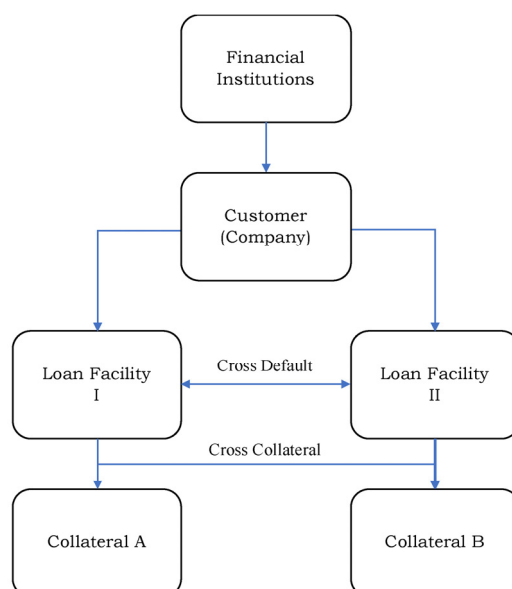


Figure 1. Cross Default Scheme

linkage is the relationship between the guarantor and the guaranteed party (Putri et al., 2019). The company establishes a new business that requires financial support from creditors. Creditors only provide loans to companies that have been running for more than two years. Creditors provide loans to new businesses on condition that there is a guarantee from the parent company. A shareholder guarantees the company, going into bankruptcy (Zulpahmi et al., 2018; Hu, 2021). Shareholders who provide guarantees are unable to cover creditors' losses on their promises. Then, the guarantor becomes subject to bankruptcy (Teco, 2021).

Cross-collateral clause has two meanings. The collateral in a loan agreement can be used to cover losses in other loan agreement with the same creditor (Sriwati, 2021). Another function is that it regulates the guarantee given to additional financing or collateral to two loans (Austin, 2019). If collateral goods have a greater value than the value of the outstanding loan. The exact collateral goods are pledged on other loans. The parties receiving the loan will sign a guarantee agreement jointly for one collateral item. Cross-collateral clause offers a better position for creditors who have more than one loan if the collateral value is greater than the outstanding loan (Zhang, 2018).

Creditors who make two loans to a company can also link the collateral provided by each loan. In addition to cross-collateral clause, cross-default clause parties be related to the net off of the parties' debts. This scheme is illustrated in Figure 1. Cross-default clause gives creditors a better position than other creditors. (Schwert, 2020)

Cross-collateral clause and cross-default clause are clauses commonly used in lending by financial institutions to consumers (Hielmy, 2020). Cross-collateral clause is a clause where one or more collateral guarantees more than one debt obligation. The purpose of the cross-collateral clause is the same as providing guarantees, namely to give creditors a better position with preferential rights over credit guarantees. In addition to cross-collateral clause, the credit agreement also has a cross-default clause. Cross-default is a condition where some credit payment obligations are bound by default. One credit payment obligation will

be considered in default if the other related credit payment obligations are also in default (Mursyida, 2017). The cross-default clause effect can trigger a domino effect of default. Credit that has not been in default will be in default due to the cross-default clause.

The credit agreement thoroughly explains the legal relationship between a company as a debtor and a financial institution as a creditor. The cross-default and cross-collateral clauses are required clauses in the agreement (Sriwati, 2021). Creditor position problems can arise if there are creditors who have preferred positions. This research will discuss whether cross-default and cross-collateral clauses protect the interests of creditors and provide justice and balance between creditors and other creditors.

Agreements made by two parties also must meet the principle of balance. The parties to the agreement have rights and obligations that are balanced between them (Svirin, 2019; Sukmana, 2020). If the agreement is a share purchase agreement, the seller has to deliver the shares, and the buyer's commitment is to pay. Buyers and sellers are in the same position.

According to Aristotle, there are two sorts of justice: distributive justice and commutative justice. Distributive justice is based on the notion of rewarding people based on their contributions. Commutative justice is a sort of justice in which each person receives the same amount based on the services he or she has rendered (Klein, 2017). Under distributive justice, creditors have a claim to services. Creditors are credited with lending the funds needed by the company. The company uses the loan funds to develop its business (Tarasov, 2019). Creditors are entitled to compensation for funds used by the debt or value in use. The debtor can use the debtor's loan funds and make a profit.

Business ethics are extremely important in the business sector. The debtor must be financially capable of repaying the loan. In the eyes of the creditor, the debtor's reputation is extremely essential. There are two types of business ethics: descriptive and normative. Business ethics, according to the descriptive definition, are the attitudes and rules that are observed within a company. As a result, all we're doing is

documenting what's going on. Meanwhile, business ethics is a normative assessment of the degree to which observable conventions, attitudes, and norms are ethical (Ghillyer, 2020).

Meanwhile, John Rawls had a different view on justice. Rawls stated that justice is fairness. The court is not an institution that only judges but has an abstract component, namely "a place to provide justice. The function of justice is related to the court's task or the duty of the judge to provide justice (Rawls, 1970). Justice is giving rights to the person. Justice is equated with fairness. Fairness is one of the principles of good corporate governance (Naqvi et al, 2011).

In law enforcement, according to Friedman, the law must be delineated by the content of the law, by the structure of law, and by the culture of law. Enforcement of the laws is not only done by implementing legislation. The implementation of the law must empower the legal apparatus and legal facilities. The performance of the law also creates a favorable legal culture for the community. The legal culture is reflected in adherence to the contents of the agreement by the parties.

Justice had become a subject of study in various philosophical and religious circles, politicians, and legal thinkers (Bahder, 2017). A definite measure cannot determine justice. Whether something fulfills the element of fairness or not, justice is often difficult to establish. It seldom satisfies all parties. The debate about justice is still ongoing. This justice issue has encouraged people to submit the formulation of justice to legislators. Judges determine justice based on their considerations when making decisions.

Because the notion of justice is not confined to current resource, it also refers to moral problems. The judge's choices in drafting laws and regulations are included in the legislation. According to the law and rules, the judge's ruling must provide fairness to the disputed party.

Rights are attached to creditors with collateral against debtors at the time of bankruptcy per the provisions of the Insolvency Law. Secured loans will be executed first, then unsecured loans (Donaldson et al., 2019). Collateral with mortgage and fiduciary

gives special rights to the owner of the guarantee. This guarantee protects the right holder from claims by other creditors when the company goes bankrupt. (Juzikienė, 2018). Creditors with collateral have the right to execute guarantee. (Wardani, 2021; Johan, 2021).

Debtors who have taken out a bank loan are frequently unable to pay off all of their bills. Default occurs when creditors are unable to pay their debts. Inequity can be seen in default conditions. The principal and unpaid interest make up the debtor's debt. The fundamental requirement to pay credit installments on time is mentioned in a loan agreement as the loan provision. The debtor is said to be in default if he is unable to pay his debt after the payment time has expired. Banks, as creditors, can execute collateral with non-performing loans (Hidayat, 2018).

Creditors will not receive a loan return or interest. The debtor has not fulfilled its obligations. Debtors' ability to pay will, however, be influenced by macroeconomic factors such as recession and pandemics. Debtors can seek for debt restructuring while continuing to pay their bills. Good borrowers who are unable to pay due to macroeconomic situations differ from bad debtors who actively do not fulfill their obligations or take risks on their debts. Debtors with nefarious motives will deprive creditors of their rights.

On the other hand, in insolvency, the bank is the secured creditor and the preferred creditor. As creditors who have collateral rights, banks can execute their guarantees at any time if the debtor defaults. Banks' legal protection is the right to enforce guarantees in a state of insolvency, even though there is no bankruptcy. This provision has been regulated in the Insolvency Law in Indonesia (Lie et al., 2019).

Secured creditors are creditors who hold collateral rights over the property. Secured creditors can sell goods that are collateral and can take the proceeds of the sale. Proceeds from the sale of collateral cover the loan losses. For a bank loan agreement with collateral rights, the creditor can directly execute the collateral if the debtor defaults and the collateral can be auctioned (Prastika et al., 2017).

Bankruptcy is a court decision that results in a general confiscation of the debtor's wealth (Dewi &

Marketing, 2013). Bankruptcy can occur if the company defaults to creditors. Creditors can file for bankruptcy against debtors. Secured creditors can execute collaterals based on the loan agreement. Unsecured creditors have no collateral. Therefore, the reorganization plan or debt restructuring only applies to unsecured creditors (Johan, 2021). Execution of guarantees can delay the process of the reorganization plan. (Dewi & Tjatrayasa, 2017).

From the perspective of bankruptcy law, if a debtor goes bankrupt and his assets are not more than the debt, the unsecured creditors who are the most disadvantaged may not get any repayments at all from the debtor. For this reason, bankruptcy facilities must not be used for bad intentions (Disemadi, 2021). Unsecured creditors are creditors who support the running of the company. Unsecured creditors consist of suppliers and other unsecured loans. Meanwhile, employee salaries are unsecured creditors (Rosmiati et al., 2021). Unsecured creditors are an important source of financing for companies. The position of unsecured creditors must be fair with other creditors. Employee salaries are recognized as preferred creditors under the Indonesian Civil Code (Yulianingsih, 2021).

The Bankruptcy Law in Indonesia currently face challenges. It increases the relationship problems between creditors and debtors. The initial concept of the Bankruptcy Law was to settle debts and receivables quickly, fairly, openly, and effectively settle debts so that the parties do not harm each other. Regulations provide legal certainty. Businesses have a definite way of resolving disputes. The quick settlement benefits both the creditors and debtors (Fitria, 2018). Bankruptcy can resolve default disputes in less than one year. If debtors and creditors do not reach a reorganization agreement, the debtor will end up in bankruptcy court (Muryati et al., 2017).

As previously stated, during the COVID-19 epidemic, the usage of the Bankruptcy Law has changed. Many businesses, as well as creditors, have declared bankruptcy. Debtors have expressed their dissatisfaction with bankruptcy as a result of COVID-19. Due to unforeseen circumstances, the debtor has been compelled default (Johan, 2020). Several countries' governments have

imposed bankruptcy moratoriums during the COVID-19 pandemic (Clarke, 2021; Noerr, 2020). The governments of Russia, Belgium, the UK, and Australia have provided flexibility to insolvent companies during the COVID-19 pandemic (AFSA, 2021; Callanan, 2020).

In addition, the implementation has not synchronized with the Bankruptcy Law in reality, where creditors holding mortgage rights cannot directly execute mortgage guarantee. The bankruptcy curator still takes the creditor's right of responsibility for the collateral in the bankrupt company. In some cases, the curator may treat the mortgage object as if there was no liability in the event of bankruptcy. (Husni, 2020).

Legal protection against the position of third parties in claiming their rights due to *actio pauliana* can be determined through the type and nature of the receivables from each creditor. To fulfill their rights, third parties in bankruptcy cases are unsecured creditors (Putri & Artha, 2020).

Equality is a fundamental human right that is enshrined in numerous national constitutions as well as international and regional conventions (van den Brink, 2021). The Oxford Dictionary define "equality" as "the state of being equal." From a legal standpoint, it is an ambiguous idea. When determining whether a given rule or situation can have a detrimental or undermining effect, the translator, that is, the judge, must put in a significant amount of creative work. Because the value of characteristics used to separate people or grant preferential treatment has varied throughout time, the equality principle has been undefined historically (Olivares-Carminal, 2018). Both public and private legal relations are built on the ideals of liberty, equality, and solidarity. People are free to do what they choose without being constrained by the aspirations of others or the ideals of equality, and they all have the same legal standing to exercise and strengthen their rights. Individuals are treated equally under the law in this situation (Atikah, 2020).

The banking relationship between the executing bank and the client must be founded on the principle of equality, which is further defined by the fiduciary, prudential, and secrecy principles, as well as the principle of understanding the customer (know your

customer principle) (Ramadhani, 2020). In the management and acquisition of bankrupt assets, the principles of equal treatment of creditors and *pari passu* *prorata parte* are applied simultaneously and cannot be separated (Winanto & Muryanto, 2019).

This research shows the linkage of particular clauses in credit agreements with the main legal principles. Clauses in a contract must still refer to legal principles. Clauses that fail to meet legal principles can be canceled. The clauses discussed are cross-default and cross-collateral clauses. The legal principles discussed are the legal principles of justice and the legal principles of equality. This research reviews the provisions that become standard clauses in credit agreements with legal principles. This research is novel because it reviews the guarantee clause based on legal principles.

The research begins with the research background and literature review, research method, discussion, and conclusion. This research examines fairness and balance in the relationship between debtors and creditors. This research explains cross-default clause, cross-collateral default, the principles of justice and the principle of equality between parties, cross-collateral, cross-default and solutions so that cross-collateral and cross-default can fulfill the principle of justice and equality. This research contributes to the development of credit agreements between financial institutions and consumers in terms of the principle of justice and principle of equality. This research is a study that links legal principles with economic theory, especially those related to bankruptcy, agency theory and capital structure theory.

### III. Research Method

This research uses a normative legal research method. This research uses primary material sources, namely the purpose of forming laws, legislation, norms, and the legal basis. Secondary materials are sources of research materials supporting the primary materials.

Source materials in the form of scientific articles, articles at conferences, and books related to research topics are consulted. Other research sources are drawn from the internet on related issues and other matters in the public domain. Several economic and financial theories, such as bankruptcy theory and agency theory, are also tied to this study (Johan & Ariawan, 2021). The interaction between creditors and debtors is the subject of agency theory. Information between creditors and creditors is linked to the theory of asymmetric information. While bankruptcy theory is linked to the debtor's liquidation situation at the moment of default.

The research begins with a discussion of credit agreements between financial institutions and companies. This credit agreement raises several issues that concern this research. This research framework examines the relationship between the principle of contract and the principle of law, the cross-default, and cross-collateral clauses. The principle of law discusses the principles of justice and equality. This study discusses the cross-default clause and cross-collateral clause related to existing legal norms. The research discussion focuses on the principle of fairness and the principle of equality for creditors and debtors.

Several financial institutions have provided loans to each company. Five banks have provided loans to XYZ. Bank A makes two loans to company XYZ, whereas banks C, D, E, and F each make one loan. In loans A and B, Company A has a cross default clause. Bank loans E and F, on the other hand, have a cross default. Between bank loan agreements A, C, D, E, and F, the research discussion is about the principles of justice and equality. This research framework is described in Figure 2.

### IV. Results and Discussions

#### A. Cross-collateral, Principle of Justice, and Principle of Equality

Financial institutions will provide loans based on the 5 C (character, capacity, collateral, condition, and capital) of credit concept. Character is the most

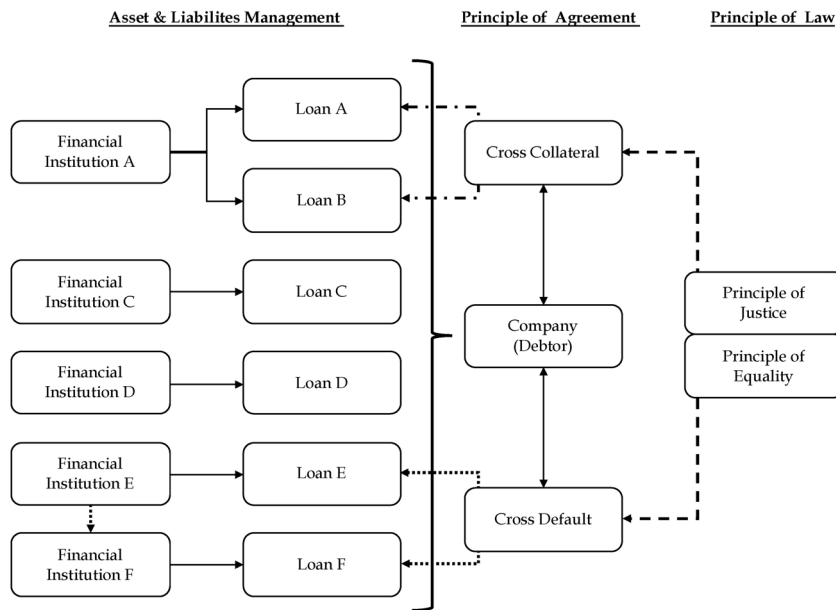


Figure 2. Research Framework

challenging factor to justify. Financial institutions tend to lend to customers they already know. Banks already know the character of existing customers.

Customers tend to establish relationships with existing banks. The customer will limit the number of banks in doing business. The limited number of banks has both positive and negative effects. The positive effect is that the customer has an anchor bank, while the negative effect is that the customer has a dependence on a particular bank. Anchor bank will be a bank that supports customer financing needs.

Banks provide additional loans to existing customers. Existing loans have collateral with a specific coverage ratio. As time goes by, the balance of the debt decreases, and the collateral value remains and the coverage ratio increases. The customer negotiates with the bank to exchange the collateral according to the debt balance. The customer bank requires a new loan with the collateral. The bank offers to provide new loans with the same 110% coverage and cross-collateral against existing loans.

The customer agrees to the bank's offer of new cross-collateralized loans. The new loan has a 110

percent coverage ratio. As a result, the loan coverage ratio is currently at 137.5 percent. As a result of the payment, the loan sum is reduced, but the collateral remains. The ratio is  $110/80 = 137.50$  percent since the loan balance is 80 percent of the existing loan and the collateral is 110 percent.

The bank extends a \$100 loan, with the debtor giving \$110 in collateral, for a total loan of 180 and a total collateral value of 220. The total coverage ratio is  $220/180 = 122$  percent with this cross-collateral clause. A collateral coverage ratio of 110 percent is estimated by other creditors. Because of the cross-collateral clause in the agreements, the real value of the collateral coverage ratio for the two loans is 122 percent. The coverage for collateral is depicted in Figure 3.

The cross-collateral clause indicates that the credit agreement does not meet the principles of fairness and balance among creditors. Creditors do not have the same position in the cross-collateral clause. This clause results in differences in the collateral coverage ratio. Between creditors, there is a lack of complete information. The credit agreement clauses are not

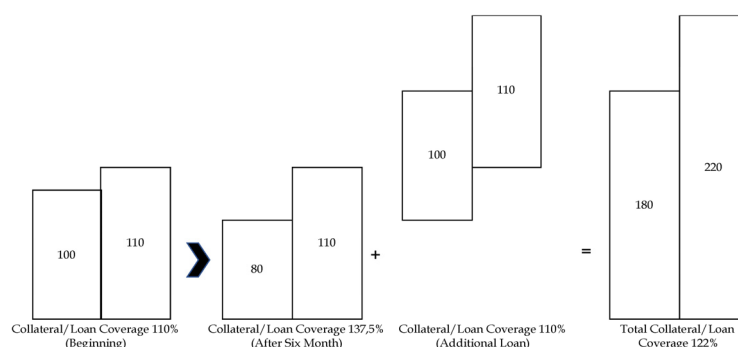


Figure 3. Collateral per Loan Coverage (1)

described in detail in the audited financial statements. Asymmetric information exists between creditors and debtors.

A company's audit report states the value of the guarantee and the collateral coverage ratio. However, the audit report does not explain the cross-collateral clause. This information is indicative of the existence of asymmetric information. Asymmetric information creates an imbalance in the position of creditors.

Creditors execute the collateral based on the cross-collateral clause. Cross-collateral information will appear if the debtor is in default. Other creditors will know that the position between creditors is not balanced.

## B. Cross-default, Principle of Justice, and the Principle of Equality

Financial institution examines the risks of a debtor in repaying the loan. These credit risks include the sources of income, raw materials, market disturbances, and other matters that may affect the ability to pay.

Some financial institutions consider that shareholders influence the payment ability of subsidiaries. Financial institutions will put a cross-default clause on shareholders against subsidiaries. If the shareholders default, the subsidiary will also default. Default criteria can be grouped into two types, loan and company defaults.

A cross-default loan is a default on one loan that results in another loan. Corporate defaults are defaults that occur in companies and are not limited to loans. Determination of default must be according to the

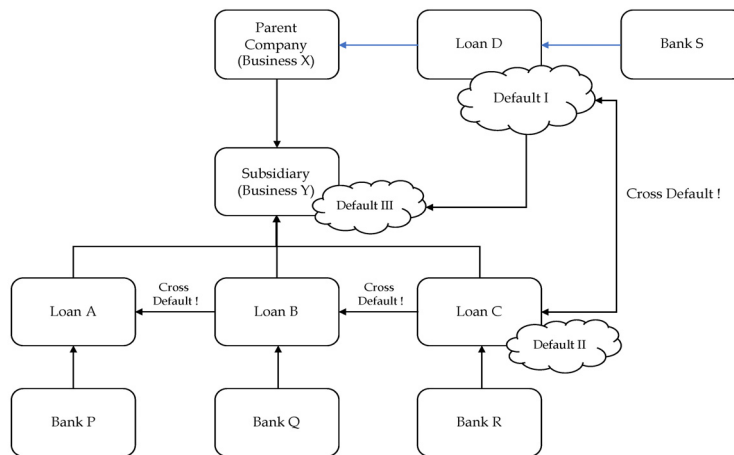
criteria for default based on the agreement or through the courts.

Bank's parent firm defaults on one of the bank's loans, it causes defaults on subsidiary loans to follow. The parent company loan has a cross-default clause in the subsidiary loan arrangement with the bank. The parent business owns the majority of the stock. Figure 4 illustrates cross-default scheme. The parent company's business is distinct from that of the subsidiary. Both businesses are limited-company's corporations (LLCs). The parent company's connection with its subsidiaries is merely an investment relationship.

In the meantime, there are parent companies and subsidiaries that do not have a binding relationship. Subsidiaries and parent companies operate independently. However, the parent company's cross-default clause against the subsidiary results in a default on the subsidiary. The subsidiary's business is not affected by the parent company's insolvency. However, due to the cross-default clause, the subsidiary's business also defaults because the subsidiary's business was disrupted. All obligations of the subsidiary go into default. This cross-default is illustrated in Figure 4. This subsidiary is a stand-alone entity with no significant business ties to the parent corporation. This is not the same as a subsidiary that is heavily reliant on the parent firm.

Cross-default clauses create systemic risk. Default on one loan results in default on all loans. The company as the debtor will also be in default. However, the default trigger is not from the company.





**Figure 4.** Cross Default Subsidiary and Parent Company

The cross-default clause does not reflect the principles of justice and equality. Defaults on the parent company result in the subsidiary being ruined. Financial institutions in subsidiaries consider that the parent company's insolvency decreases the subsidiary's ability to pay. This clause shows that it does not meet the principles of balance and justice. It should be noted that not all defaults of the parent company affect a subsidiary.

The cross-default clause does not apply to all credit agreements. Not all creditors will have the same rights in determining the cross-default clause. The cross-default clause is never clearly stated in the credit agreement and is open to all creditors. This agreement between the parties does not fulfill the principle of balance.

In general, the cross-default clause applies to the parent company, as well as to other loans. If a loan is in default, the different loan facilities will be in default. Many factors can cause a loan default. Bankruptcy has dire implications for creditors and debtors. The reputation of the debtor in default creates a bad record. Creditors are required to provide for losses for debtors who default.

### C. Cross-default and Cross-collateral

Cross-collateral has no effect if the company is

not in default. The default condition raises the creditor's rights to the collateral. Creditors cannot execute collateral if they are not triggered. Cross-default will arise if there is a default agreement. Cross-defaults affect cross-collateral.

Collateral and cross-collateral clauses are two different clauses. Collateral is an article that regulates guarantees in credit agreements. The cross-collateral clause is a clause that binds one contract to another.

Default is a condition in which creditors are unable to pay their maturing and collectible liabilities. Liabilities can be debts that are due or promises that must be fulfilled. The cross-default clause is a clause that governs the binding conditions of default between one contract and another.

Default will rise to cross-default. After a cross-default occurs, it will cause a cross-collateral. Defaults have a systemic effect on overall company performance.

### D. Solutions to Fulfill the Principles of Justice and Equality

The cross-collateral clause must be removed from the credit agreement. The cross-collateral clause does not fulfill the principle of *pari passu pro rate parte*. This clause gives preference rights to certain creditors. Abolishing these clauses gives creditors the same

position based on the principles of justice and equality. Collateral can be asset guarantees in the form of fixed or current assets.

Another alternative to the cross-collateral clause is to have collateral coverage be based on a ratio so that no party will benefit. The debtor must ensure that the collateral that the creditor can obtain is in the form of a percentage, not an asset. Many banks will always stick to the value of guaranteed assets rather than the debt-to-guarantee ratio. This is a common occurrence in developing countries like Indonesia. Furthermore, the loan value cannot be used to divide the fixed asset value. A single unit represents the fixed asset value. The proposed collateral coverage is illustrated in Figure 5. The ratio shows a decrease in the debt balance followed by a decrease

in the collateral balance.

A cross-default clause with limits is provided by the debtor. Creditors want the cross-default clause because it anticipates risk. The debtor has the option of setting a minimum default value. The default value must represent an issue that has an impact on the company's performance. The default limit's value must reflect the value of the company's capital. Figure 6 illustrates these limiting conditions.

Many businesses in underdeveloped nations, such as Indonesia, are at a disadvantage when it comes to negotiating with creditors. The debtor is concerned that the creditor would refuse to give a loan as a result of the negotiations. The debtor sees the loan as a sort of self-trust.

Limiting the minimum value of cross-defaults

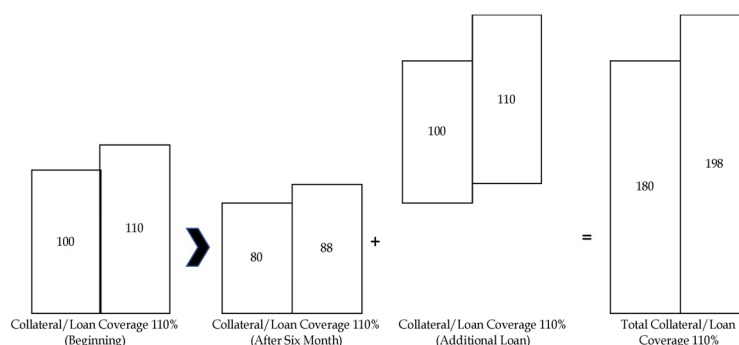


Figure 5. Equal Collateral per Loan Coverage

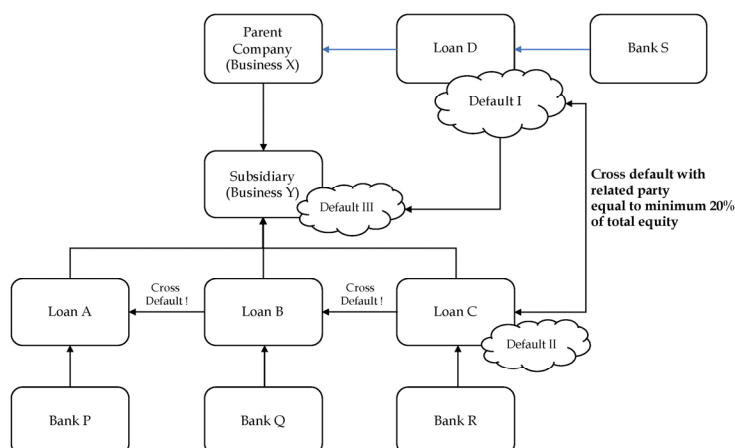


Figure 6. Cross Default Criteria

provides fairness and balance to all parties. Not all default conditions can cause systemic effects. Cross-default settings must reflect the value of justice and balance in a two-party agreement.

## V. Conclusion

A credit agreement is a form of contract. The clauses in an agreement must fulfill the principle of equality and the principle of justice. The cross-default clause and the cross-collateral clause in the credit agreement do not meet these two principles.

The debtor may offer modifications to the cross-default clause and the cross-collateral clause. Limiting the collateral value to the collateral ratio is one alternative. Determining the default value based on a deal that has a significant effect is another. Limitation to this value and percentage offers fairness and balance to all creditors. Further research can be developed by researching the types of businesses that provide a fixed asset guarantee value. In addition, the prelamination of this research is that it does not address the issue of negotiations between creditors and debtors. Finally, existing creditors are unlikely to change the rights they have already obtained.

Another line of inquiry could be to undertake a poll of foreign creditors' perspectives on developing country borrowers. In addition, research can also examine the views of supporting professions such as lawyers and arbitrators regarding debt dispute resolution. Other research can be developed by conducting comparative studies of debt disputes between countries.

## VI. Managerial Implications

The debtor must be able to discuss the terms of arrangement with the creditor. Debtors' negotiations are not considered defiance of creditors. The debtor

must consider the long-term repercussions of his business and ensure that the creditor is treated fairly. Debtors must preserve a good reputation in the eyes of all creditors. Creditors must request debtor information and have faith in the debtor. Creditors' faith in debtors will foster a favorable business climate.

## VII. Acknowledgment

The authors would like to thank Ian Harvey Samuel (Freshfields, Singapore), Robert van Zwieteren and Peter Franklin (General Electric Asia Pacific, Hongkong), Jeff Werner (Treasurer, GE Capital, Stamford, USA), Gunawan Geniusahardja (Astra Group, Indonesia), Darmawan Widjaja (Astra Sedaya Finance/Astra Financial Services, Indonesia) and all bankers from around the world for sharing their knowledge. However, the authors are responsible for the content of the article.

## VIII. Compliance with Ethical Standards

Conflict of interest: Authors state that there is no conflict of interest.

## References

- AFSA. (2021). Temporary debt relief measures ended on 1 January 2021 | Australian Financial Security Authority. Retrieved from <https://www.afsa.gov.au/about-us/newsroom/temporary-debt-relief-measures-ended-1-january-2021>
- Ams, J., Baqir, R., Gelpert, A., & Trebesch, C. (2018). Sovereign Default. In *Sovereign Debt: A Guide for Economist and Practitioners* (pp. 1-50). United Kingdom, Oxford University.
- Atikah, I. (2020). Consumer Protection And Fintech Companies In Indonesia: Innovations And Challenges Of The Financial

- Services Authority. *Jurnal Hukum dan Peradilan*, 9(1), 132-153.
- Azzam, J. E., Ayerbe, C., & Dang, R. (2017). Using patents to orchestrate ecosystem stability: The case of a French aerospace company. *International Journal of Technology Management*, 75(1-4), 97-120. doi:10.1504/IJTM.2017.085695
- Austin, J. (2019). Cross-Collateralization and a Debtor's Options Under 1325 (a)(5). *American Bankruptcy Institute Journal*, 1325(48), 30-32.
- Bahder J. N. (2017). Kajian Filosofis tentang Hukum dan Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern. *Al-Ihkam: Jurnal Hukum & Pranata Sosial*, 11(2), 247. doi:10.19105/al-ihkam.v11i2.936
- Beaver, W. H., Cascino, S., Correia, M., & McNichols, M. F. (2019). Group affiliation and default prediction. *Management Science*, 65(8), 3559-3584. doi:10.1287/mnsc.2018.3128
- Callanan, Lord. (2020). *Government gives businesses much-needed breathing space with extension of insolvency measures*, GOV.
- Clarke, O. (2021). *Update: Belgian government responds to end of bankruptcy moratorium*. Osborne Clark.
- Dawson, A. B. (2018). Modularity in Cross-Border Insolvency. *Chicago-Kent Law Review*, 93(3), 650-677.
- Wardani, D. K. (2021). Legal Protection of Creditors in the Execution of Collateral Objects of Dependent Rights Confiscated and Seized by the State Related to Corruption Crimes. *Palarch's Journal of Archaeology of Egypt*, 17(6), 8019-8027.
- Dewi, K. S., & Markeling, I. K. (2013). Kedudukan Utang Upah Pekerja dalam Kepailitan. *Kertha Semaya*, 01(10), 1-15. <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/39602>
- Dewi, W. W., & Tjatrayasa, I. M. (2017). Akibat Hukum Penundaan Kewajiban Pembayaran Utang Terhadap Status Sita dan Eksekusi Jaminan Ditinjau Dari Undang Undang Nomor 37 Tahun 2004. *Kertha Semaya: Jurnal Ilmu Hukum*, 5(1), 1-6. <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/19129>
- Disemadi, H. S., & Gomes, D. (2021). Perlindungan Hukum Kreditur Konkuren Dalam Perspektif Hukum Kepailitan di Indonesia. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9(1), 123-134. doi:10.23887/jpku.v9i1.31436
- Donaldson, J. R., Gromb, D., & Piacentino, G. (2019). Conflicting Priorities: A Theory of Covenants and Collateral. *SSRN Electronic Journal*. <https://ideas.repec.org/p/red/sed019/157.html>
- Fitria, A. (2018). Penundaan Kewajiban Pembayaran Utang Sebagai Salah Satu Upaya Debitur Mencegah Kepailitan. *Lex Jurnalica (Journal of Law)*, 15(1), 18-28.
- Ghillyer, A. W. (2018). *Business Ethics Now*. New York: McGraw-Hill Education International.
- Hidayat, D. R. (2018). Perlindungan Hukum Bagi Kreditor Dengan Jaminan Atas Objek Jaminan Hak Tanggungan Yang Sama. *DiH Jurnal Ilmu Hukum*, 14(27), 1-16. doi:10.5281/zenodo.1188346.1
- Hielmy, M. I. (2020). Penerapan Prinsip Cross-default Dan Cross-collateral Pada Perjanjian Kredit dengan Agunan Hak Atas Tanah. *Indonesian Notary*, 2(1), 273-292.
- Hu, M., Zhang, D., Ji, Q., & Wei, L. (2020). Macro factors and the realized volatility of commodities: A dynamic network analysis. *Resources Policy*, 68, 1-13. doi:10.1016/j.resourpol.2020.101813
- Hu, T. (2021). Financing of Small and Medium-sized Enterprises Based on Financing Guarantee Institutions. *ACM International Conference Proceeding Series*, 946-950. doi:10.1145/3452446.3452672
- Husni, R. M. T. (2020). Kedudukan Kreditor Hak Tanggungan Dalam Kepailitan. *Supremasi Hukum*, 16(2), 104-113. doi:10.33592/jsh.v16i2.747
- Johan, S. (2020). Potential Systemic Risk Effects Of Credit Relaxation In The Financial Industry As The Effect The COVID-19. *Jurnal Manajemen Bisnis Dan Kewirausahaan*, 4(4), 87-93. doi:10.24912/jmbk.v4i4.8661
- Johan, S. (2021). Separatist Creditors Problems on Postponement of Debt Payment Obligations Based on the Supreme Court's Decree Number 30 / KMA / SK / I / 2020. *Fiat Justisia Jurnal Ilmu Hukum*, 15(3), 207-220. doi:10.25041/fiatjustisia.v15no3.1956
- Johan, S., & Ariawan. (2021). Corporate Liability for Creditors' Losses during the Covid-19 Pandemic. *Media Hukum*, 28(1), 15-28. doi:10.18196/jmh.v28i1.10566
- Juzikienė, R. (2018). Peculiarities of enterprise mortgage as a new form of commercial charge. *Baltic Journal of Law and Politics*, 11(1), 85-107. doi:10.2478/bjlp-2018-0004ida
- Klein, D. B. (2017). Commutative, distributive, and estimative justice in Adam Smith. *Adam Smith Review*, 12, 17-11.
- Kogin, K., Isnaeni, M., & Prasetyawati, E. (2018). Ratio Legis of Using Cross-collateral and Cross-default Clauses in Banking Credit Contract. *JL Pol'y & Globalization*, 78(II), 82-92. [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/jawpjob78&section=15](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jawpjob78&section=15)
- Lie, G., Saly, J. N., Gunadi, A., & Tirayo, A. M. (2019). Problematika UU No. 37 Tahun 2004 Tentang Kepailitan dan PKPU Terhadap Bank Sebagai Kreditor Separatis. *Jurnal Bakti Masyarakat Indonesia*, 2(2), 159-168. <http://repository.untar.ac.id/id/eprint/13054>
- Mursyida, A. (2017). *Analisis Penerapan Cross-collateral Dan Cross-default Dalam Pemberian Kredit Antara LPEI Dan PT X Abstrak Analysis Of Cross-collateral And Cross-default Terms in Loan Agreements Between LPEI And PT X*. Bachelor degree. University Indonesia. <http://lontar.ui.ac.id/detail?id=20458669&lokasi=lokal>
- Muryati, D. T., Septiandani, D., & Yulistyowati, E. (2017). Arrangement of Responsibility of the Curator for the Management and Settlement of Bankrupt Assets in relation to the right of Separate Creditors. *Jurnal Dinamika Sosial Budaya*, 19(1), 11-21.
- Naqvi, S. A. H., Hashmi, D. M. A., Raza, D. S. A., Zeeshan, D. A., & Faiz, M. Shaikh. (2011). Australian journal of business and management research. *Australian Journal of Business and Management Research*, 1(8), 65-71. <https://do>

- aj.org/article/390f7c7f8c134becaf219cfcf05a980d
- Noerr. (2020). The Russian government introduces a moratorium on bankruptcy. Retrieved from <https://www.mondaq.com/russianfederation/insolvencybankruptcy/930202/the-russian-government-introduces-a-moratorium-on-bankruptcy>
- Olivares-Caminal, R. (2017). The definition of indebtedness and the consequent imperilling of the pari passu, negative pledge and cross-default clauses in sovereign debt instruments. *Capital Markets Law Journal*, 12, 164-179. doi:10.1093/cmlj/kmx021
- Olivares-Caminal, R. (2018). Creditor equality, secured transactions, and systemic risk: a complex trilemma. *Law & Contemp. Probs.*, 81, 87.
- Omarini, A. (2018). The Retail Bank of Tomorrow: A Platform for Interactions and Financial Services. Conceptual and Managerial Challenges. *Research in Economics and Management*, 3(2), 110. doi:10.22158/rem.v3n2p110
- Prastika, K. S. D., Marwanto, & Sukranatha, A. A. K. (2017). Kedudukan Kreditor Dalam Perjanjian Kredit Dengan Jaminan Hak Milik Atas Tanah Berdasarkan Undang Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Beserta Benda-Benda Yang Berkaitan Dengan Tanah. Kertha Semaya: *Jurnal Ilmu Hukum*, 5(1), 1-14. <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/40234>
- Putri, D. R. E., Sudiarto, S., & Munandar, A. (2019). Legal Protection Against Providers of Guarantees for Land Rights in the event of Default Debtors (Study at Bank Mandiri Bima Branch). *International Journal of Multicultural and Multireligious Understanding*, 6(2), 658. doi:10.18415/ijmu.v6i2.751
- Putri, N. P. W. A., & Artha, I. G. (2020). Perlindungan hukum pihak ketiga pada perkara kepailitan. *Kertha Negara*, 8(3), 1-12. <https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/61563>
- Ramadhani, R. (2020). Legal Consequences of Transfer of Home Ownership Loans without Creditors' Permission. *International Journal Reglement & Society (IJRS)*, 1(2), 31-37
- Rawls, J. (1970). *Justice as Fairness | Rawls John | Taylor & Francis Group*. Routledge
- Ria, R., & Nuryatno, M. (2018). Influence of Audit Quality, Pattern of Loans Concentration and Company Size to Banking Loans (Agency Problem of Creditor-Debtor at Manufacture Company in Indonesia). *International Journal of Economics and Financial Issues*, 8(4), 172.
- Rosmiati, M., Sumiati, Y., Yusdiansyah, E., & Ramadhani, A. (2021). Employee's Position as Privileged Creditors When Debt of Bankruptcy is Larger Than Bankruptcy Assets. *Proceedings of the Social and Humanities Research Symposium (SORES 2020)*, 562, 122-128. doi:10.2991/asschr.k.210617.025
- Schwert, M. (2020). Does Borrowing from Banks Cost More than Borrowing from the Market? *Journal of Finance*, 75(2), 905-947. doi:10.1111/jofi.12849
- Sriwati. (2021). Legal Protection for Creditor under Cross-default and Cross-collateral Clause in a Credit Agreement. *Konfrontasi: Jurnal Kultural, Ekonomi Dan Perubahan Sosial*, 8(1), 12-22. doi:10.33258/konfrontasi2.v8i1.137
- Sukmana, D. M. (2020). Juridical Review of the Balance of Position of the Parties in the Micro Business Credit Agreement. *Legal Brief*, 9(2), 92-97.
- Svirin, Y. A., Kulakov, V. V., Mokhov, A. A., Shestov, S. N., & Sorokin, V. P. (2019). Balance of interests as a principle of civil law: Some aspects of legal consciousness. *Journal of Advanced Research in Law and Economics*, 10, 940-947. doi:10.14505/jarle.v10.3(41).32
- Tarasov, A. (2019). Management Issues in Loan Syndications Banking. *Review of Business and Economics Studies*, 7(3), 37-44. doi:10.26794/2308-944x-2019-7-3-37-44
- Teco, K.A. (2021). Dugaan Transaksi Ganjil di Balik Pailit PT. Tiphone Mobile Indonesia. Retrieved July 30, 2021. (On-line), Retrieved from <https://bisnis.tempo.co/read/1484880/dugaan-transaksi-ganjil-di-balik-pailit-pt-tiphone-mobile-indonesia>
- van den Brink, Y. (2021). Equality in the Youth Court: Meaning, Perceptions and Implications of the Principle of Equality in Youth Justice. *Youth Justice*, 1-27.
- Sulistiyono, A., & Muryanto, Y. T. (2019, October). Analysis of Equality on Creditor Standing Principle on The Process of Arrangement and Settlement of Bankruptcy Asset in Indonesia. In *3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)* (pp. 286-288). Atlantis Press.
- Yulianingsih, W. (2021). The Petitioner's Legal Standing In Verdict No. 4/Pdt. Suspkpu/2018/Pn. Niaga Surabaya With The Case Of Loan Payment Suspension (PKPU) Based On Law No. 37 Of 2004. *LIGAHUKUM*, 2(1), 50-58.
- Zhang, D. (2018). A recommendation to improve the opt-out mechanism in EU regulation on insolvency proceedings recast. *International Company and Commercial Law Review*, 28(5), 167-175.
- Zulpahmi, Z., Sumardi, S., & Akmal, M. (2018). The Role of Shareholders and Good Corporate Governance in Sharia Banks. *Ikonomika*, 3(1), 43. doi:10.24042/febi.v3i1.2510