

JURIDICAL OVERVIEW OF THE SYNDICATION FINANCING AGREEMENT BETWEEN CUSTOMERS AND FINANCIAL INSTITUTIONS

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ABSTRACT

Companies need funding for business growth. Syndicated financing is financing in large amounts of funds and projects that require extensive and long-term financing. Syndicated financing has grown since the 1960s. Participating financial institutions have compliance and knowledge of syndicated financing agreements. Customers have low compliance and understanding of financing agreements. This discrepancy has given rise to several communication problems, which resulted in legal events. This research aims to examine syndicated financing agreements between financial institutions and customers from the juridical side. This research uses a normative juridical method. This research concludes that the financing agreement is a single agreement between customers and many financial institutions. Financial institutions cannot deal directly with customers in the syndicated financing agreements. The facility agent or trustee represents the financial institution in negotiations with the customer if there is a difference or discrepancy with the financing agreement.

Key Words: customers; financial institutions; syndicated loan.

INTRODUCTION

Companies need funding to grow their businesses. Companies borrow funds from financial institutions. Loans originating from a single direct financial institution are called bilateral loans. Loans originating from several financial institutions are called syndicated loans. Syndicated loans are loans in large amounts that involve many parties (Tirana, 2019). Syndicated loans finance large projects such as infrastructure development, mining project development, and others (Asril, 2020). These projects are long-term projects. Banks participating in syndicated financing are determined

by four factors: bank liquidity, information about the customer's company, the relationship between the customer and the bank, and loan characteristics (Noraini & Rusni, 2020). Banks that choose to participate in syndicated financing aim to diversify risk and cooperate with other financial institutions. This collaboration is between financial institutions that have the same portfolio allocation (Basovskaaya, 2018). Risk financing also poses risks to financial institutions. This risk arises because of the considerable financing value (Sumriyah, 2018).

Syndicated loans consist of several financial institutions coordinated by a facility agent (Trianto & Suhardiman, 2015). The facility agent may also be a member of a syndicated financial institution. A syndicated agreement is an agreement between all syndicated financial institutions and customers. The financing agreement only consists of one agreement document, even though there is more than one financing participant (Honandar, 2017). Any changes to the contents of this agreement require the approval of all parties in the syndicated agreement. Changes to the contract may include accelerated payments, changes in interest rates, or changes in other loan amounts.

Syndicated financing agreements or contracts are the basis for customers and financial institutions to take action. This is per the principle of *fact sum servanda*. Customers and financial institutions must study the contents of the agreement. The contents of the financing agreement are the legal basis for action. The syndicated financing agreement must meet the legal requirements of a contract as stated in Article 1320 of the Indonesian Civil Code (Djaman, 2019).

Customers and financial institutions tend to prepare an agreement per the costs. Low fees will result in complex contracts. A complicated deal will create a legal system that ensures the parties fulfill their obligations. On the other hand, a short loan agreement will result in moral hazard and risk (Tetty, 2017). The lender has experience in syndicated loans. Creditor compliance with credit agreements is higher than customer compliance (Umardani, 2017).

The financial industry, especially the banking industry, must comply with existing regulations. The financial sector is highly regulated. The process of financing and repaying loan

debts prioritizes the principle of prudence. Syndicated financing involves many parties. The parties involved have discussed the conditions in the contract (Bisnis.com, 2021). Accelerated repayment of financing requires the agreement of the members of the syndicated financial institutions (Djumena, 2021). The syndicated loan value is divided equally by the syndicated members according to the number of participants. Therefore, the value of syndicated loan financing requires the approval of all syndicated members.

Disputes between customers and financial institutions can be reported to the Financial Services Authority of Indonesia (OJK) through consumer protection. The Financial Services Authority of Indonesia will assist with mediation (Karunia, 2021). The Financial Services Authority of Indonesia provides preventive legal protection and repressive protection through non-litigation dispute resolution and the judiciary (Zulfiqar et al., 2019).

An entrepreneur has stated that one of his companies engaged in infrastructure has a syndicated loan. The entrepreneur applied for an interest waiver from the bank, but it was rejected. The entrepreneur pays the loan, but the bank refuses it (Atmoko, 2021). The businessman has also reported the case to the police. The entrepreneur says it is extortion. Repayment of financing has been deposited but not received as repayment. The funds have been used to pay interest costs (Detik.com, 2021). This fund is a fund for early repayment, not for loan interest payments. This has led to differing views on syndicated financing.

Syndicated financing is a type of corporate financing that involves a large amount and a large number of financial institutions. A financing agreement is between a group of financial institutions and customers. Each loan amount will be divided proportionally according to the participation amount. Syndicated financing has given rise to several different views between customers and financial institutions. Indonesia's legal system of guarantees has not overcome collateral with large values, such as infrastructure projects (Murwadji, 2013).

Expansive monetary policy can increase credit supply from various cross-border countries to destination countries, especially funding for companies that have not performed well. However, foreign banks with a larger share in the borrowing country can reduce the stability of low-interest rates. This is due to an increase in the volume of loan funds (Demirgüç et al., 2017).

The transfer of receivables or *cessie* from syndicated financing must pay attention to the principles of prudence and accuracy. Receivables that can be collected are only legally transferred per the syndicated financing agreement (Harahap & Nurdin, 2020). In addition to *cessie*, the transfer of syndicated financing receivables can be done by novation. Novation is a common law and civil law method, while *cessie* is stated in civil law (Nefi & Warman, 2008). The transfer of syndicated receivables can be canceled if done without authority. This impacts the legal standing of the new creditor (Raih Cita et al., 2018).

This research aims to conduct a review from the juridical side of the syndicated financing agreement between customers and financial institutions. Only a few studies are examining the review of syndicated deals. A syndicated agreement is an agreement between the customer and the financial institution. Financial institutions consist of many financial institutions or more than one institution. The syndicated financing agreement also involves several other parties, such as facility agents and security agents. This is illustrated in Figure 1.

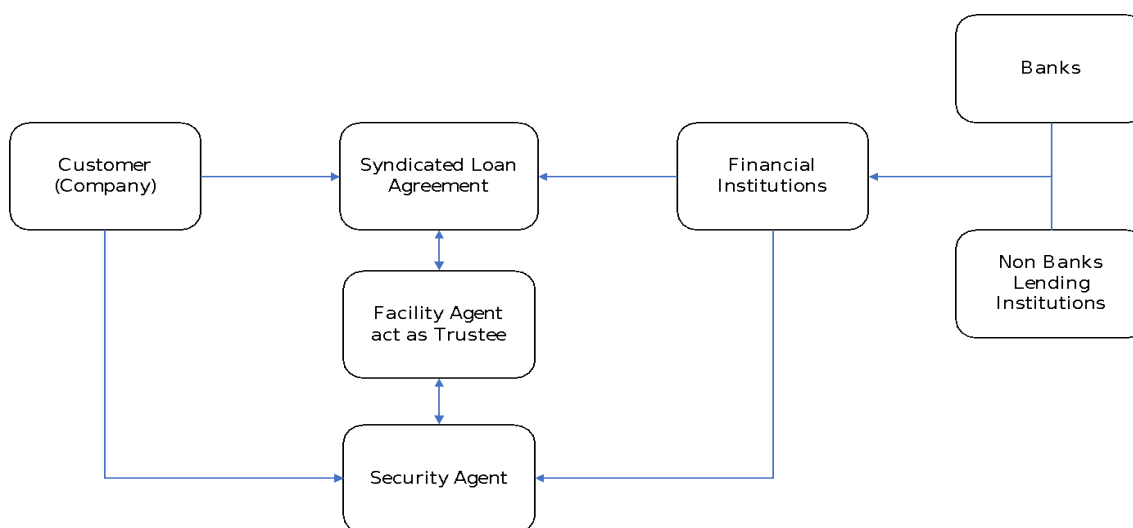


Figure 1 Syndicated Financing Agreement Process

This study has research questions regarding the juridical review of syndicated financing agreements. What is a syndicated financing agreement? Can a syndicated agent act alone without obtaining the consent of the syndicated participants? Can each syndicated member deal directly with customers based on the syndicated financing agreement?

RESEARCH METHODS

This research examines legal principles and norms, legal system and synchronization between laws and regulations, legal comparisons, and legal history, especially those relating to financial institution's financing agreements. Referring to the background, research problem, and previous research, the research method used is a normative legal research method or literature-based legal analysis using secondary research materials. Legally normative, this research uses a statutory approach to study all laws and regulations related to the research topic (Marzuki, 2017). The approach to legislation is an approach that uses laws and regulations as the basis for research. With this method, the study analyzes the regulations, adjusts them, and identifies them with related regulations.

The normative legal research materials include primary, secondary, and supporting legal materials. The main legal materials used in this research include the 1945 Constitution of the Republic of Indonesia, laws, and other related regulations. Secondary legal materials include literature in legal journals, legal theories, scientific books related to research titles, results of symposiums/seminars, and scientific articles. Tertiary legal materials explain primary and secondary legal materials (Johan & Ariawan, 2021).

DISCUSSIONS AND ANALYSIS OF RESULTS

1) Syndicated Financing Agreement

Syndicated financing begins with the appointment of an arranger. If there is more than one arranger, one is appointed as the lead arranger by the customer. The customer will sign a letter of

appointment of a financial institution as an arranger or lead arranger. Arrangers who provide guarantees for fundraising to customers are called underwriters. If the promise of finding funds is 100%, it is called full commitment. If the arranger only does his best, it is called best effort commitment.

After signing the appointment letter, the arranger or lead arranger will contact and make offers to other financial institutions. The arranger will offer it within a specific time according to the letter of appointment. Once the offering period is over, the arranger will contact the customer to inform the results of the search for funds. The appointment process is depicted in Figure 2.

When the arranger offers participation to a financial institution, the arranger will attach the loan conditions. This condition will be the basis for making a syndicated financing agreement. The requirements for granting this loan are also stated in the letter of appointment of the arranger.

The basis for agreeing has been discussed between the customer and the arranger at an early stage. After the arranger concurs with the customer, the arranger and the customer will prepare a financing agreement. This agreement will be granted to all financial institutions participating in the syndication. The arranger coordinates this agreement review process. The customer blends with the arranger. The parties may appoint a legal advisor to represent the legal opinion of the agreement. The customer appoints one legal advisor, and the lender appoints one legal advisor.

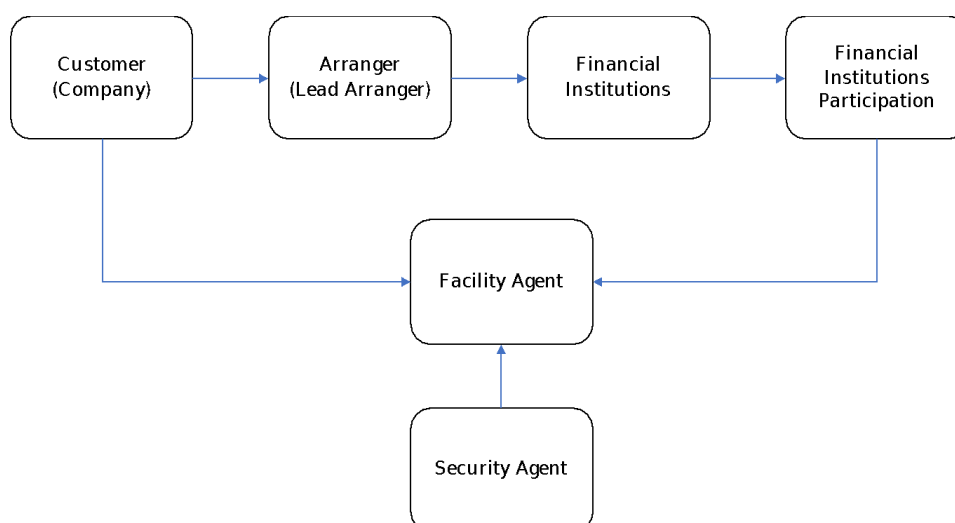
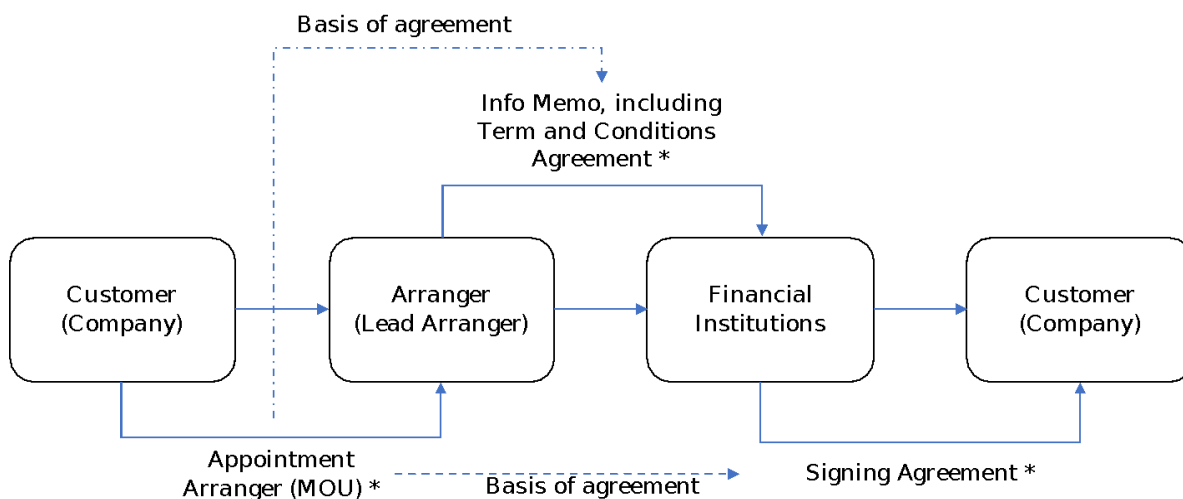


Figure 2 Arranger Appointment Process

After all, parties agree on the contents of the syndicated financing agreement. The parties will sign this agreement. A security agreement accompanies the signing of the financing agreement. The signing of this agreement also appoints a facility agent and security agent. Facility agent works based on financing agreements. Security agent works under a security agreement. The basis for making the two agreements is based on the arranger appointment letter.



* Assisted by Lawyer

Figure 3 Agreement Making Process

The financing agreement signed by the customer with all participating financial institutions has been reviewed at least three times before signing. The customer has prepared and reviewed the agreement twice. Financial institutions have prepared and studied it a minimum of three times. This is explained in Figure 3.

Financial institutions that participate in syndicated financing have almost the same characteristics. Syndicated financing has several types of participation. Syndicated financing with tender panel participation or participation on a pro-rata basis. Tender panel financing is financing in which each financial institution provides a loan value and interest rate that each financial institution can provide. This grant is based on a request for a loan by the debtor. After giving the interest rate and loan value, the debtor will choose a financial institution. The basis for the selection is the

interest rate offered. These interest rates differ from one financial institution to another. The interest rate range is predetermined.

The second type is financing with a pro-rata basis on the participation commitment of financial institutions. The debtor applies for a certain amount of loan withdrawal. This amount will be divided according to the participation amount. The interest rate charged is the same for all syndicated participants.

The clauses in the financing agreement are laws between the creditors and the debtor. There are several types of clauses governing changes to the contents of the contract. There is a change in the clause that requires unanimous consent, and there is sufficient majority consent. Majority consent is categorized into two, namely simple majority or significant majority.

The simple majority is the number of $1/2$ plus one, while the significant majority is $2/3$ or $3/4$ of the total participation. This vote calculation is based on the participating loan value of each syndicated participant.

The significant majority or unanimous consent governs the statement of the debtor's default. Unanimous consent regulates changes to the loan interest rate reference. It is precisely on the fixed-rate loan between all syndicated participants.

Syndicated financing agreement becomes law between debtor and creditor. There are accelerated repayments that are allowed with a break funding cost. The break funding cost is a penalty for early repayment. Some do not allow any early repayment.

Syndicated financing agreements are different from bilateral financing agreements. A bilateral financing agreement is an agreement between a single debtor and a single creditor. The creditor is sole, and the debtor is sole. A single debtor and creditor can determine all agreements.

A syndicated financing agreement is an agreement between a single debtor and multiple creditors. All creditors have the right to be involved in decision-making, especially decisions that require unanimous consent. Negotiations between debtors and numerous creditors will require extra

time and extra effort. The results of the talks resulted in a mutual agreement in one agreement. There are times when an agreement will be difficult to reach because the syndicated financial institutions have very different views on a matter. There are also times when syndicated participants wait for the decisions of other participants. These things will be obstacles to a syndicated agreement. However, syndication is a more accessible financing alternative for debtors who require large amounts of financing.

2) Syndicated Agents Are Representatives of Syndicated Members

A facility agent represents the relationship between customers and financial institutions participating in syndicated financing. The facility agent will take care of the disbursement of funds, payment of interest, and calculation of fees charged. They will represent financial institutions in managing this syndicated facility until it is paid off. The facility agent also decides if the company as the borrower has defaulted. These requirements are set out in the syndicated financing agreement.

The facility agent will submit each request or information regarding the customer to the participating financial institutions. Questions or information required by financial institutions will be sent through the facility agent. The working pattern of the facility agent is illustrated in Figure 4.

The security agent acts under the security agreement. If there is a default, the security agent will execute the collateral that has been given. The result of the execution of the collateral is used to cover the principal amount of the loan from the financial institution.

3) Relationship between Syndicated Members and Customers

Every communication between syndicated members and customers has to be done through the facility agent. Syndicated member financial institutions may meet with customers to request information or other matters. However, the decision regarding the syndication must still go through

the facility agent. Decisions regarding customers will refer to the contents of the syndicated financing agreement.

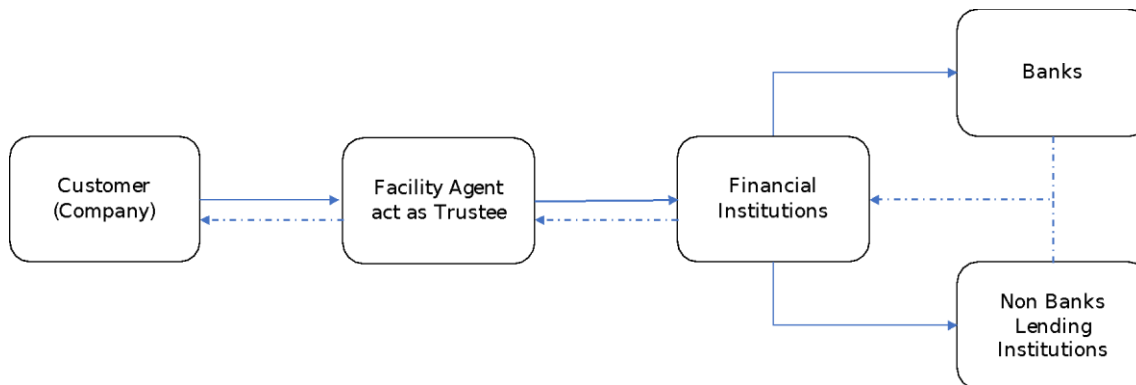


Figure 4 Facility Agent Work Pattern

Decisions regarding customers can be made based on majority consent. Some decisions require unanimous consent or must be approved by all syndicated members. Repayment, interest payments, declaration of default, and imposition of fines must obtain unanimous consent.

The basis for calculating the approval is based on the participation value of the syndicated members. Participants with significant participation scores will have considerable voting rights. The vote count is not based on a one-man-one-vote system. The vote count is given in writing and sent to the facility agent. The facility agent performs the vote counting. The facility agent will submit the results of the vote count to the syndicated members and debtors.

Changes in interest rates require the approval of all syndicated members because each syndicate member has the right to interest paid by the customer. Early repayment also requires the consent of all syndicated members if not regulated in the syndicated financing agreement. Every decision regarding a customer originating from a syndicate involves the approval of a syndicated member.

4) Managerial Implications

Debtors need to have a legal consultant who has studied the contents of the syndicated financing agreement. Any changes to the contents of the contract involve a legal consultant. The

debtor needs to review every range of the agreement before signing the agreement. A syndicated financing agreement is an agreement between a debtor and a creditor. Creditors consist of several financial institutions. The position of financial institutions is as a debtor. All decisions must be taken together. The creditor's decision is based on matters stipulated in the agreement. One financial institution cannot represent another financial institution. Decision-making is based on the number of participations in the syndication.

CONCLUSIONS

A syndicated financing agreement is an agreement between a group of financial institutions as creditors and customers as debtors. The syndicated financing agreement has been prepared from the beginning of the appointment of the arranger. It has been reviewed more than twice by the parties with the assistance of legal consultants. In this syndicated financing, the syndicated member financial institutions are represented by a facility agent. This facility agent deals with customers regarding syndicated agreements. Syndicated member financial institutions cannot make their own decisions on customers regarding syndicated financing facilities. Every decision regarding syndicated financing must go through a facility agent. This decision is based on the contents of the syndicated financing agreement. This study has limitations in qualitative research methods. Empirical research can be developed. Analysis by studying dispute cases through the courts.

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