



## Default on Joint Responsibility Agreements by Debtors

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### **Abstract:**

*The purpose of this study is to find out how the arrangement of the joint responsibility system in the lending and borrowing agreement at PNM Mekaar East City Branch 2 Gorontalo City and to find out the legal consequences and efforts to resolve defaults in joint responsibility agreements by debtors in Huangobotu Village. The research method used is Normative legal research. The research location is PNM Mekaar Office, East City Branch 2 Gorontalo City. The data obtained are primary and secondary. The data collection techniques used by the author are observation, interview, and literature. The results of the study show that the arrangement regarding the joint responsibility system in the loan and borrowing agreement at PNM Mekaar Branch Kota Timur 2 Gorontalo City is under the provisions of the applicable rules as stated in Article 1278 of the Civil Code concerning joint responsibility or joint responsibility where the joint responsibility agreement can occur over the will or agreement of the parties and must be expressly stated in the agreement.*

*Moreover, the type of joint responsibility applied by business groups in the village of Huangobotu is a type of passive joint responsibility, as stated in Article 1280 of the Civil Code. Moreover, the legal consequences of default in the lending and borrowing agreement with a joint responsibility system at PNM Mekaar East City 2 Branch City of Gorontalo in Huangobotu Village are payment of achievements by each group member and requests for the fulfillment of achievements by PNM Mekaar East City 2 Branch of Gorontalo City to the person in charge of customers who do not fulfill these obligations. Moreover, efforts to resolve defaults by PNM Mekaar Branch Kota Timur 2 Kota Gorontalo are more to the approach of deliberation or mediation with customers to find the right settlement solution.*

**Keywords:** *Default, Joint Liability, Debtor*

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## Introduction



Debt is an agreement between one party and another, and the subject of the agreement is usually money. The position of one party as a lender while the other party receives a loan. The money borrowed will be returned according to the agreed period (Gatot Supramono 2014).

A loan/credit agreement is the most important contract that regulates the rights and obligations between the lender and the debtor. Credit contracts in any form are, in principle, according to the law, a borrowing agreement which is regulated in Article 1754 of Book 3 Chapter 130 of the Law of the Republic of Indonesia, which confirms that borrowing and lending is an agreement whereby one party gives the other party a certain amount of goods to be used for the intended purpose, provided that the latter party returns it in the same amount, type and condition (Mahendra, Dantes, and Yuliartini 2022).

Article 1313 of the Civil Code states, "An agreement is an act by which one or more people bind themselves to one or more people." An agreement is an event where two people promise each other to carry out a matter. The legal consequences of an agreement are the rights and obligations of each party. If one of the parties does not fulfill the obligations determined by a certain party, it is declared a default. Default is regulated in Article 1243 of the Civil Code, which states that: "reimbursement of costs, losses, and interest due to non-fulfillment of an obligation, begins to be required, if the debtor, even though it has been declared negligent, remains negligent in fulfilling the obligation, or if something that must be given or done in a time that exceeds the time specified." (Fajriani and Hadi 2021)

civil national capital limited liability company is one of the financial institutions which is a Sharia financial system channeling business capital funds to the community. As mentioned in Article 2 of Government Regulation No. 38 of 1999 concerning the Investment of the State Capital of the Republic of Indonesia for the Establishment of a Company (Persero) in the Framework of Development of Cooperatives, Small and Medium Enterprises, "The purpose and objective of national civil capital limited liability company as referred to in Article 1 are to organize:

1. Financing services, including credit programs and management services for the development of cooperatives, small and medium enterprises;
2. Other business activities to support the implementation of the activities of the letter above ("Government Regulation Number 38 of 1999



concerning the Participation of the State Capital of the Republic of Indonesia for the Establishment of a Company (Persero) in the Framework of Cooperative Development, Small and Medium Enterprises [JDIH BPK RI]" n.d.)

Civil national capital limited liability company applies a joint responsibility group system which is expected to bridge access to financing so that customers can develop businesses to achieve their goals and improve family welfare. The practice of the joint responsibility financing system at Civil National Capital Limited Liability Company is an agreement whose target is the lower middle economy community.

The financing provided by the national civil capital limited liability company is carried out in groups containing a minimum of 7-10 people in each group, with a representative as the group leader. Installment financing is carried out weekly; all members must be present and deposit themselves in weekly collective payments. If members are unable to attend or there is a delay in installment payments, a joint responsibility system is carried out; namely, installments are borne by members of the group. (Wahyuni, Fadilla, and Meriyati 2022)

The community's view of national civil capital limited liability company financing is very good because Permodalan Nasional Madani Mekaar helps people who need capital to run their business or want to open a business but do not have capital. Customers who are prioritized to apply for financing at PT Permodalan Nasional Madani Mekaar are pre-prosperous mothers because the institution considers mothers to be able to prosper or advance the business is run, and the financing institution guides the mothers; these are the things that cause many people to choose this financing institution. (Sevina, Suryani, and Humaemah 2022)

Civil national capital limited liability company has distributed loans to more than 4 million customers of the national civil capital blooming program (Membina Ekonomi Keluarga Sejahtera). The history of economic development in Indonesia, including the economic crisis of 1997, has raised awareness of the strength of the micro, small, medium, and cooperative business sectors and their potential prospects. (Septina, Yunus, and Stiawan 2023)

The debtor is obliged to pay the payments specified in the contract. Civil national capital limited liability company customer promise is mutually agreed upon



in the payment of funds and becomes an obligation commitment that must be honored (Lukum and Thalib 2022). Customer members of national civil capital limited liability Company will read the customer pledge and prayer together at every weekly group meeting. The customer pledges of national civil capital limited liability Company are: First, attend on time. Second, pay weekly installments as required. Third, use this financing for the business. Fourth, the business results are for the welfare of our families, and fifth, be jointly responsible if customers do not fulfill their obligations. The customer's obligation to the national civil capital limited liability Company is in accordance with the binding principle. This principle is found in Article 1338 of the Civil Code.

Joint responsibility is a legal term for jointly bearing the costs that must be paid. Joint and several liabilities are debts that a group should pay so that the debt is canceled. (Regina, Rochendi, and Pratama 2021) Article 1278 of the Civil Code explains that joint and several liabilities is "an obligation to bear responsibility or an obligation to bear responsibility occurs between several debtors. (Saripudin 2016)

Providing credit to the public is done through a credit agreement between the giver and the recipient of the credit so that there is a legal relationship between the two. Often encountered in the field, credit agreements are made by the creditor or, in this case, the bank, while the debtor only studies and understands it well. However, this credit agreement needs special attention from both parties because the credit agreement has a very important function in granting, managing, and managing the credit in the agreement made between the debtor and the creditor; if the debtor signs a credit agreement which is considered binding on both parties and applies as law to both. (Basir and Hamid 2021)

The agreement will run without any obstacles if the parties to the agreement who carry out the agreement carry out their obligations following what was agreed at the beginning. However, if in carrying out the agreement, one of the parties does not fulfill its obligations, and there will be a default. (Renata and Tanawijaya 2019) Such is the case of non-performing loans in Huangobotu Village, where the customer is considered in default or does not fulfill his obligations to pay his credit installments, which results in members of his group having to bear jointly for the installments that still need to be fulfilled.



## Method

The type of research used in this research is normative legal research. Normative legal research is legal research conducted by examining library materials or secondary data. This research uses qualitative data analysis methods. This is because in analyzing a research object, this method explains the data used. The data in question explains interview data, legal regulations related to research, and literature study data, namely literature related to research problems.

## Discussion

### 1. Joint Responsibility System in Money Lending Agreement at Civil National Capital Mekaar, East City Branch 2, Gorontalo City

With the implementation of the joint responsibility system in a group, there must be benefits obtained from the joint responsibility system. The following are the benefits of the joint responsibility system, namely:

- 1) All group clients have a high sense of responsibility.
- 2) Payment installments are always complete because of the joint responsibility system.
- 3) Fosters a sense of family.
- 4) Fostering a sense of helping others and strengthening the relationship between group members. (Faidah 2014)

It is impossible if joint responsibility is applied without members being grouped; in this case, three elements must be fulfilled, namely:

- a. The group referred to here is not just a list of members, who take their initiative, but a group by forming members.



- b. Obligation. In this case, members must pay installments of loans from the national civil capital blooming. (Irawan, Suharmoko, and Rokhimah 2022)

The distribution of business capital financing provided by Civil National Capital Mekaar, East City Branch 2, Gorontalo City is only specialized for female customers such as housewives and entrepreneurs who need business capital or open a new business, provided they are 18-63 years old and married. Unmarried women who are over 18 years old may become customers. This program does not apply to civil servants because it is specifically for people who are underprivileged and need funds for business capital.

Civil National Capital Mekaar, East City Branch 2, Gorontalo City, is carried out by homemakers with the requirement to become a group, which is a minimum of 10 members and a maximum of 30 customer members, one of whom becomes the group leader with the implementation of a joint responsibility payment system, namely the responsibility of all customers if in the group there is one customer who is absent or late or does not pay at the time of installment payment, other members cover or pay for the absent member and the member for the next week must pay the debt that other members have covered. ("Interviewed with head of PNM Mekaar Cabang Kota Timur 2 Kota Gorontalo," n.d.)

After all, matters relating to the application, examination, and others are deemed complete, and a credit contract will be made. The contract or agreement is made after obtaining approval from the prospective customer. The signing of the agreement must be done by every prospective customer of Civil National Capital Mekaar, East City Branch 2, Gorontalo City so that the rights and obligations of both



parties can be realized and agreed together. After the debtor fulfills his rights and obligations, the debtor can determine the loan's value provided by Civil National Capital Mekaar, East City Branch 2, Gorontalo City. Based on the researcher's interview with the head of Civil National Capital Mekaar East City Branch 2 Gorontalo City regarding the loan value available at Civil National Capital Mekaar East City Branch 2 Gorontalo City, the minimum loan value given to the customer is Rp. 2,000,000, - and the maximum loan value given to the customer is Rp. 5,000,000 - the customer can determine how much loan he wants. However, the loan must be adjusted to the customer's income so that later the fulfillment of obligations can be carried out in accordance with the agreement. ("Hasil Wawancara Dengan Pimpinan PNM Mekaar Cabang Kota Timur 2 Kota Gorontalo," n.d.)

When viewed in terms of civil law, joint and several liabilities is a type of binding law and is regulated in the third book of the Civil Code Article 1278, which reads, "An obligation of responsibility or joint and several liabilities occurs between several creditors, if in proof of agreement, each of them is expressly given the right to demand the fulfillment of the entire debt, while payments made to one of them, release the debtor, even though the obligation by its nature can be broken down and divided between the creditors." (Fadhil and Ropei 2022)

According to the provisions of Article 1282 of the Civil Code, joint and several liability agreements can occur because:

- a) The will of the parties

The agreement of responsibility that occurs due to the expression of the parties' will can be stated either in an agreement (*overseenkomst*) or in a testament, and this





is only considered to exist on the debtor's part if it is "expressly" stated. It must not be merely assumed.

b) The provisions of the law

Generally, the responsibility agreement that occurs because of the law is a passive responsibility agreement; namely, the "debtor" is each responsible "entirely" for fulfilling the performance/debt.

c) The power of habit

Article 1339 of the Civil Code states that: "agreements are not only binding following what has been expressly determined in the agreement, but also everything that is required according to the nature of the agreement, according to propriety, custom, or law. (Santoso 2019)

As seen from the explanation above, the loan agreement with a joint responsibility payment system occurred to the business group in Huangobotu Village, who applied for a business capital loan to 1. Civil National Capital Mekaar, East City Branch 2, Gorontalo City, was at the parties' will. Where based on the results of the researcher's interviews with several customers from business groups in Huangobatu Village, it was carried out based on the will or agreement of their group to apply for business capital loans to Civil National Capital Mekaar, East City Branch 2, Gorontalo City. Furthermore, already know the terms and conditions required by the creditor, namely Civil National Capital Mekaar, East City Branch 2, Gorontalo City, with a joint responsibility payment system or joint responsibility of the group members if one of them does not fulfill his achievements or obligations.





Joint responsibility comes from the word responsibility means to bear, guarantee, and declare the availability to pay other people's debts if the person does not keep his promise. While the word jointly means series or strands. The meaning of joint and joint responsibility is found in Article 1278 of the Civil Code, which states that: "a responsibility agreement or joint responsibility agreement occurs between several creditors, if in the proof of agreement expressly to each is given the right to demand fulfillment of all debts, while the payment carried out to one of them, releasing the debtor, even though the agreement by its nature can be broken up and divided between the creditors earlier. (Mantili 2019)

An engagement is a joint responsibility or joint responsibility is based on the will of the parties or statutory provisions:

- 1) Each creditor from two or more creditors can demand the entire performance of the debtor, with the understanding that fulfillment of a creditor frees from other creditors (active joint responsibility). This situation is called the liability agreement, as Article 1278 of the Civil Code stipulated. Liability engagement occurs when the creditor consists of several people. The right to vote, in this case, rests with the debtor.
- 2) Every debtor of two or more debtors is obliged to the creditor for the overall performance by fulfilling an achievement by one of the debtors, freeing the other debtors (passive joint responsibility).

In the passive liability agreement, as stipulated in Article 1280 of the Civil Code, the debtor consists of two or more people dealing with creditors, where each debtor can be charged/billed for carrying out "all" of the achievements. If one of the debtors



has fulfilled all the achievements of the agreement, it means releasing the remaining debtors from the obligations of implementing the agreement.

If we look at the arrangements regarding liability or joint responsibility in the Civil Code, the type of agreement entered into by business group customers in Huangobotu Village with Civil National Capital Mekaar, East City Branch 2, Gorontalo City is a type of liability agreement. Or passive joint responsibility. This is based on the interview results of researchers with Civil National Capital Mekaar, East City 2 Branch, Gorontalo City. It was explained that the payment system implemented by Civil National Capital Mekaar, East City Branch 2, Gorontalo City is a group payment system. Where one group consists of several debtors or members; moreover, each debtor is obliged to pay installments every week to Civil National Capital Mekaar, East City Branch 2, Gorontalo City at the time of billing. (“Hasil Wawancara Dengan Pimpinan PNM Mekaar Cabang Kota Timur 2 Kota Gorontalo,” n.d.)

## **2. Consequences and Settlement Efforts If There Is a Default in the Joint Responsibility Agreement**

The debtor's obligations to Civil National Capital Mekaar, East City Branch 2, Gorontalo City, follow binding principles. This principle is contained in Article 1338 of the Civil Code, which explains: "All agreements made under the law apply as laws for those who make them. This agreement cannot be withdrawn other than by agreement of both parties or for reasons determined by law. The agreement must be carried out in good faith.



Besides that, the unsecured credit agreement will have legal consequences for the debtor and the creditor if it is not implemented in good faith using the *pacta sunt servanda* principle. The debtor should pay his debts to the creditor by using all his property even though there is no collateral-binding agreement. On the other hand, the creditor also has the right to sue the debtor to repay his debt (“ Results of Interview with the Head of National Civil Capital, Mekaar, East City Branch 2, Gorontalo City,” n.d.)

What often happens is if someone violates the agreement they made, it is considered the same as violating the law, which has certain legal consequences, namely legal sanctions. So whoever violates the agreement will be punished as stipulated in the law. Default means negligence, not fulfilling its obligations in the agreement. The legal consequences for debtors who have defaulted are as follows:

- a. The debtor is required to pay compensation for losses suffered by the creditor (Article 1243 of the Civil Code).
- b. If the agreement is reciprocal, the creditor can demand termination or cancellation of the agreement through a judge (Article 1266 of the Civil Code).
- c. If the agreement is to provide something, the risk will be transferred to the debtor since default occurs (Article 1237 paragraph (2) of the Civil Code).
- d. The debtor must fulfill the agreement if it can still be done, or cancellation accompanied by payment of compensation (Article 1267 of the Civil Code).
- e. The debtor is obliged to pay court fees if permitted before the District Court, and
- f. The debtor is found guilty (Paendong 2022)



The legal consequences arising from the joint responsibility agreement in the event of default based on the results of research conducted by researchers at the office Civil National Capital Mekaar, East City Branch 2, Gorontalo City, and Debtors in the business group located in Huangobotu Village are as follows:

1. Every customer who is in the same business group is obliged to jointly bear the losses suffered by the creditor as a result of default by one of the members in the business group by paying installments that have been mutually agreed upon in the loan agreement at Civil National Capital Mekaar, East City Branch 2, Gorontalo City As happened with the business group in Huangobatu Village where based on the results of interviews conducted by researchers with customers of Civil National Capital Mekaar, East City Branch 2, Gorontalo City located in Huangobotu Village, Mrs. Nano, Mrs. Nano explained that in the business group she joined there was one customer who after the disbursement of business capital carried out by Civil National Capital Mekaar, East City Branch 2, Gorontalo City the business group only fulfilled its obligations to pay installments for 3 times, and after that the customers fled without fulfilling their obligations. Meanwhile, based on the agreement made by the business group with Civil National Capital Mekaar, East City Branch 2, Gorontalo City, it is 50 installments. As a result, the remaining 47 installments are borne jointly or jointly by the business group members.
2. Based on the results of interviews conducted by researchers with the leadership of Civil National Capital Mekaar, East City Branch 2, Gorontalo City, to resolve if there are customers who commit defaults, it is explained that before disbursing funds to customers, there are terms and conditions that must be met, one of which is by asking approval of the person in charge, namely the husband or parents of the applicant. The purpose of asking for the approval of the person in charge is to prevent unwanted things from happening, namely not fulfilling the obligation to pay installments every week or running away and not paying off their obligations to Civil National Capital Mekaar, East City Branch 2, Gorontalo City the person in charge will pay off the debt from the wife or a child who enters into a loan agreement at Civil National Capital Mkeaar East City 2 Branch, Gorontalo

- City. The consequences of default in the joint responsibility agreement are imposed on group members and the person in charge of the applicant.
3. If in one business group, there are customers who do not want to be jointly responsible or jointly responsible, the Civil National Capital Mekaar, East City Branch 2, Gorontalo City will use the deposit money or liability money as repayment if loan arrears arise as stated in the contents of the agreement. Moreover, customers who do not refuse to carry out Civil National Capital Mekaar, East City Branch 2, Gorontalo City, will no longer accept applications for submitted business capital loans or can be done with a record of smooth installments. However, the credit provided is no longer large.

Based on the results of the researcher's interview with the leadership of Civil National Capital Mekaar, East City 2 Branch, Gorontalo City, the factors that become a factor for customers not fulfilling their obligations which result in members in one group bearing jointly or jointly responsible for installments from one of the customers who default are :

- a. Customers who only want to make loans to Civil National Capital Mekaar, East City Branch 2, Gorontalo City, but need better faith to carry out their obligations, resulting in losses to other members of the business group.
- b. A misunderstanding in one group where when there is joint responsibility or shared responsibility as a result of not paying obligations to creditors, the customer who has been jointly responsible does not return the amount of money that has been bailed out by other members when billing is done by Civil National Capital Mekaar, East City Branch 2, Gorontalo City This also triggers defaults by customers. (“ Results of Interview with the Head of National Civil Capital, Mekaar, East City Branch 2, Gorontalo City,” n.d.)

The purpose of the parties to agree is, of course, so that the agreement mentioned in the contents of the agreement can be carried out properly by the parties. However, in practice, the parties must comply with what has been agreed upon in the agreement or can be said to be in default.



If, in the implementation of the agreement, there is a recipient of capital in default, the other recipient in the same group will also be responsible. If the recipient of the capital needs to pay the installments or the loan installments, then all group members use a system of joint responsibility. The joint responsibility system is a system that requires other members to help and cover loan installments from capital recipients who default.

This joint responsibility system is burdensome for other group members who fulfill the achievements following what was promised if they continue to bear jointly to cover the mistakes of the recipient of capital who commit defaults so that other efforts if the capital loan provided is Rp. 2,000,000, up to Rp. 10,000,000, it can be resolved through litigation by way of Civil National Capital Limited Liability Company will file a lawsuit with the District Court if all non-litigation efforts fail (Fajriani and Hadi 2021)

Based on the results of interviews conducted by researchers with the leadership of Civil National Capital Mekaar, East City Branch 2, Gorontalo City, to resolve if there are customers who commit defaults, it is explained that before disbursing funds to customers, there are terms and conditions that must be met, one of which is by asking for approval from the person in charge, namely the husband or parents of the applicant. The purpose of asking for the approval of the person in charge is to prevent unwanted things from happening, namely not fulfilling the obligation to pay installments every week or running away and not paying off their obligations to Civil National Capital Mekaar, East City Branch 2, Gorontalo City, the person in charge will pay off the debt from the wife or a child who enters into a loan agreement at Civil National Capital Mekaar, East City Branch 2, Gorontalo City. The consequences of



default in the joint responsibility agreement are imposed on group members and the person in charge of the applicant.

Another settlement effort made by the Civil National Capital Mekaar, East City Branch 2, Gorontalo City, was to first hand over to the group leader to resolve the problems of its members, but if the group leader was no longer able to solve the problem in the group regarding the default then the Civil National Capital Mekaar, East City Branch 2, Gorontalo City directly involved in solving problems regarding defaults within the business group. The settlement efforts made by the Civil National Capital Mekaar, East City Branch 2, Gorontalo City are more towards the mediation route, looking for a middle point of the problem, based on the explanation from the leadership of Civil National Capital Mekaar, East City Branch 2, Gorontalo City that until now the Civil National Capital Mekaar, East City Branch 2, Gorontalo City has never been to the court of law to resolve a problem between Civil National Capital Mekaar, East City Branch 2, Gorontalo City and a customer who defaulted.

### **Conclusion**

Based on the results of the research above, it can be seen that the joint responsibility system implemented by the creditor, in this case, Civil National Capital Mekaar, East City Branch 2, Gorontalo City, to customers in Huangobatu Village does not conflict with applicable regulations, namely following the existing responsibility system arrangements. They are contained in Article 1278 of the Civil Code, where the parties made the agreement based on a mutual agreement and clearly stated in the agreement on the loan and borrowing of money at Civil National Capital Mekaar, East City Branch 2, Gorontalo City. Moreover, the consequences arising from the joint responsibility agreement based on the research conducted are that the creditor can sue





each member of the group for fulfilling the achievements of default committed by one of the members and the person in charge who signed on the business capital loan application file also bears it jointly the same for the default committed by the customer. As well as efforts to resolve disputes carried out by the Civil National Capital Mekaar, East City Branch 2, Gorontalo City, put more emphasis on mediation or deliberation in groups with problems or defaults to find the right solution.

### **Recommendation**

Civil National Capital Mekaar, East City Branch 2, Gorontalo City must also increase socialization to the public regarding the financing system and the installment payment system implemented by Civil National Capital Mekaar, East City Branch 2, Gorontalo City, in order to provide understanding and knowledge to the community, more specifically to women who are want to make a loan at Civil National Capital Mekaar, East City Branch 2, Gorontalo City. Furthermore, provide socialization regarding the joint responsibility system so that customers will later understand the joint responsibility system implemented by the Civil National Capital Mekaar, East City Branch 2, Gorontalo City. As well as for Civil National Capital Mekaar, East City Branch 2, Gorontalo City in Huangobotu Village customers who have entered into a loan agreement with a joint responsibility system, it is hoped that they will be able to carry out the contents of the agreement that has been made and agreed upon together so as not to harm other members or families who share in bearing the losses incurred. By making the loan agreement, the rights and obligations of the parties apply, namely between the Civil National Capital Mekaar, East City Branch 2, Gorontalo City, and the customer of the business group in Huangobotu Village.



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