
Legal Reconstruction of the Use of Checks as Security Instruments in Banking Credit Agreements in Indonesia

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Abstract

A credit agreement constitutes the legal basis of the relationship between a bank as creditor and a customer as debtor in banking activities. In practice, credit agreements often include additional clauses requiring the debtor to provide checks as a form of payment guarantee. However, the use of checks as security instruments is not explicitly regulated under Indonesian law, which creates legal uncertainty, particularly when a check cannot be honored due to insufficient funds. This research aims to analyze (i) the legal framework governing the use of checks as security in credit agreements, (ii) the legal position of checks within the perspective of civil law and banking law, and (iii) the boundary between civil default and criminal liability. Furthermore, this study proposes a legal reconstruction to ensure fairness and legal certainty in banking practices. This research uses a normative juridical method with statutory and conceptual approaches. The analysis refers to the Indonesian Civil Code, particularly Article 1320 and Article 1338, the Commercial Code provisions on checks, and relevant banking regulations. The results indicate that checks function only as additional guarantees and do not provide proprietary rights or preferential rights to creditors. The failure of a check to be honored should primarily be treated as a civil default. Criminal liability may only arise if there is evidence of fraudulent intent at the time the check is issued. Therefore, a legal reconstruction is necessary to prevent the misuse of criminal law in civil disputes and to provide clearer regulatory guidelines.

INTRODUCTION

The banking sector plays a crucial role in supporting national economic development through its intermediary function, namely collecting funds from the public and distributing them in the form of credit (Bernard Azolibe, 2022)(Rejekiningsih et al., 2022)(Bhegawati & Utama, 2020)vv. In granting credit, banks face significant risks, particularly the possibility of debtor default. Therefore, banks generally require collateral to ensure the repayment of debt obligations.

A credit agreement serves as the legal foundation governing the relationship between the creditor (bank) and the debtor (customer) (Kothary, 2025)(Sriwati, 2021). In practice, such agreements often include additional clauses aimed at strengthening the creditor's legal position. One commonly used clause is the requirement for the debtor to provide checks as a guarantee for repayment (Dewi & Kurniawan, 2024; C. Lupton & Huneberg, 2023; C. S. Lupton, 2022; Thalib et al., 2023).

However, the use of checks as security instruments raises legal issues. Indonesian law, particularly the Commercial Code, regulates checks solely as payment instruments, not as collateral (Batubara et al., 2025; Erwiningsih, 2023; Mashdurohatun et al., 2026; Putri et al., 2025; Rambe et al., 2025; Rizal, 2022). Despite this, banking practice has developed to treat checks as a form of additional guarantee (Putri et al., 2025) (Restianti & Wardiono, 2025).

Legal problems arise when a check cannot be honored due to insufficient funds (bounced check). This situation creates ambiguity as to whether the act constitutes a civil default or a criminal offense, such as fraud (Rubin, 2022) (Wachter et al., 2024). On one hand, under Article 1338 of the Civil Code, agreements bind the parties as law (*pacta sunt servanda*), meaning that non-performance should be treated as a civil matter. On the other hand, if the debtor knowingly issues a check without sufficient funds, criminal liability may arise.

The urgency of this research stems from the need to address legal uncertainty and ensure fair treatment for both creditors and debtors in banking transactions. The absence of explicit regulation regarding checks as security instruments creates risks for all parties involved. Creditors face uncertainty regarding their legal remedies when checks are dishonored, while debtors may face disproportionate criminal consequences for what should be treated as civil default. This situation not only undermines legal certainty but also potentially discourages economic activity and investment. Moreover, the inconsistent application of law by courts and law enforcement agencies highlights the need for clearer legal standards and guidelines. The principle of *ultimum remedium* in criminal justice further emphasizes that criminal law should be used as a last resort, not as a primary tool for debt collection.

The novelty of this research lies in its integrated analysis of the legal issues surrounding checks as security instruments and its proposal for legal reconstruction. Unlike previous studies that have examined aspects of this issue separately, this research provides a comprehensive analysis that considers the intersection of contract law, banking regulations, and criminal law. The proposed legal reconstruction offers practical solutions to address the identified legal problems, including clearer regulatory guidelines, strengthened distinctions between civil and criminal liability, and enhanced protection for both creditors and debtors. This integrated approach contributes to the development of a more coherent and consistent legal framework for banking transactions involving checks as security instruments.

This study addresses three principal legal issues concerning the use of checks as security instruments in banking credit agreements in Indonesia. First, the research examines the legal regulation governing the use of checks as collateral instruments within the framework of Indonesian banking and commercial law. Although checks are commonly used in banking practice as additional guarantees, Indonesian legislation primarily recognizes checks only as payment instruments, thereby creating legal ambiguity regarding their function as security devices. Second, this study analyzes the legal position of checks in credit agreements, particularly in relation to their status as additional guarantees that do not create proprietary or preferential rights for creditors. Third, the study explores the legal boundary between civil default and criminal liability arising from dishonored checks, especially in determining when a debtor's failure to fulfill payment obligations constitutes mere breach of contract and when it may qualify as criminal fraud.

Furthermore, this paper aims to formulate a legal reconstruction that can provide greater fairness, legal certainty, and consistency in the application of law within banking practices.

The proposed reconstruction emphasizes the importance of establishing clearer regulations concerning the use of checks as guarantee instruments, strengthening the distinction between civil and criminal liability, and prioritizing civil dispute resolution mechanisms in contractual disputes. In addition, the study highlights the necessity for banks and law enforcement institutions to apply prudential principles and proportional legal approaches in handling cases involving dishonored checks. Through this reconstruction, the research seeks to prevent the misuse of criminal law in civil disputes while ensuring balanced legal protection for both creditors and debtors in banking transactions.

METHOD

This research employed a normative juridical approach with a descriptive-analytical method. The study focuses on analyzing legal norms contained in statutory regulations, legal doctrines, and scholarly opinions.

Sources of Data

1. Primary legal materials: Civil Code, Commercial Code, Banking Law, Criminal Code
2. Secondary materials: books, journals, and legal research
3. Tertiary materials: legal dictionaries and supporting references

Method of Analysis

The data are analyzed qualitatively using:

1. Deductive reasoning (general principles → specific cases)
2. Inductive reasoning (specific facts → general conclusions)

RESULTS AND DISCUSSION

Legal Regulation of Checks as Security Instruments in Indonesian Banking Practice

The findings of this study indicate that Indonesian positive law does not specifically regulate the use of checks as security instruments in banking credit agreements. The Commercial Code (Kitab Undang-Undang Hukum Dagang/KUHD) only recognizes checks as negotiable instruments and payment instruments, not as material guarantees. Nevertheless, in practice, banks frequently require debtors to provide post-dated checks or blank checks as additional assurance for debt repayment obligations. This practice develops from the principle of freedom of contract as stipulated in Article 1338 of the Indonesian Civil Code, which allows parties to create contractual clauses as long as they do not violate statutory regulations, morality, and public order

The use of checks as security instruments demonstrates the existence of a gap between normative legal regulation and banking practice. On one hand, banks seek practical mechanisms to strengthen debtor compliance and minimize credit risk. On the other hand, the absence of explicit legal regulation creates uncertainty regarding the legal standing of checks used as guarantees. This condition potentially leads to inconsistent interpretation among legal practitioners, judges, and law enforcement authorities when disputes arise from dishonored checks.

From a banking law perspective, the requirement for checks as guarantees reflects the implementation of prudential principles in credit distribution. Banks attempt to secure additional leverage against debtors who may fail to perform their obligations (Saeed, 2024)(Bennon & Fukuyama, 2023). However, because checks are not categorized as

proprietary security rights such as mortgages, fiduciary guarantees, or pledges, creditors do not obtain executorial rights over the debtor's assets. Consequently, banks remain dependent on civil litigation mechanisms to enforce debtor obligations.

The findings further reveal that the use of checks as guarantees often occurs without sufficient legal understanding among debtors. Many debtors perceive the issuance of checks merely as an administrative requirement rather than a legal commitment carrying potential civil and criminal consequences. This situation contributes to the increasing number of disputes involving dishonored checks in banking transactions and commercial practices.

Legal Position of Checks in Credit Agreements

The study demonstrates that checks used in credit agreements possess only the status of additional guarantees rather than principal security rights. Legally, a check does not create proprietary rights (*zakelijke rechten*) over the debtor's assets and does not grant preferential rights to creditors. Unlike fiduciary guarantees or mortgages, a check cannot provide priority rights in debt repayment when the debtor becomes insolvent.

The legal relationship arising from the issuance of a check remains contractual in nature and binds only the parties involved in the agreement (Atiyah et al., 2026). Therefore, the rights and obligations resulting from the use of checks are governed primarily by the principles of contract law. In the event of dishonor due to insufficient funds, the creditor cannot automatically seize the debtor's property based solely on the existence of the check.

This condition illustrates that checks function primarily as psychological and administrative pressure instruments intended to encourage debtor compliance. In practice, banks often perceive checks as practical tools to maintain debtor discipline. However, from a juridical standpoint, checks cannot replace formal collateral institutions recognized under Indonesian law.

The research also indicates that legal uncertainty regarding the position of checks frequently causes creditors to pursue criminal complaints against debtors whose checks are dishonored. This practice reflects a tendency to use criminal law as a debt collection mechanism, despite the fact that the underlying relationship originates from a contractual agreement. Such misuse potentially contradicts the fundamental distinction between private law disputes and criminal offenses.

Furthermore, the findings show that courts in Indonesia often face difficulties in distinguishing between civil disputes and criminal fraud cases involving dishonored checks. Some judicial decisions emphasize the contractual nature of the dispute and classify the matter as *wanprestasi* (default), while others recognize criminal liability where fraudulent intent can be proven. This inconsistency highlights the urgent need for clearer legal standards and guidelines.

Boundary Between Civil Default and Criminal Liability

One of the central findings of this research concerns the distinction between civil default and criminal liability in cases involving dishonored checks. The study confirms that not every dishonored check constitutes a criminal offense. In principle, when a debtor fails to fulfill payment obligations arising from a lawful agreement, the matter should first be treated as a civil dispute under contract law.

Civil default occurs when the debtor is unable to fulfill contractual obligations due to financial difficulties, business losses, or economic circumstances without any intention to

deceive the creditor. In such circumstances, the legal consequences should be limited to civil remedies, including compensation claims, contract termination, or debt restructuring. This approach aligns with the principle of *pacta sunt servanda*, which recognizes agreements as binding law between parties.

However, criminal liability may arise when the debtor intentionally issues a check while knowingly lacking sufficient funds and uses the check as a means to deceive the creditor. The existence of mens rea or fraudulent intent becomes the determining factor distinguishing civil breach from criminal conduct. Therefore, criminal sanctions should only be imposed when evidence demonstrates deliberate deception, bad faith, and intentional fraudulent conduct.

The findings also reveal that law enforcement institutions occasionally criminalize contractual disputes without sufficiently examining the existence of fraudulent intent. Such practices create legal uncertainty and may undermine business confidence in the banking sector. The overcriminalization of civil disputes risks transforming criminal law into a tool for debt enforcement, which contradicts the principle of *ultimum remedium* in criminal justice (Sulistiani & Fakhriah, 2023)(Nafid et al., 2024).

In practice, debtors experiencing genuine economic hardship may become vulnerable to criminal prosecution merely because they are unable to honor issued checks. This condition can negatively affect business sustainability and discourage economic activities. Consequently, a balanced legal approach is necessary to ensure both creditor protection and debtor rights.

The research further emphasizes that judicial interpretation plays a critical role in determining the legal classification of dishonored checks. Courts must carefully analyze the chronology of transactions, the intention of the parties, and the presence of fraudulent elements before imposing criminal liability. Without clear standards, inconsistent legal application may continue to occur.

Legal Reconstruction for Fairness and Legal Certainty

Based on the findings, this study proposes a legal reconstruction aimed at providing greater fairness, legal certainty, and consistency in the use of checks as security instruments in banking agreements. The reconstruction is necessary because current legal regulations fail to comprehensively address the practical realities of banking transactions involving checks.

1. Explicit statutory regulations should be introduced to define the legal status of checks used as guarantees in credit agreements. Such regulations would reduce ambiguity and provide guidance for banks, debtors, courts, and law enforcement authorities. Clear legal definitions are essential to prevent differing interpretations and inconsistent judicial decisions.
2. The law should expressly recognize checks only as additional guarantees rather than proprietary security rights. This clarification would prevent creditors from assuming that checks provide executorial powers similar to formal collateral institutions. At the same time, debtors would gain greater understanding regarding the legal implications of issuing checks.
3. Dispute resolution involving dishonored checks should prioritize civil law mechanisms before criminal law intervention. Civil remedies such as mediation, restructuring, negotiation, or compensation claims should become the primary approach in resolving disputes arising from contractual relationships. Criminal prosecution should remain limited to cases where fraudulent intent can be clearly established through evidence.
4. Banking institutions must strengthen prudential principles in assessing debtor credibility and financial capability before granting credit facilities. Reliance solely on checks as

guarantees reflects inadequate risk management practices. Banks should instead utilize comprehensive collateral systems and proper credit analysis to minimize future disputes.

5. Law enforcement authorities require clear procedural guidelines in handling cases involving dishonored checks. Such guidelines would help distinguish between ordinary contractual defaults and genuine criminal fraud. By establishing objective standards for determining fraudulent intent, legal certainty and consistency can be significantly improved.

Ultimately, the proposed legal reconstruction seeks to create a more balanced legal framework that protects both creditors and debtors while preventing the misuse of criminal law in private commercial disputes. A clear and proportional legal approach would contribute positively to banking stability, business confidence, and the development of fair commercial practices in Indonesia.

CONCLUSION

This study concludes that the use of checks as security instruments in banking credit agreements is not explicitly regulated under Indonesian law, although such practice is permitted based on the principle of freedom of contract. Legally, checks function only as additional guarantees and do not create proprietary or preferential rights for creditors. In cases where checks cannot be honored due to insufficient funds, the dispute should primarily be resolved as a matter of civil default arising from contractual obligations. Criminal liability should only apply when there is clear evidence of fraudulent intent or deliberate deception by the debtor at the time the check is issued. Therefore, legal reconstruction is necessary to provide greater legal certainty, establish clearer limitations between civil and criminal liability, and prevent the misuse of criminal law in resolving private banking disputes.

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