

Ratio Decidendi of the Panel of Judges in Passing Judgement (Case Study of Case Decision No. 202/Pdt.G/2023/PN.Gin)

Original Article

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Received : 24 November - 2024

Accepted : 26 December - 2024

Published online : 31 December - 2024

Abstract

This paper aimed to find out more deeply and understand the validity of debt and receivable agreements made by debtors and creditors with collateral for joint assets and to be able to find out and analyze the ratio of decisions of the Panel of Judges in handing down decisions. The method used is the normative research method, which uses several types of approaches, namely the case approach and the statute approach, the context of which is carried out by examining laws relating to legal issues. The results obtained from this research are that the debt and receivable agreement made by the parties in case Number 202/Pdt.G/2023/PN.Gin is not in accordance with the provisions of Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage and ratio decidendi The Panel of Judges in this decision did not contain a legal basis explaining that the debt and receivable agreement made by the parties was legally valid.

Keywords: Agreement, Ratio Decidendi, Validity.

1. Introduction

A debt and credit agreement are an agreement made in writing or unwritten which is agreed by the parties to comply with the provisions contained therein, especially in terms of debt and credit (Sjahdeini, 2009; Tjoanda et al., 2021). In debt and credit agreements usually contain provisions related to collateral, collateral is something given to the lender (creditor) to create confidence that the recipient of the loan (debtor) will fulfil obligations that can be valued in money arising from an agreement (Tiodor & Tjahyani, 2023). Article 1131 of the Civil Code explains 'All movable and immovable property of the debtor, both existing and future, shall be security for the debtor's personal obligations.' Thus, according to this article, all assets of a person will automatically become collateral for debts that have been made, both existing and non-existing objects. This reinforces that a creditor can be granted security in the form of the debtor's property even without having specifically agreed beforehand.

Usually, collateral provided by debtors consists of immovable property such as houses, buildings, or land, which is pledged using the Certificate of Ownership (SHM) (Fauziana & Mashdurohatun, 2019; Yuris & Sudiro, 2023). This is stipulated in the debt and credit agreement signed by both parties: the debtor (who receives the loan and owns the collateral/Certificate of Ownership) and the creditor (who provides the loan). However, the situation differs when the debtor and the owner of the Certificate of Ownership are separate parties - for example, when the husband owns the Certificate of Ownership while the wife is the debtor. Based on Article 35 paragraph 1 of Law No. 1 of 1974 concerning Marriage which states 'property obtained during marriage becomes joint property'. Which means that the



Certificate Of Ownership is joint property, therefore based on the provisions of Article 36 paragraph 1 of Law No. 1 of 1974 concerning Marriage 'regarding joint property, the husband or wife can act on the consent of both parties', if in the debt and credit agreement there is no signature of the husband or wife, the agreement is declared invalid.

Decision of the Gianyar District Court number 202/Pdt.G/2023/PN.Gin which is a tort lawsuit due to debt and credit. The case occurred between Ni Wayan Londri as the plaintiff and I Nyoman Ratawan as the defendant. The incident started when Ni Wayan Londri borrowed Rp771,000,000 to I Nyoman Ratawan by pledging a villa. Ni Wayan Londri and I Nyoman Ratawan made and signed a debt and credit agreement stating that a piece of land in the name of I Nyoman Murdika (Ni Wayan Londri's husband) with Certificate Of Ownership No.2184 / Ubud Village with an area of 400M2 based on measurement letter No. 722/2007 would be used as collateral, and that a piece of land in the name of I Nyoman Murdika would be used as collateral: 722/2007 will be used as collateral, then the agreement is brought before a notary and the Certificate Of Ownership is reversed into the name of I Nyoman Ratawan by making a Sale and Purchase Deed (AJB). If Ni Wayan Londri already has money to pay the debt to I Nyoman Ratawan then the Certificate Of Ownership will be reversed back into Ni Wayan Londri's property.

After the ownership of the villa became the property of I Nyoman Ratawan, renovations were made to the villa with the total value of the villa becoming -/+ 10 Billion. After seeing the condition of the villa that had changed to be better, Ni Wayan Londri wanted to return the money borrowed in the amount of Rp771,000,000 and get the freehold of the villa back, but I Nyoman Ratawan refused, because the price of the villa after renovation was -/+ 10Milyar. I Nyoman Ratawan wanted Ni Wayan Londri to pay 10 billion, but Ni Wayan Londri was only willing to pay the amount of money he borrowed, which was Rp771,000,000. Ni Wayan Londri sued I Nyoman Ratawan for the tort of debt and credit.

The decision of the Gianyar District Court is considered to have been erroneous because in the interpretation of the law between the rules of law and the facts of law there are discrepancies. The Defendant believes that the consideration of the Panel of Judges is not correct in the implementation of the law, in its consideration the Panel of Judges stated that 'based on the considerations as described above, the Panel has an opinion regarding the legal relationship between the Plaintiff and the Defendant is true debt and credit and not sale and purchase'. In the verdict, the Panel of Judges stated that 'based on the aforementioned considerations described above, the Panel is of the opinion that the legal relationship between the Plaintiff and the Defendant is true debt and credit and not sale and purchase'.

Based on the description above, it can be seen that the verdict 'states that the debt and credit agreement dated 22 December 2021 made and signed between the Plaintiff and the Defendant with a guarantee of Certificate Of Ownership No. 2184 land measuring 400M2 (disputed object) in the name of I Nyoman Murdika is legally valid and binding for the Plaintiff and the Defendant'. This raises the question of what is the Ratio Decidendi of the panel of judges in handing down the decision, and how the debt and credit agreement can be said to be legally valid even though it does not fulfil Article 36 paragraph 1 of Law No. 1 of 1974 concerning Marriage, what are the legal consequences of the Panel of Judges who handed down a decision that is not in accordance with the provisions of the rules.

There are various other studies that raise topics related to Ratio Decidendi. First, a study entitled 'Ratio Decidendi of the State Administrative Court on the Dismissal of Civil Servants' written by Arga Andika Putra Wibawa and Nynda Fatmawati Octarina. The research was published in 2023. Second, a study entitled 'Ratio Decidendi of Slot Online Gambling

Offenders (In Decision Number 2283/Pid.B/2021/PN.SBY)' written by Anisa Dwi Andiani and Ahmad Sholikhin Ruslie. The research was published in 2023.

This research raises the formulation of the problem of what is the ratio decidendi of the panel of judges in passing the verdict and how the validity of the debt and credit agreement in case number 202/Pdt.G/2023/PN.Gin legally. This research aims to know and understand that the importance of ratio decidendi for the panel of judges in seeing and considering the rules of law and legal facts to make a decision.

2. Methods

This research employs a normative legal research methodology, examining secondary data through the lens of legal rules and doctrines to address the research questions. The analysis utilizes two primary approaches: the case approach and the statutory approach.

3. Results and Discussion

3.1. Legality of Debt and Credit Agreement in Case Number 202/Pdt.G/2023/PN.Gin by Law

In general, an agreement is defined as an agreement either in writing or orally, made by two or more parties in which the parties agree to comply with each of the provisions contained in the agreement. Article 1313 of the Civil Code explains that 'an agreement is an act by which one or more people bind themselves to one or more other people'. Markovits (2003) defines an agreement as 'a legal event in which one person promises to another person or in which the two people promise each other to carry out a matter'. Meanwhile, Yahya Harahap defines an agreement as 'a legal relationship of wealth / property between two or more people that gives a party the right to fulfil its obligations'. An agreement can be said to be valid if it fulfils the provisions of Article 1320 of the Civil Code, namely the existence of an agreement, capability, a certain thing, and a halal cause (Putra, 2023).

Debt and credit are defined as an agreement between one party and another party with the object of the agreement being money. The Civil Code regulates debt and credit events in Article 1754 as an act of Borrowing and Lending which explains that 'Borrowing and Lending is an Agreement by which one party gives to the other party a certain amount of goods that are consumed due to use, with the condition that the latter party will return the same amount of the same kind and condition'. The position of one as a lender or debtor (creditor) with the other party receiving a loan of money (debtor). Debt as an agreement creates rights and obligations for the parties who make it (Rizqi, 2024).

Debt and credit agreements can be made based on what underlies the making of the agreement. Contracts or agreements are binding for business transactions whether on a small or large scale, as long as their function is important to ensure the certainty of the contents of the agreement for the parties to be implemented and fulfilled and if at any time there is a violation, the violating party must be prepared with all the consequences and be responsible based on the contents of the agreement (Cowandy, 2021). In Article 1338 of the Civil Code, the *Pacta Sunt Servanda* Principle applies (Jamil & Nury & Rumawi, 2020), which means that the agreement is a law for the makers, if there is a violation, the provisions in accordance with those in the agreement that have been agreed upon by the parties apply (Fadzoli, 2020).

A writing that can have evidentiary value if it fulfils the conditions, namely that the writing or letter must be accompanied by a signature, contains the legal acts of the parties and is made as evidence of the legal acts in it. The validity of the agreement as a deed under the

hand is regulated in article 1874 of the Criminal Code which explains several requirements, namely formal and material requirements (Maharani, 2020). The formal requirements are that the agreement is in writing, contains the signatures of the parties, contains the place and date of signing and is made by the parties without the assistance of an authorised official (Bujangga & Purwanto, 2022). The material requirement is that there is information containing an agreement related to legal relations and legal consequences and is made to be able to prove the truth of a legal relationship and legal acts (Amaliya et al., 2022).

In the event that the parties involved in the agreement are husband and / or wife, by making joint property as collateral, the husband or wife can act on joint property with their agreement. The agreement can be marked by the signatures of the parties to the agreement, it can be said that when a husband or wife makes a debt and credit agreement by making joint property as collateral, then those who should sign the agreement are husband and wife, if only one of them signs, the agreement can be said to be defective and considered invalid. This is based on Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage (Edlynafitri, 2017).

In Case Number 202/Pdt.G/2023/PN.Gin, it starts with the parties making a debt and credit agreement. The debt and credit agreement were signed by the creditor and the debtor, with the guarantee of a plot of land belonging to the debtor's husband, but the problem in this case is that the debtor's husband did not sign the debt and credit agreement. Based on the provisions in Law No. 1 of 1974 concerning Marriage Article 36 paragraph (1) which explains that 'regarding joint property, the husband or wife can act upon the consent of both parties'. So, in accordance with the explanation above, the parties who should sign the debt and credit agreement are the debtor and creditor along with the debtor's husband, as proof that the debtor's husband knows that his joint property is used as a collateral object in a debt and credit agreement. Meanwhile, what happened in the debt and credit agreement in this case was that it did not include the signature of the debtor's husband, there were only signatures from the debtor and creditor. Based on this, it can be concluded that the debt and credit agreement in the case is said to be defective which results in null and void.

3.2. Ratio Decidendi of the Panel of Judges in Reaching a Verdict

Ratio decidendi comes from Latin which means 'reason for decision', it can also be interpreted as a rational reason. If it is related to the judge's decision, the ratio decidendi means the rational or logical reasons that the judge has in making a decision, which of course is also based on considerations that are objective by prioritising the objectives of the law, namely justice, certainty and expediency (Bisma, 2023).

In the verdict of the Gianyar District Court case number 202/Pdt.G/2023/PN.Gin, the Panel of Judges ruled 'Stating the law that the Debt and Credit Agreement dated 22 December 2021 made under the hand and signed between Plaintiff I and Defendant I with the guarantee of the property land No. 2184 covering an area of 400 M2 (the Disputed Object) in the name of Plaintiff II is Legally Valid and Binding for the Plaintiffs and Defendant I' with considerations stating 'Considering, that based on the considerations as described above, the Tribunal is of the opinion that the legal relationship between the Plaintiffs and Defendant I is true debt and credit and not sale and purchase so that the actions of Defendant III in making Deed of Sale and Purchase Agreement No. 24 dated 22 December 2021 juncto Deed of Power of Sale No. 25 dated 22 December 2021 juncto Deed of Sale and Purchase No. 90/2022 dated 19 July 2022 which was made based on the existence of a debt and credit relationship between Plaintiff I and Defendant I'.

In the discussion point 3.1. The author has described the validity of the debt and credit agreement in Case Number 202/Pdt.G/2023/PN.Gin by law. Based on this discussion, it can be concluded that the debt and credit agreement in the case is said to be defective which results

in null and void due to the lack of parties signing the debt and credit agreement. If you look at the ratio decidendi of the Panel of Judges which states that the debt and credit agreement is legally valid, the author can say that the Panel of Judges should be able to include the legal basis used so that it is clear what can make the debt and credit agreement legally valid. Because in the rules that are still valid today, namely Law No. 1 of 1974 concerning Marriage Article 36 paragraph (1) explains that 'regarding joint property, the husband or wife can act on the consent of both parties'. In accordance with the explanation above, the parties signing the debt and credit agreement should be the debtor and creditor along with the debtor's husband, as proof that the debtor's husband knows that his joint property is used as a collateral object in a debt and credit agreement (Akomar et al., 2026).

A judge's decision should contain legal objectives as stated by Gustav Radburch, namely certainty, justice, expediency (Yulianingrum & Prasetyo, 2022). However, in Decision Number 202/Pdt.G/2023/PN.Gin it can be said that the decision of the Panel of Judges was not made by considering legal objectives, the Panel of Judges did not contain the legal basis used to say that the agreement was legally valid, resulting in a lack of legal certainty, even though the Panel of Judges is obliged to decide cases based on the Law, this certainly does not provide justice for the parties and the lack of benefits that can be reaped by the parties, of course, the decision also raises many questions from various parties because it is considered less objective (Hamdani & Huda, 2024). The panel of judges' decision has generated controversy in the community, particularly regarding the objectivity of their ruling. Critics argue that the panel demonstrated bias and failed to maintain judicial neutrality. If this happens continuously, it is feared that it will result in a loss of public confidence in the judiciary, especially the judiciary (Wiyono & Yulianingsih, 2024).

Law No. 48 of 2009 Concerning Judicial Power Article 53 paragraph (2) explains that 'determinations and decisions as referred to in paragraph (1) must contain legal considerations of judges based on precise and correct legal reasons and bases'. Based on the provisions of the Article, the Panel of Judges should include the correct and correct legal basis in the Decision, so that the Ratio Decidendi of the Panel of Judges in reaching a decision will be in accordance with the objectives of the law.

4. Conclusion

The validity of the debt and credit agreement in case number 202/Pdt.G/2023/PN.Gin is not in accordance with the provisions of Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage which explains that 'regarding joint property, the husband or wife can act on the consent of both parties'. So, in accordance with the explanation above, the parties signing the debt and credit agreement should be the debtor and creditor along with the debtor's husband, as proof that the debtor's husband knows that his joint property is used as a collateral object in a debt and credit agreement. However, the agreement contains only the signatures of the debtor and creditor, omitting the debtor's husband's signature. Consequently, this omission renders the debt and credit agreement legally defective and therefore null and void.

When looking at the ratio decidendi of the Panel of Judges which states that the debt and credit agreement is legally valid, the author can say that the Panel of Judges should be able to include the legal basis used so that it is clear what can make the debt and credit agreement legally valid. The decision of the Panel of Judges was not made by considering legal objectives, the Panel of Judges did not include the legal basis used to say that the agreement was legally valid, resulting in a lack of legal certainty, even though the Panel of Judges is

obliged to decide cases based on the Law, this certainly does not provide justice for the parties and the lack of benefits that can be learned by the parties, of course the decision also raises many questions from various parties because it is considered less objective.

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