



Implementation of Corporate Guarantee for the Debt of Debtor at PT Bank Danamon Indonesia Tbk, Padang Branch

Nevina Yuliani; Busyra Azheri; Wetria Fauzi

Faculty of Law, Andalas University, Padang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i6.1279>

Abstract

Bank is a business entity which collect fund from citizen in the form of deposits and re-distribute it back in the form of credits (lending) or other in order to improve the social welfare. Giving credits to citizen is based on in-depth analysis towards the debtor's character and ability to pay off the debt. The debtors must give out collateral and the bank must analyze the character, capability, collateral capital and business prospect of the debtor. The collateral given by the debtors can be divide in two form, fixed asset and non fixed asset, the example of non fixed asset is corporate guarantee. This type of collateral is commonly accepted in state owned bank and private bank, such as in PT. Bank Danamon Indonesia, Tbk. Bank Danamon is one of leading bank for lending chatategories in Indonesia and supported by thousands branch. The main problem in this study is how the implementation of binding corporate guarantee as collateral at PT. Bank Danamon Indonesia, Tbk Padang Branch. And does the corporate guarantee can settle the issue of non-performing loan in PT. Bank Danamon Indonesia, Tbk. The type of research used in this thesis is empirical legal research. The specification of research used in this thesis is analytical descriptive. The results of the author's research showed that although the Corporate Guarantee Agreement Deed stated the guarantor must bail-out the debtor obligation upon the bank request without any evidences of debtor neglected. However, the issue of non performing loan in PT Bank Danamon Indonesia, Tbk Padang Branch has never been settled by law enforcement or foreclosure. The conclusion is that corporate guarantee at PT Bank Danamon Indonesia, Tbk Padang branch is merely a moral obligation, and acted as a additional collateral to increase the assuredness of the bank because the main collateral given to the debtor is already sufficient.

Keywords: *Corporate; Guarantee; Bank*

Introduction

Every country in the world has a financial institution that regulates its national financial conditions, and this authorized institution is managed directly by a country or agency appointed by the state such as a bank.¹ The definition of a bank itself is a business entity that collects funds from the public in the form of

¹ Adami Chazawi, *Crimes Regarding Counterfeiting*, (Jakarta: PT Raja Grafindo Persada, 2002), p. 26.

deposits and distributes them to the community in the form of credit and or other forms in order to improve the lives of many people.² Financial institutions, especially the banking sector as one of the main pillars in the implementation of development activities, have an important and major role in people's lives.

The bank acts as a form of financial institution that aims to prosper the public at large, by providing credit, financing, and other services. As for providing loans, financing, and other services, it is done with own capital, or with funds entrusted by third parties or by distributing new payment instruments in the form of demand deposits. Banks always pay attention to aspects of collateral (collateral) as the basis for granting credit primarily to eliminate credit risk, as well as through assessing the character, ability, capital and business prospects of the debtor or known as the Five C's, namely: Character (character), Capacity (ability), Capital (capital), Collateral (collateral) and Conditions of economic (conditions or business prospects).

Article 10 Bank Indonesia Regulation number 07/2 / PBI / 2005 concerning Asset Quality Rating for Commercial Banks, classifies problem loans into several categories, among others: current, special attention, substandard, doubtful and loss. At the end of each month banks are required to report the results of the classification to BI or currently to the OJK, as one of the basic analyzes in granting credit to debtors. Banks must also know the purpose of using credit and credit development plans and the urgency of the credit requested by prospective borrowers, which is called the 5 P principle which consists of:³

1. Party

The parties are the central point that is considered in every credit extension. For that the creditors must obtain a trust in the parties, in this case debtur, how its character, abilities and so on.

2. Purpose

The purpose of lending is also very important to be known by creditors. It must be seen whether the credit will be used for positive things that are really intended for the purpose as promised in a credit agreement.

3. Payment (payment)

It must also be considered whether the source of credit payments from prospective borrowers is sufficiently available and secure enough, so that it is hoped that the credit to be launched can be paid back by the debtor concerned. In this case, the debtor must have a source of income and whether the income is sufficient to repay the credit after the loan is granted.

4. Profitability (profitability)

The element of profitability by the debtor is no less important in the provision of credit, so creditors must anticipate whether the profits to be earned by the company are greater than the loan interest and whether the company's income can cover credit repayments, cash flow and so on.

5. Protection (protection)

A protection for credit is needed by the debtor company, for that protection of the group of companies or collateral from holding and or personal guarantee of the owner of the company is important to be

² Article 1, Law No. 7 of 1992 concerning Banking as amended by Law number 10 of 1998.

³ Djoni S. Gazali and Rachmadi Usman, *Banking Law*, Cet: III, (Jakarta: Sinar Grafika, 2016), p. 274.

considered, especially in case if things happen outside the scenario or outside of the original prediction.

The bank also demands additional collateral in the form of material collateral or collateral from certain parties. One of them is a corporate guarantee that is incorporated. The birth of a guarantee agreement can also be said to be the formation or a guarantee has been made either by an individual (personal guarantee) or a business entity (corporate guarantee).⁴ The difference in implementing juridical essence with what is called a corporate guarantee because the implementation in the banking world wants the process of returning the funds given to the public effectively and quickly can be fulfilled. The gap between practice and theory is evident, especially in the chapters on debt security regulated in the Civil Code. In the practice of the banking world there are different applications where with a corporate guarantee, the obligation to fulfill the achievements of the guarantor is instantaneous when the debtor is guaranteed to default. Of course the actual conditions are not so simple, but must go through several stages as regulated in Article 1820 to Article 1864 of the Civil Code, the seventeenth chapter on debt security. These articles form the basis for regulating the corporate guarantee mechanism.

Corporate Guarantee in lending is commonly applied in the banking world, both state-owned banks and private banks. One of the national private banks which is the top private bank in terms of assets in Indonesia is Bank Danamon. Bank Danamon is one of the national private banks that is able to survive amidst storms in the banking world. Since its establishment in 1956 until 2019, it has continued to experience several major stock changes. After the monetary crisis in 1998, Bank Danamon was taken over by the Indonesian Bank Restructuring Agency or IBRA. And in early 2000 Danamon merged with several banks and the name Danamon was maintained as a large bank among the other merged banks. The majority shares of Bank Danamon were owned by the government at that time. In 2003, government shares were sold to Temasek, one of Singapore's financial institutions. And in 2018 after nearly 15 years of being the majority shareholder, Temasek sold its shares to MUFG Japan (Mitsubishi group). In 2019, MUF shares will reach more than 90 percent. And finally in early 2019, Bank Danamon acquired shares from Bank Nusantara Parahyangan.

Bank Danamon continues to run normally despite a transfer of ownership and each customer, either a savings owner or a loan borrower, can conduct banking activities without significant obstacles. The process of granting credit facilities at Bank Danamon continues as usual, and as long as credit applications at Bank Danamon meet the requirements of both documents and collateral, credit approval can be given. Bank Danamon has a Credit Program or Credit Policy in accordance with Article 2 of the OJK regulation no. 42/POJK.03 / 2017 concerning Obligations for the Compilation and Implementation of Credit Policy or Bank Financing for Commercial Banks where Banks are required to have a written credit or financing policy for the Bank. If not implemented, according to article 7 the Bank may be subject to administrative sanctions that affect the health rating of the bank and other administrative sanctions in accordance with statutory provisions.

Every three years, Bank Danamon's Credit Program is revised and guarantees given by debtors can be in the form of guarantees of fixed assets such as land for housing, shop houses and non-fixed assets such as: cars, goods stock, accounts receivable, Personal Guarantee and Corporate Guarantee. However, for non-fixed asset guarantees this is called collateral support and additional collateral. Corporate guarantees (personal guarantees) and personal guarantees (Personal Guarantee) are classified as additional

⁴ Provision of guarantees must be followed in good faith. The giver of security is expected to have an attitude which is not only subject to the things that are explicitly stated in the agreement, but also to the propriety, customs, or law which gives an obligation according to the nature of the agreement. Ridwan Khairandy, *Goodwill In Freedom of Contracting*, (Jakarta: University of Indonesia Faculty of Law Post-Infrastructure Program, 2004), p. 190-191. UNIVERSITAS Indonesia, 2004), p. 190-191.

collateral and are one of the requirements to provide confidence to the bank in deciding credit, among others in terms of:⁵

1. Credit facilities provided to debtors, both individuals and companies both in the form of legal entities and business entities on the grounds that credit in the name of the debtor is still related to the ownership of other companies, so the company must guarantee the debtor's debt.

2. Credit facilities provided to debtors for certain reasons are required to be provided with additional collateral in the form of a corporate guarantee, such reasons include:

- a. Guaranteed fixed assets are insufficient to cover the amount of credit.
 - b. The credibility of the debtor or keyperson is still in doubt in managing the business.
 - c. Debtor business is a joint venture with another party or is a group (one obligor).
 - d. Debtor business is still relatively new (start up company)
3. Relatively large amounts of credit. (large credit exposure)

From the above background it is very interesting to write a thesis about Implementation Of Corporate Guarantee For The Debt of Debtor At PT Bank Danamon Indonesia Tbk, Branch of Padang, From this background, problems will be limited as follows: How is the implementation of the binding of the guarantee against debt by the company (Corporate Guarantee) as collateral for credit at PT. Bank Danamon Indonesia, Tbk Padang branch b) Can the guarantee of debt protection by the company (Corporate Guarantee) guarantee the settlement of problem loans at PT Bank Danamon Indonesia, Tbk Padang branch.

Research Method

Based on the formulation of the problem and research objectives, the method of approach used is an empirical juridical approach, to see how the implementation / implementation of a debt insurance guarantee by a company against the debts of problem debtors at PT. Bank danamon Indonesia, Tbk Padang branch through a field study conducted by direct observation and interviews, so that clarity is obtained about the things studied. Sociological or empirical legal research is carried out by examining the field which is the primary data. In carrying out this empirical juridical approach, the method used is a qualitative method. Because of several considerations, namely: first, adjusting this method is easier, when faced with multiple facts; second, this method presents directly the nature of the relationship between researchers and respondents; third, this method is more sensitive, and more adaptable to the many sharpening of the mutual influence on the value patterns encountered.

⁵ Pre Survey, interview with Julyanto, Bank Danamon Pekanbaru Credit Approver, January 23, 2019.

Discussion

1. The Implementation of The Binding of The Guarantee Against Debt by The Company (Corporate Guarantee) As Collateral For Credit at PT. Bank Danamon Indonesia, Tbk Padang branch

In the credit policy at Bank Danamon, the collateral aspect is a very important aspect in granting credit because the execution of collateral is one of the solutions in the event of a problem loan. Credit terms with main collateral and additional collateral are common in any lending, but at Bank Danamon in addition to the main collateral, the credit policy at Bank Danamon also requires additional collateral by material guarantees or collateral guarantees from certain parties. And this guarantee is commonly known as the Corporate Guarantee.

According to the Bank Danamon Padang Credit Support Section, this corporate guarantee is a tool that can provide optimal protection and is considered to be able to support confidence in the lending mechanism. The guarantee given can result in financial obligations of the guarantor (guarantor) to bear the fulfillment of the achievement if the guaranteed party (the debtor) breaches the promise⁶ Until now, in Bank Danamon the provision of credit in the presence of a Corporate Guarantee is still required by credit breakers, but only for specific segments / divisions of SME, Commercial and Corporate or in other words for loans with amounts above Rp. 500,000,000 (five hundred million rupiahs) but for the purpose of using the credit for working capital and investment. For Consumer Credit and DSP, there is never a company guarantee required, but it can be in the form of an individual guarantee.

At Bank Danamon Padang Branch, there are only SME and Commercial segments / divisions while for Enterprise banking only at Headquarters, so the conditions that will be further explained are only for SME and Commercial segments / divisions. There is a significant difference for credit breakers (approvers) requiring an additional Company Guarantee between the SME segment / division and the Commercial segment / division.

a. Providing Corporate Credit for SME segments / divisions.

Credit Breakers in the SME segment / division, require a Company Guarantee for the following conditions:

1) The business feasibility of a prospective debtor is still questionable

Example: if you see from your current account mutation, the use of credit is very high but the transactions are also very good.

2) Rather generation

The company is a hereditary business, so far managed by parents and then transferred to their descendants (children), because the bank is not sure of the child's ability to manage the business, it is implied that there is a Company Guarantee from parents. This is because the Bank considers that in the process of generation over, the parents of the debtor have not fully let go of the business to the hands of their children, or in other words they are still managing the business.

3) There is a financial link between the debtor and the guarantor, so a Corporate Guarantee is requested.

⁶ Interview with Leonardi Fansukri, CDCM Supervisor Bank Danamon Padang Branch 10 September 2019.

4) Prospective debtor is a limited liability company (PT. Closed)

A company guarantee is required at a minimum from the management of PT. Closed with the reason that the management of PT. Closed is the person who is fully responsible for the business continuity of PT. The closed.

b. Providing Corporate Assurance Credit for commercial segments / divisions.

For Commercial segments / divisions, Corporate Jamian is required for the following conditions:

1) Prospective debtors are legal entities or business entities

Loans disbursed to companies both in the form of legal entities and business entities on the grounds that credit in the name of the company must be guaranteed by other parties (other companies) that have affiliations with debtors (are one obligor). For commercial segments / divisions the requirements for additional Company guarantees are required if the prospective Debtor is a business entity or legal entity, required for the Company which owns shares or as the largest shareholder (ownership > 50%).

2) Fixed asset collateral is insufficient to cover the amount of credit.

Credit policies at Bank Danamon for this segment / division, although collateral that does not cover the amount of credit can still be covered with additional guarantees including corporate guarantees with the following conditions:

- a) Debtor business has very good prospects
- b) Business management has been running well and is very prudent (careful)
- c) Business is very marketable and profitable (including businesses that are the target market)
- d) Business experience of more than 2 (two) years in the said business field.
- e) Credibility of Debtors at other Banks and at Bank Danamon is very good (collectibility is always at number 1 or current collectibility)
- f) Has a well-known business reputation in the area.

3) Debtor credibility is still doubtful in managing its business.

The debtor is a new player in the business but the value of the guarantee greatly covers the amount of credit so that a Corporate Guarantee must be added either from the referee or from the family company of the prospective debtor.

4) Transferring generations

The company is a hereditary business, so far managed by parents and then transferred to their offspring (children), because the bank is not sure of the child's ability to manage the business, it is required that there is a guarantee of the Company owned by his parents.

5) Debtor business is a joint venture with another person.

In this case, the debtor is not only involved in the debtor's business but also other parties because the business carried out is a joint venture, for this condition a Corporate Guarantee from the business partner of the prospective debtor is needed (One Obligor).

6) Credit limit requested by the Debtor is relatively large (large credit exposure).

In this case, Bank danamon has a policy for each relatively large amount of credit (usually above Rp. 10,000,000,000.00) required or required to provide credit.

2. *Settlement of Non-Performing Loans With Guaranteed Debt Guarantee by the Company (Corporate Guaraantee)*

The initial effort taken by the bank at the time of rescue efforts and settlement of debtors' problem loans is by first negotiating, the bank against negotiating the debtors will transparently or openly tell the real conditions of the business or company both for management and financial conditions that cause debtors having difficulty in repaying loans to banks. Banks in such conditions are supported by adequate professionalism in this case either by Relationship officer (RO) or Remedial Credit officer (ROC) must be able to find effective and efficient solutions and determine the most appropriate credit policy to overcome the financial problems being faced by its debtors. Banks inevitably have to have a new paradigm in managing credit, to collect current loans that have the potential to default by saving credit or having to immediately settle loans in the event that the bank has the confidence that the debtor can no longer fulfill his debt obligations to the bank. Negotiation efforts only apply to debtors who are in good faith and cooperative and still have the potential to generate neet cash flow with good business prospects.

Credit settlement options will only be made if credit rescue efforts cannot be implemented. Important things that must be considered before undertaking credit settlement measures include:

- a. Certainty that the provision of credit to debtors is in accordance with the prudential banking principle and that it is in line with Bank Danamon's Credit policies, which are compiled based on guidelines for the preparation of bank credit policies launched by Bank Indonesia.
- b. Certainty that the provision of credit does not violate the provisions of the legislation in force, is still within the limits of the economic sector, market segments and within the risk tolerance determined according to capabilities or existing limitations.
- c. Certainty that the prospective debtor has no good intention to pay off the credit or debt to the bank.
- d. Certainty that credit collateral submitted as a second way out really covers and has preferences and executables.
- e. Certainty that banks have adequate networks at the time the credit settlement effort is taken.
- f. Certainty that legal documents stored with banks are complete and perfect.
- g. Certainty that the costs involved in carrying out credit settlement measures do not create a separate loss burden for the Bank.

At the beginning of each legal effort before the completion of the debtor in order to settle the problematic debts the effort made by Bank Danamon is to negotiate with the debtor to be willing to pay off debts to the bank. The collection effort undertaken by the bank to the debtor must initially be carried out persuasively but if persuasive efforts are seen to be unsuccessful then the repressive effort is the final effort that must be carried out by the bank. If within the period agreed by the debtor cannot fulfill its obligations to the bank, the bank must collect / collect the creditors. Collection efforts undertaken by Bank Danamon for debtors with problem loans were carried out by doing :⁷

⁷ Interview with Firmansyah, Remedial Officer of Bank Danamon Padang Branch, 13 September 2019

1. Collection outside the court proceedings taken by Bank Danamon, among others, is carried out by:

- a. Direct billing was taken by Bank Danamon which was initially carried out by RO as the account manager, but in the event that the collection effort was not successful then submitted to the Remedial Officer Credit (ROC) at the coordinating branch in charge. Direct billing can initially be overtaken with a summons that is followed up with persuasive efforts face to face and family. This billing effort is also carried out against the guarantor if the debtor is also guaranteed with a Corporate Guarantee.
- b. Search for debtors' collateral loans in the form of cash collateral, such collateral for loans usually in the form of deposits or gold for which binding of collateral for loans is done through a pawnshop.
- c. Voluntary sale of collateral loans.
When RO believes that the debtor's financial condition is no longer possible, the RO or ROC appointed to handle the problematic debtor's credit must persuasively persuade the debtor or guarantor to sell the collateral for credit or other assets to repay the Debtor's credit to the bank. Voluntary sale of collateral loans from debtors to repay debts can only be carried out if the debtor is in good faith to repay his debt to the bank.

2. Collection Through the Judicial Process.

Efforts to settle credit peacefully without going through a judicial process are not successful, so the effort made by Bank Danamon is to conduct legal efforts through the court conducted by:

- a. Request for Somatie
Submitting a Somatie application carried out by Bank Danamon is the initial process of a collection effort, the process of credit settlement through somatie includes: Submission of a request for somatie by Bank Danamon to the Head of the local Court in accordance with the legal domicile specified in the credit agreement and / or acknowledgment of debt.
- b. The next District Court after the request for somatie is received summons the Respondent somatie in this case the debtor or guarantor in accordance with the specified time. Furthermore, the Chairperson of the District Court will warn the debtor or guarantor to immediately pay off the debt obligations to the Bank.
- c. Somatie efforts taken by the Bank are often ignored by the debtor or guarantor so that usually the bank will immediately be followed up with requests for execution or filing a lawsuit / lawsuit to the debtor or guarantor in the absence of a settlement.
- d. Requests for execution may be submitted on the Deed of Recognition of Debts or collateral for loans that have been granted an executorial title "In the name of justice based on the Almighty God". Grosse Deed of Recognition of Debt or Grosse Mortgage in accordance with article 224 HIR can be carried out with stages:
 - Submission of a fiat execution request for the Debt Acknowledgment Grosse or the Mortgage Deed Mortgage.
 - After the fiat execution is given, the bank will submit the application for seizure execution.
 - The final stage of execution is the implementation of an auction which is followed up with an emptying effort if the object being executed has not been empty.
 - Filing of a Lawsuit to the Debtor and / or Guarantor

Conclusion

1. Implementation of Corporate Credit granting at Bank Danamon applies only to loans that have been running for less than two years (start up company), a subsidiary, a generation from parent to child, prospective debtors in the form of a limited liability company, Main collateral in the form of fixed assets is still lacking, the debtor business is a joint venture with others, the credit ceiling requested by the debtor is relatively large, and there is a financial link between the debtor and the guarantor of the company. The granting of company guarantees is carried out with in-depth analysis and a notarial binding is done with the Corporate Guarantee Deed.
2. Corporate Guarantee as a guarantee to increase the confidence of the bank. And the Corporate Guarantee is not the main guarantee in guaranteeing the settlement of problem loans at PT. Bank Danamon Indonesia, Tbk Padang Branch due to the following matters:
 - a. Corporate guarantee is only a moral obligation.
 - b. Corporate guarantees are only additional guarantees to increase bank confidence because the main collateral has covered most of the credit limit given to debtors.
 - c. Bank Danamon has never filed a lawsuit for the execution of the Corporate Guarantee to a State court for the resolution of problem loans with consideration of the substantial costs and reputation of the bank.

Suggestion

1. The creditor must choose a prospective guarantor who has credibility and good character and has sufficient financial capacity to guarantee the debtor for his debts to the creditor and must identify and inventory the assets of the prospective guarantor before the Company Guarantee Agreement is made.
2. Creditors must be brave to try to take steps to file a lawsuit on the execution of a Corporate Guarantee in the District Court in the event of a non-performing loan guaranteed by the Corporate Guarantee, to erase the impression that the Corporate Guarantee is only a "moral obligation" as well as to obtain a settlement of the problem loans. This step is taken after the creditor has investigated the guarantor and there are still assets that the guarantor can use to pay debtors' debts.

Reference

- Adami Chazawi, Crimes Regarding Counterfeiting, (Jakarta: PT Raja Grafindo Persada, 2002), p. 26.
- Article 1, Law No. 7 of 1992 concerning Banking as amended by Law number 10 of 1998.
- Djoni S. Gazali and Rachmadi Usman, Banking Law, Cet: III, (Jakarta: Sinar Grafika, 2016), p. 274.

Interview with Firmansyah, Remedial Officer of Bank Danamon Padang Branch, 13 September 2019.

Interview with Leonardi Fansukri, CDCM Supervisor Bank Danamon Padang Branch 10 September 2019.

Pre Survey, interview with Julyanto, Bank Danamon Pekanbaru Credit Approver, January 23, 2019.

Provision of guarantees must be followed in good faith. The giver of security is expected to have an attitude which is not only subject to the things that are explicitly stated in the agreement, but also to the propriety, customs, or law which gives an obligation according to the nature of the agreement. Ridwan Khairandy, *Goodwill In Freedom of Contracting*, (Jakarta: University of Indonesia Faculty of Law Post-Infrastructure Program, 2004), p. 190-191. UNIVERSITAS Indonesia, 2004), p. 190-191.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).