



## Guarantee Benefit for Creditor and Credit Reconstruction Effort during COVID-19 Pandemic

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### **Abstract**

Guarantee begins with the debtor credit agreement that followed with the handover of the object guarantee by debtor to creditor, where the creditors are banks. If referred in the regulation article 1 point 2 of Constitution No. 10/1998 concerning on banking stated that bank is a business entity that raised fund from citizen in the form of deposits and channeling them to the public in the form of credit and/or in other forms in order to improve the lives of many people. Bank has the important role in economic, because one of its function is giving the credit to citizen and helping the micro, small and medium enterprises. This given credit must be accompanied by collateral or collateral provisions from the debtor because it was one of the precautionary principal from Bank, and also with the efforts to protect the creditor at any time the debtor defaults. The covid-19 pandemic outbreak that had a profound impact on the entire life of society was also influenced the problem of credit and guarantee. The collateral agreement which is an *accessoire* agreement (follow-up or accompanying) follows the main or principal agreement, that is preceded by a credit agreement (debt agreement), including on what if there is bad credit and what efforts should be done by the Bank so that it does not experience even greater losses. For this reason, the writer is very interested, to find out the extent of the benefits of the collateral object for creditors as well as credit restructuring efforts during the Covid-19 pandemic.

**Keywords:** *Collateral; Creditors; Credit Agreements; Collateral Laws; Credit Restructuring*

### **Introduction**

According to (Satrio, 2002), guarantee law is a legal regulation governing collateral receivables from a creditor to a debtor, In other words. It is a law governing collateral for a person's receivables. (Salim, 2007) also provides the formulation of collateral law, namely all legal norms governing the relationship between the giver and the recipient of the guarantee in relation to the imposition of collateral to obtain a credit facility. From the two opinions, the meaning of collateral law can be concluded as legal provisions governing the legal relationship between the guarantor or debtor and the recipient of the guarantee or creditor as the imposition of a particular debt or credit with a guarantee (certain objects or persons).

Property rights as repayment of debt (collateral law) is a collateral rights attached to creditors which gives the authority to implement the execution to the property become the guarantee if debtor implement *wanprestasie* of an achievement. If there are creditors who want more position more than fellow concurrent creditors, then the creditor can pledge collateral rights as well as individual collateral rights, such as the debtor's responsibility and the existence of *Borg*. The existence of *Borg* gives him a better position because there are more than a person who can be billed or pledges a material security right that gives him the right to take precedence in taking repayment of the proceeds of the sale of certain objects or groups of certain objects belonging to the debtor, the guarantor, and there are times when it is simplified to implement their rights.

These days, the world including Indonesia is faced with a Covid-19 pandemic outbreak which greatly affects the lives of the community in health, social, legal and economic terms. in economic field there are a lot of bad loans since people have difficulty to work due to the Government policies on Social Distancing and Large-Scale Social Restrictions. The collateral agreement which is the accessoire agreement follows the principal agreement, and the extent to which the functions and benefits of the collateral object for creditors in the credit agreement will be discussed in this paper. Based on this background, the writer is interested in formulating the problem limitation, "What are the benefits of collateral for creditors and credit restructuring efforts during the Covid-19 pandemic?"

## **Theoretical Review**

### **A. The Meaning of Credit**

The term of credit is derived from roman which is *credere* or trust, Trust is a credence in delaying payments, both delays in debt and point of sale in which debtors are not obliged to pay their debts in cash but rather given trust by law in the credit agreement to pay later in stages or in installments. Because the debt is paid in installments, then the risk for the unpaid debt must be borne by the lender (Harun, 2010).

The Definition of risk there are:

- Credit risk, which is the risk arising from the failure of the parties to fulfill their obligations
- Market risk, the risk arising from the movement of market variables from the portfolio owned by the bank can harm the bank market variables, including interest rates and exchange rates
- Liquidity risk, i.e. risk due to the bank not being able to meet obligations that are due
- Operational risk, namely the risk caused by inadequate and / or malfunctioning of the internal system of human error, system failure or external problems that affect bank operations
- Legal risk, which is due to weaknesses in the juridical aspects, juridical weakness, and weaknesses in the aspect of the absence of legislation that supports or weaknesses of the agreement such as not fulfilling the legal requirements of the contract
- Reputational risk, which is partly due to negative publications relating to bank business activities or negative perceptions of banks (Direktorat Perizinan dan Informasi perbankan, 2009).

### **B. The Basic Law of Credit Agreement**

In every banking and credit activity, it needs a juridical provision that become the basic law. This was the consequence from a principal that Indonesia is country of law, where the laws and regulations ranked as 'very important' in law sources. Moreover, the act of legal credit rating needs a strong basis of law which seen on the following points below:

- a. The article 1338 paragraph 1 of the civil code stated that “all agreements made legally apply as a law to those who make them”. Then, with the provision in the Article 1338 paragraph (1), it is applicable that every valid or legal agreement has the same strength as the constitution power.
- b. In Indonesia, banking is regulated within the constitution Number 10/1998 which arrange on the change of law Number 7/1992 concerning on banking. As stipulated that “Banking is everything related to banks, including the institutions, business activities, and the method and process in carrying out the business activities”.

### C. Place and Regulatory Law regulatory system

Book II Indonesia Civil Code arrange about the property agreement which includes the special accounts receivable (chapter XIX), fiduciary (Chapter XX), and mortgage (Chapter XXI). While, in the Book III of civil code KUHPPerdata regulate the security of individuals that is debt suppression (*borgtocht*) chapter XVII.

Beyond the Civil Code law guarantees can be found in:

1. Civil Code of trade
2. Constitutions Number 16 of 1985 concerning about flats.
3. Constitutions Number 4 of 1992 concerning about residence.
4. Constitutions Number 7 of 1992 concerning about Banking as amended by law number 10 of 1998.
5. Constitutions Number 15 concerning about aviation.
6. Constitutions Number 17 of 2008 concerning about shipping.
7. Constitutions Number 14 of 1996 concerning about mortgage rights to the land and the properties that connecting with land.
8. Constitutions Number 42 of 1999 concerning about Fiduciary Agreement.

In addition, in colonial times there were several number of material security rights institutions, namely:

A. *Credietverband* as it stipulated in *Staatsblad* 1908 Number 542 Jo. *Staatsblad* 1909 Number 586 and *Staatsblaad* 1937 Number 190 Jo. *Staatblad* 1937 Number 191; and

B. *Oogstverband* as stipulated in *Staatsblad* 1886 Number 57. (Usman, 2009)

Meanwhile, for the Flats Constitution has now been changed to Constitutions Number 220 of 2011.

### D. Material Law in the Perspective of Civil Law

The property law is closely related with civil law since it is included as one of the civil law field (Hasbullah, 2002). The property law that manage on the connection between someone and the object of property rights. In the other words, the property law is the regulation of law that stipulated about property/material. The system of civil law (materiil) can be chosen according to the science of law (doctrine) and can be chosen according to the civil law. It is in contrast with the system of civil code, the civil law has categorized according to the science of law in 4 (four) fields:

1. Law of individual (*personrecht*)

The law of individual is a legal regulation that stipulates about natural person (human) as law subject or stipulates the things that related with someone’s legal skills, subjective rights (obligations), as well as things that have influence on one's position as a legal subject such as gender, marriage status, age, domicile status – under remission or maturity, and the civil registration data.

2. Law of family (*familierecht*)  
Law of family stipulates about the connection between natural interpersonal relations of different types in one family bond such as marriage, divorce relationship between husband and wife, relationship between parents and guardianship children.
3. Law of wealth (*vermogensrecht*)  
Law of wealth is the provisions that stipulate the connection of personal law with wealth that authorized and have the rights of wealth which is absolute. It arranged within material law including guarantee of law which have the rights of wealth in relative characteristic arranged in the law of binding.
4. law of inheritance (*erfrecht*)  
Law of inheritance stipulates about transfer of ownership of someone's property after the person concerned died or the heir had determined who is becoming the heir and how much is their portion (Usman, 2009).

### **Methodology**

The researcher is used the Juridical Normative Method. According to Soerjono Soekanto juridical normative approach is the research of law conducted with the researcher's way from library materials or secondary data as the basic sources to be analyzed by implementing the search on regulations and literatures related with the problem (Soekanto & Mamudji, 2011). In this paper, the researcher is explaining and analyzing about the benefit of credit guarantee and also the credit restructuring efforts during the Covid-19 pandemic as stipulate of applicable law.

### **Analysis and Discussion**

In giving the credit to citizen, commonly bank will implement the precautionary principle that known as the 5 C principle:

1. One of the most important elements that must be considered by the bank before giving credit is the assessment of personality / character of the prospective debtor. The assessment including paying attention and researching about their habits, personal traits, ways of life (style of living), family circumstances (children & wife), hobbies, and so on, as a measure of willingness to pay or ability to pay
2. Capacity (ability)  
The debtor candidates must have the business ability, thus his ability to pay off the debt can be predicted until can predict the ability to pay off the debt. If his business ability is small, then he is not feasible to be given credit in a large scale. As well as if the business trend performance decreases, the credit will not be given.
3. Capital (modal)  
The Capital from a debtor is also an important thing that must be known and reviewed by prospective creditors. Because the capital and ability of debtor's financial will have the direct correlation with the ability to repay credit.
4. Condition of economy  
The economic condition in micro or macro is the important factors to analyze before the credit is given, especially those who directly related to the debtor's business. Because if there is change in policy by government in accordance with the development of the debtor's business, then credit lending must be done extra carefully.
5. Collateral  
In finding the data to ensure the credit value, collateral are the important things to gives the credit. Even the Constitution suggest that collateral should be appear in every loan or credit.

According to (Fuady, 1996), releasing credit by bank must be done by adhering to the principles:

- a. The principal of trust
- b. The principal of prudential
- c. 5C principals
  - Character (personality)
  - Capacity (ability)
  - Capital
  - Economic conditions
  - Collateral (guarantee)
- d. 5P principals
  - Party (the party)
  - Purpose (purpose)
  - Payment
  - Profitability
  - Protection
- e. 3R principals
  - Returns
  - Repayment
  - Risk bearing ability

According to Marhainis Abdul Hay stated that: “the credit agreement is the synonymous with the loan agreement and is controlled by the provisions of Chapter XIII of Book III of the Civil Code” (Hay, 1975).

According to (Badruzaman, 1994): “from the formula in the Constitutions of banking regarding on the credit agreement, can be concluded that the basic of credit agreement is the loan agreement in the Civil Code Article 1754. The loan agreement is also containing the broad meaning which is the objects that consume if *verbruiklening* includes within is money. Based on the loan agreement, the credit recipient becomes the borrowed owner and then it must be returned by the same type to the lender. Because, the credit agreement is an agreement that is real and arranged in the Article 1320 of Civil Code. There are 4 (four) conditions that must be fulfilled for the validity of the agreement. These conditions are:

1. The agreement of those who remind themselves.
2. The ability to make an agreement.
3. A certain thing.
4. A lawful cause.

The Credit agreements need special attention, even by the Bank as the creditor or debtor. Because, the credit agreement is the basic relationships of contractual between parties. From the credit agreement can be explored some various things about granting, managing, or administering the credit itself. According to Ch. Gatot Wardoyo, the credit agreement has functions as below:

1. The credit agreement has a function as the primary agreement, means the credit agreement which determines whether or not another agreement that follows it, such as a guarantee agreement.
2. The credit agreement has a function as the Evidence regarding the limitations of rights and obligations between creditors and debtors.
3. The credit agreement has a function as a tool to carrying out the monitoring credit.

In the practice of banking, each bank has already served blank forms or credit agreement forms that have been prepared in advance (standaarform). The blank forms of credit agreement given to the debtor party to be approved and without giving any freedom to negotiate on terms that offered. This agreement is known as the standardized agreement or (raw) adhesion agreement. In English legal literature, the term standard agreement used the term "standardized agreement" or standardized contract, while Dutch legal literature uses the term "standard voorwaarden", standard contract. Mariam Darus using the term of "standardized agreement", which standard means assessment or reference. If the legal language is standardized, it means that the legal language is determined by the size and the standard. So it has a fixed meaning which can become a general grip. In standardized agreement without relying on the willingness of one party to use a standard agreement, the standard agreement which proposed by one party will follow the other party with acceptance. The standard agreement is binding when the agreement is signed (Ibrahim, 2004b).

### 1) Juridical Guarantee Function

A credit without collateral means increasing the level of risk (degree of risk) that must be faced by banks. Guarantee is the facility for creditor security, that is, certainty over the repayment of the debtor's debt or the performance of an achievement by the debtor or the guarantor of the debtor. The existence of collateral is a requirement to reduce the risk of banks in channeling credit. However, in principle, guarantee is not the main requirement. The bank prioritizes the feasibility of the business as the main collateral for credit repayments according to the agreed schedule (Ibrahim, 2004a). The Specific provisions regarding banking legislation, do not explain the position of the creditors. The provisions governing credit guarantees are listed in Law Number 7 of 1992 concerning on Banking, Article 8 which states that "In providing credit, commercial banks must have confidence in the ability of debtors to repay their debts in accordance with the agreement".

The constitutions Number 10 of 1998 regarding the changes on the constitution Number 7 of 1992 regarding the banks, Article 8 stated that:

- Paragraph 1: "(1) In extending Credits or Financing based on Syariah Principles, a Commercial Bank shall have confidence based on thorough analysis on the intention, capability and ability of a Debtor Customer to repay its debt or the financing according to the agreed terms.
- Paragraph (2): A Commercial Bank shall formulate and implement guidance on Credit and Financing based on Syariah Principles, according to regulations stipulated by Bank Indonesia.

### 2) Credit Restructuring During the Covid-19 Pandemic

The steps that can be implemented by Bank related with the 3R pattern as below:

1. Rescheduling, which is the effort to make the changes for some or all of the terms from the credit agreement related to the credit repayment's schedule or credit term.
2. Reconditioning (review of credit back requirements), which is the effort to make the changes for some or all credit terms but not only the credit period, but will be borne by the company (company equity).
3. Restructuring (realignment), means the effort to restructure credit terms, in addition to the methods described in items a and b above (Mansyur, 2010).

With the covid-19 outbreak that hit Indonesia, President Joko Widodo (Jokowi) gives some simplicity to several business sector and citizen that affected by the corona virus outbreak (Covid-19). This simplicity is given after hearing some complain from the businessman, started from micro, small and medium enterprises (UMKM), to motorcycle taxi drivers and taxi drivers.-(President, when opening

limited meeting at the Merdeka Palace, Presidential Palace complex, Jakarta, Tuesday (03/24/2020) (Asmara, 2020).

Financial Services Authority (OJK) issued Financial Services Authority Regulation Number 11/POJK.03/2020 related with The National Economic Stimulus as a Countercyclical Policy impacts of the 2019 Corona virus Disease, with basic considerations as below:

- a. The development of spreading the corona virus disease 2019 (COVID-19) in global has been influenced directly or indirectly debtor performance and capacity to fulfilling the responsibility on credit payment or financing;
- b. The effect on the debtor performance and capacity will increase the credit risk which has potential to disrupt banking performance and system stability of financial even influence—the economic growth;
- c. To push the optimization of banking performance, specifically the intermediation function, to keep the stability of financial system and support the economic growth needs economic stimulus policies to be taken as a countercyclical impact of the spread of corona virus disease 2019 (COVID-19).
- d. The economic stimulus policy as a countercyclical impact of the spread of corona virus disease 2019 (COVID-19) is intended to be implemented while taking into account the precautionary principle;
- e. Based on the consideration as mentioned in point a, b, c, and d, it needs to determine Financial Services Authority (OJK) related with National Economic Stimulus as Countercyclical Policy on the Impact of the Corona Virus Disease 2019.

In the chapter I related with General Provisions Financial Services Authority Regulation Number 11 / POJK.03 / 2020, provisions of Article 2:

- (1) Bank can implement the policy that supported the economic growth stimulus for debtor that impacted by the spread of corona virus disease 2019 (COVID-19) including the debtor of micro, small and medium enterprises (MSME).
- (2) The supporting policy of economic growth stimulus as mentioned in the paragraph (1) is including below:
  - a. asset quality determination policy; and
  - b. credit or financing restructuring policy.
- (3) Bank in implementing the policy that supported the economic growth stimulus as mentioned in the paragraph (1) still pay attention to the application of risk management as stipulated in the Financial Services Authority regulations related with application of Bank risk management.
- (4) In bank, implementing the policy that support the economic growth stimulus as mentioned in the paragraph (1), bank must have the guidelines for establishing to debtors that impact of the spread of corona virus disease 2019 (COVID-19) including the debtor of micro, small and medium enterprises (UMKM).
- (5) The Debtor designation guidelines that impact of the spread of corona virus disease 2019 (COVID-19) including the debtor of micro, small and medium enterprises (UMKM) as mentioned in the paragraph (3) as explained below:
  - a. The debtor that determined to be affected by corona virus disease 2019 (COVID-19); and
  - b. The sector that impact of corona virus disease 2019 (COVID-19).

In the chapter III the Credit Restructuring provisions are regulated in the following articles:

## Article 5

- (1) The credit quality or the financing that restructured determined smoothly since the restructuring.
- (2) Credit restructuring or financing as mentioned in the paragraph (1) can implemented on credit or financing that gives previously or after debtor impacted of the spreading the corona virus disease 2019 (Covid-19) including the debtor of micro, small and medium enterprises (UMKM).
- (3) Credit for rural Bank (BPR) or financing for BPRS (Sharia Small Business Bank) that restructured is excluded from the application of accounting treatment for credit or financing restructuring.

Article 6, the regulation as mentioned in the Article 5 applies to loans or financing that meets the requirements:

- a) Given to debtor impacted of spread of corona virus disease 2019 (COVID-19) including the debtor of micro, small and medium enterprises (UMKM).
- b) Restructure after debtor impacted of spread of corona virus disease 2019 (COVID-19) including the debtor of micro, small and medium enterprises (UMKM).

According to (Buchari, 2020) in Web Seminar on the Handling of problematic Financing and Restructuring of bank loans (impact covid-19), which was held on 18 May 2020, that the effect of COVID-19 hampering the economic activities of the community, positive side can accelerating changes in work culture utilizing technology. The negative sides are many things cannot be done online, especially production; the prohibition on activities causes various parties to be affected by the economy. Banks disbursing credit and financing for economic agents, when the economic condition is decreased and economic agents can make credit or financing from banks experienced decreased of profit. So, then the ability to repay debt to the bank will be reduced, the Bank may experience bad credit problems.

The researcher is also stated that COVID-19 impacted for the entire of society especially the economic impact, where all sections of society have difficulty earning a living, to banks that cannot carry out credit distribution activities as usual for even more than three months. With there are the regulation Financial Services Authority (OJK) issued Financial Services Authority Regulation Number 11/POJK.03/2020 concerning the National Economic Stimulus as a Countercyclical Policy on the impact of Corona Virus Disease 2019 Dissemination, also cannot return the economic condition as before, because all the party especially bank still need time to adjust to the OJK regulations. With the regulation of the OJK cannot deleted the payment of credit installments by the Debtor, but only delay the payment especially for citizen with micro, small and medium enterprises (UMKM) until a certain period of time in accordance with the policies taken by each Bank.

## **Conclusion**

Based on the explanation above, can be concluded that:

1. The basic law of basic law of credit agreement is based on the Constitution of banking while the regulation of collateral is based on Civil law. The benefit in credit agreement is form of prudential principle. Creditors extend the credit to the public and gives law or legal protection for creditor, if at any time the debtor is doing wanprestasie.
2. The effort of the credit restructure means the efforts to restructure credit terms, Financial Services Authority (OJK) release the regulation Financial Services Authority (OJK) Number 11/POJK.03/2020 related with National Economic Stimulus as a Countercyclical Policy to Impact the Spread of Corona virus Disease 2019 in globally has been impact direct or indirect on



performance and capacity of debtor in fulfilling credit or financing payment obligations as well as the impact on the performance and capacity of debtors will increase credit risk which has the potential to disrupt banking performance and financial system stability so that it can affect economic growth, but it is also hoped that this regulation will not harm the banking world, especially related to bad loans and credit distribution in a society that is stunted.

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