



Legal Protection in the Implementation of Personal Guarantees in Indonesia

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Abstract

The research aims to discuss the problem of how legal policies relate to the implementation of personal guarantees in providing bank credit in Indonesia? And what is the legal protection for customers and banks in cases of using personal guarantees in providing bank credit? The research method used is normative juridical. The research results concluded that Legal policies related to the implementation of personal guarantees in Indonesia are based on applicable laws and regulations as regulated in Article 1820, Article 1831 and 1837 of the Civil Code of the Civil Code, specifically based on the internal regulations of each bank, as recipients of personal guarantees. Legal protection in implementing personal guarantees in Indonesia is very important to prevent abuse and ensure justice for both parties. However, to ensure optimal protection, it is important for both parties to fully understand their rights and obligations and to consult with legal experts if necessary before entering into or signing a personal guarantee agreement.

Keywords: *Legal Protection; Policy; Personal Guarantee*

Introduction

Banks have a very important role in supporting the economy and national development with the aim of improving community welfare (Hasanah, 2017: 52). This role is in line with the definition of a bank regulated in Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking, which in this research is referred to as the Banking Law. According to the Banking Law, a bank is a business entity that collects and distributes funds from the public in the form of savings, as well as providing credit and/or other forms to the public. This is done with the aim of improving the standard of living of many people.

In practice, banks collect funds from the public through savings, then channel them back to the community in the form of credit or other financial products (Lailiyah, 2014: 218). By providing credit facilities, banks support economic growth by financing productive projects, including financing housing, education and micro, small and medium enterprises (MSMEs) (Sulistiyandari, 2012: 229). Providing credit facilities by banks not only acts as a financial institution, but also as an economic driving force that contributes greatly to improving people's living standards (Bidari, 2020: 302). Through wise policies and prudent fund management, banks can become the main pillars in supporting national economic growth.

Banking law in Indonesia addresses banking issues that occur in this country. This law is known as *banking law*, which is a series of legal rules including regulations, court decisions, legal concepts and other legal sources. Banking Law regulates various aspects of banking institutions, including daily activities, regulations that must be followed by banks, behavior of bank staff, rights, obligations, duties and responsibilities, as well as banking business boundaries. This includes things such as the existence of banks and various other aspects related to the world of banking (Djumhana, 1993).

One of the functions of banks is to act as an Intermediary Institution (Herlina , 2015: 13) . As a financial intermediary entity, banks act as a bridge between individuals or entities who have excess funds and those who need funds. This involves the process of connecting parties who have surplus funds with those who need funds for investment purposes, projects, or other activities (Imaniyanti , 2010:13).

The functions of banks include; Fundraising; Credit Provision; Facilitation of Financial Transactions; and Sources of Information, Consultation and Administrative Support. Providing credit loans is a core activity in banking operations. From the data written in a bank's balance sheet, the majority of bank assets are in the form of lending. Likewise with bank income, the majority comes from interest income generated from the proportion of credit provided (Sinungan , 2000:210).

When providing credit facilities by banks, banks are obliged to apply the principle of prudence in accordance with the provisions of the regulations. This precautionary principle is the bank's obligation to safeguard the interests of customers who deposit funds (Wahyuni, 2017:14). When allocating funds in the form of credit, banks must be very thorough and careful in analyzing potential borrowers to ensure that the loans provided can be repaid in accordance with the agreements that have been made. Banks must ensure that the funds lent come from customers who have saved funds so as not to harm their interests (Asikin, 2020: 80).

Providing credit facilities by banks has a positive impact on Indonesia's economic growth. Banks, through providing credit, provide opportunities for many parties to develop capital from the community (Usman, 2012: 123) , create profit opportunities, and indirectly provide benefits to the surrounding community. Apart from that, lending activities are also a main aspect in the banking business because most of the bank's income comes from interest and provisions generated from credit activities (Sulistiyandari, 2012: 229).

Article 1 number 11 of Law Number 7 of 1992 as amended by Law Number 10 of 1998 concerning Banking, there is a definition of credit, namely:

"Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest."

So that banks can overcome the risk of failed credit payments by debtors who violate the agreement, prospective debtors are usually required to prepare collateral in the form of collateral that has a high value and can be easily resold. The value of this collateral must be at least equivalent to the amount of credit or financing provided to the debtor. Therefore, banks have an obligation to request additional collateral. The purpose of this additional collateral is to provide a guarantee to the bank that if the debtor is unable to pay the credit, the additional collateral can be sold and the proceeds used to pay off or reduce the remaining outstanding credit or financing. In this way, banks can ensure the continuity of financing by reducing the risk of payment failure on the part of debtors (Sudjana, 2012: 378) . Unfavorable circumstances will disrupt the financial liquidity of debtors, and have an impact on reducing the ability to repay outstanding loans.

Regarding guarantees for repayment of credit debt, it is regulated in the Civil Code through Article 1131 B and Article 1132 of the Civil Code. However, this regulation is considered too general and does not provide optimal protection for banks. The problem lies in the possibility that the bank will not be able to obtain full payment of the debtor's remaining debt because the rules apply to all creditors. Therefore, banks sometimes require collateral in kind as special collateral, which gives the bank priority in getting payment among other creditors.

Even though the bank has obtained collateral from the debtor, the bank still feels less confident that the debtor will be able to pay off the credit debt as agreed. This could be caused by a lack of collateral value provided by the debtor or the debtor's inability to fulfill its obligations in proportion to the credit value provided by the bank. Even though the credit application is assessed based on internal and external factors and has also been checked to assess its feasibility, the conditions of these factors can change during the course of the credit agreement between the credit provider and the credit recipient (Budi, 2017:99). To anticipate the risk of default or bad credit, banks sometimes ask for additional special guarantees, namely individual guarantees or personal guarantees. This individual guarantee involves a third party who is willing to guarantee payment of the debtor's debt, known as the guarantor or guarantor. This guarantor can be an individual or a company.

An individual guarantor or what is usually called a personal guarantee has special rights contained in Article 1831 of the Civil Code, but usually in the guarantee agreement there is a clause stating that *the personal guarantee* waives its special rights which actually have legal consequences for the personal guarantee (Pangastuti, 2015: 148).

The practice of individual guarantees in the form of *corporate guarantees* is regulated through a guarantee agreement which is based on the main agreement, namely the credit agreement or loan agreement between the bank and the debtor customer. A credit agreement is a main agreement that has a real nature, meaning that this agreement occurs because the bank provides money to debtor customers. As a main agreement, a guarantee agreement is an additional accessory part, which means that the existence and termination of the guarantee agreement depends on the main agreement (Kusumaningtyas, 2016: 102).

Guarantee agreements are regulated by Articles 1820-1850 of the Civil Code. The definition of a guarantee agreement in accordance with Article 1820 of the Civil Code is an agreement in which a third party binds itself in the interests of the creditor, being responsible for fulfilling the debtor's obligations if the debtor fails to fulfill his obligations or is in default. In guarantee agreements, banks often include clauses that provide convenience and legal certainty in the execution or collection process, to ensure credit payments when debtor customers or their guarantors cannot fulfill their obligations. However, in practice, debtor customers and their guarantors often ignore the agreements they have made with the bank. As a result, the bank had to file a lawsuit through the district court.

When a bank files a lawsuit in district court, the results are not always favorable to the bank. Often, the lawsuit filed by the bank loses and the debtor wins, for various reasons that are not satisfactory to the bank. In this situation, the bank experiences losses and feels that its rights guaranteed in the agreement with the debtor and guarantor do not receive adequate protection. This research will focus on discussing the issue of how legal policies relate to the implementation of *personal guarantees* in providing bank credit in Indonesia? And what is the legal protection for customers and banks in cases of using *personal guarantees* in providing bank credit?

Research Methods

This research uses normative juridical methods (Efendi, 2018: 52), namely legal research that examines legal problems based on the laws and regulations that regulate them. This research uses secondary legal data obtained through literature study. The analytical approach used is descriptive analytical by describing the legal problems being analyzed to then find answers to research problems (Juanda, 2016: 157).

Research Results and Discussion

1. Legal Policy Related to the Implementation of *Personal Guarantees* in Providing Bank Credit in Indonesia

Legal policy or official line (policy) regarding law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals (MD, 2014: 53). The meaning of legal politics according to Padmo Wahjono, is the basic policy that determines the direction, form and content of the law that will be formed. More details, Padmo Wahjono explained that legal politics is the policy of state administrators regarding what is used as the criteria for forming something which includes the formation, application and enforcement of law (Wahyono, 1966:34). Satjipto Rahardjo in the book *Legal Sciences* defines legal politics as an activity to choose certain social goals. Politics is a field related to the goals of society. Meanwhile, law is faced with the necessity to determine choices about goals or methods that will be used to achieve society's goals (Rahardjo, 2014: 352). Based on the definition above, it can be seen that legal politics is a legal policy that determines the direction, form and content of law which includes the formation, application and enforcement of law in order to achieve legal political goals, namely certain social goals/state goals. Legal policy in the context of this research is legal policy in implementing *Personal Guarantee* in Indonesia.

Personal Guarantee In principle, it is a personal guarantee to creditors, in order to increase creditors' trust in debtors so that creditors lend money to debtors, also so that creditors do not experience losses (Peltoniemi, 2013: 238). *Personal Guarantee* places the personal guarantor as the party to whom the creditor can be held responsible for returning the debt when the debtor fails to pay (Brown, 2020:2). In this regard, Indonesian law which is the basis for the policy regarding *Personal Guarantee* is regulated in Article 1820 of the Civil Code which determines that;

"Guarantee is an agreement by which a third party, for the benefit of the debtor, binds himself to fulfill the obligation of the debtor when he himself does not fulfill it."

Arrangements related to *personal guarantees* are regulated in the Civil Code in Book III Chapter 17 Articles 1820-1850. According to the provisions of Articles 1831 and 1837 of the Civil Code, the guarantor or so-called personal guarantee has the right to demand that the debtor be billed first, if there is a shortfall then the shortfall will be billed to the personal guarantee. It can be concluded that when filing a bankruptcy case there must be a concept of debt as a condition for the bankruptcy application, because without debt the essence of bankruptcy does not exist. Bankruptcy in *the Black's law Dictionary literature* states *"Bankrupt is the state or condition of one who is unable to pay his debts as they are, or become, due"* (Garner, 2004:563). Legal policies related to the implementation of *personal guarantees* in Indonesia are based on the applicable laws and regulations as explained above and are generally based on the internal regulations of each bank, as the recipient of the *personal guarantee*.

2. Legal Protection in the Implementation of Personal Guarantees in Indonesia

In principle, all guarantees given by debtors to banks as creditors, including personal guarantees, are to guarantee that debtors can pay off their debts or obligations to creditors. If there is a failure to pay, the collateral can be taken by the creditor to pay off the debtor's debt (Adelina, 2018:117). The *personal guarantee* responsibility for debtors who fail to pay banking credit is that the guarantor is obliged to pay credit obligations if the main debtor fails to fulfill them in accordance with the personal guarantee agreement (Syahid, 2023:334). This is one way for banks or financial institutions to reduce their credit risk. Therefore, the person considered as a guarantor must fully understand the legal and financial implications of this role before signing a personal guarantee agreement (Putriyanti, 2017:135).

Personal guarantees must be given by people who have sufficient financial capacity or assets to guarantee the fulfillment of the debtor's obligations. Therefore, not everyone can get a *personal guarantee*. Banks using the 5C principles will carry out an analysis of people who will become debtors, including parties who will provide personal guarantees in providing bank credit. The application of the 5C principles is in order for banks as credit providers to obtain legal protection. Legal protection is an effort to protect the government or authorities with a number of existing regulations. Here's the meaning and how to get it. Everyone has the right to obtain legal protection (Wibawa, 2016:57).

In Indonesia, legal protection in implementing a *personal guarantee* can take the form of protection for both parties involved, namely the creditor and the personal guarantee provider (guarantor). Several aspects of legal protection in implementing personal guarantees in Indonesia include:

- a. Clear Contract Terms: *Personal guarantee agreements* must be drafted clearly and in detail, covering the rights and obligations of both parties as well as binding limitations. This provision will provide legal protection for both parties, ensuring that their respective rights and obligations are strictly regulated.
- b. The Principle of Legal Certainty, legal protection in the application of personal guarantees also refers to the principle of legal certainty, which ensures that each party has a clear understanding of the legal implications of the agreement they make. This includes ensuring that the agreement is not unlawful and can be enforced in court if a dispute arises.
- c. Limitations on Collateral: Laws and regulations in Indonesia regulate limitations on collateral (fiduciary). These restrictions may include limits on the amount of collateral that can be provided, certain conditions that must be met, and applicable law enforcement procedures. This limitation aims to protect both parties from abuse or injustice in implementing personal guarantees.
- d. Providing Clear Information, before providing a *personal guarantee*, the party providing the personal guarantee must be given clear and adequate information about the legal implications of the action. This includes a good understanding of the financial risks and legal consequences that may arise if the principal debtor fails to meet its obligations.

Legal protection in implementing *personal guarantees* in Indonesia is very important to prevent abuse and ensure justice for both parties. However, to ensure optimal protection, it is important for both parties to fully understand their rights and obligations and to consult with legal experts if necessary before entering into or signing a *personal guarantee agreement*.

Conclusion

Legal policies related to the implementation of personal guarantees in Indonesia are based on applicable laws and regulations as regulated in Article 1820, Article 1831 and 1837 of the Civil Code of the Civil Code, specifically based on the internal regulations of each bank, as recipients of personal guarantees. Legal protection in implementing *personal guarantees* in Indonesia is very important to prevent abuse and ensure justice for both parties. However, to ensure optimal protection, it is important for both parties to fully understand their rights and obligations and to consult with legal experts if necessary before entering into or signing a *personal guarantee agreement*.

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