Due to Legal Liability in Banking Credit

Feibe Engeline Pijoh(✉), Darmawan Edi Winoto, and Lesza Leonardo Lombok

Law Studies Program, Faculty of Social Science and Law, Manado State University, Manado, Indonesia
feibepijoh@unima.ac.id

Abstract. Credit is the most important part of the bank's business activities, as an effort to provide a sense of security for each bank's operational activities. In implementing bank lending, in addition to technical and financial analysis, legal protection must also be carried out, through strong collateral binding, including installing Mortgage Rights on the object of credit guarantees that the bank has realized. This paper raises the issue of the legal consequences of liability in banking credit using a normative research method. This approach is used in analyzing legal materials by referring to legal norms in laws and regulations, court decisions, and various kinds of literature related to the research object. The results of this study indicate that in a liability agreement, the number of subjects is considered, in this case, more than one creditor and/or debtor. In an active liability engagement, each creditor has the right to collect all obligations in the liability engagement from the debtor. The obligation to bear responsibility is to deliver the money that can naturally be divided. Then the debtor can fulfill the obligation simultaneously to each creditor until the total amount is equal to the debtor's general obligations. The debtor has the right to be sued entirely by the creditor for all his receivables. Liabilities between debtors are meaningless if the nature of the object of the engagements allows for the distribution of the implementation.

Keywords: Legal Position · Trademark

1 Introduction

Personal guarantee rights consist of a guarantee agreement and the debtor's responsibility to bear. The right of a personal guarantee is part of the guarantee law, which regulates the warranties of creditors' receivables against debtors. Special guarantee rights (Zekerheidsrechten) are also regulated, giving a creditor a better position than other creditors (who do not have special guarantee rights). These special security rights are in the form of material security rights (Zakelijke Zekerheidsrechten), and some are in the form of personal security rights (persoon¬lijke Zekerheidsrechten).

In the Civil Code (KUH Perdata), among other things, it is proposed that the guarantee agreement must be made in writing (Article 7.14.2.3.1), and it is also suggested that certain provisions must not be deviated by the parties in the guarantee agreement, which -bring adverse consequences for the borg (Article 7.14.2.6.) [1].

The problems in this research are: How does the obligation to bear responsibility occurs, including the obligation to fulfill debts to creditors, and what are the legal consequences of the obligation to accept responsibility in banking credit?

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2 Method

According to Soekanto and Mamudji [2], there are two research methods: normative and empirical. This study uses a normative research type, where a normative legal approach is used to analyze legal materials by referring to legal norms as outlined in legislation and court decisions and literature studies related to the research object.

Literature research aims to obtain legal materials through literature review from various existing references. The data obtained are qualitative in the form of descriptive juridical, complementing each other in describing the problems studied. From the normative side and banking policies, it is hoped that this research can explain legal issues, especially regarding the obligation to assume responsibility in providing bank credit. Primary legal materials, namely binding legal materials, consist of the Civil Code, Law No. 8 of 1996 concerning the Borgtoch Guarantee Institution, and Law no. 10 of 1998 concerning Banking [3]. While secondary legal materials, namely materials that provide explanations of primary legal materials such as seminar results, scientific papers, research results, and journals related to the issues discussed.

3 Results and Discussion

3.1 Definition of Guarantee Law

Guarantee law regulates juridical construction that allows the provision of credit facilities by pledging the objects purchased as collateral. Such regulations must be sufficiently convincing and provide legal certainty for credit institutions from within and outside the country. The existence of such guarantee institutions and institutions presumably must be accompanied by the presence of credit institutions with large numbers, long terms, and relatively low-interest rates [4].

Collateral law relates to the legal aspects of the guarantee, both to the parties, namely between the debtor and the creditor or regarding the subject, as well as regarding objects/goods used as collateral objects in an agreement made. Collateral is always related to objects, where objects as assets regulated in the Civil Code are distinguished by the types of movable objects, immovable objects, and tangible and intangible objects. The consequence of this distinction is the existence of a certain guarantee institution for each kind of object that is used as the object of the guarantee.

3.2 Guarantee Legal Principles

Based on the results of an analysis of various laws and regulations governing guarantees as well as a study of several types of literature on warranties, it is found that five important principles in guarantee law are found, namely;

1. The principle of publicity is that all rights, both mortgage rights, fiduciary rights, and mortgage rights, must be registered. This registration is intended to let third parties know that the collateral is being billed.

2. The principle of specificity, namely that mortgage rights, fiduciary rights, and mortgage rights can only be imposed on a small amount or on goods that have been registered in the name of a certain person.
3. The principle of indivisibility, namely the principle that debts can be divided, cannot result in the distribution of mortgages, fiduciary rights, mortgages, and liens even though partial payments have been made.
4. The principle of Inbezittstelling, namely the collateral (pawn), must be the recipient of the pledge.
5. The horizontal principle is that buildings and land are not one unit. This can be seen in the use of usufructuary rights, both state land and property rights.

Mariam Darus Badrulzaman [5] explains and interprets the principles related to philosophical, constitutional, political, and operational principles, namely:

1. Philosophical principles, namely the principle that all applicable laws and regulations in Indonesia must be based on the philosophy adopted by the Indonesian people, namely Pancasila;
2. Constitutional principles, namely, all statutory regulations made and ratified by lawmakers, must be based on basic law (constitution). The basic law that applies in Indonesia is the 1945 Constitution. If the laws made and passed are contrary to the constitution, they must be repealed;
3. The political principle is the principle where all policies and techniques are in the preparation of laws and regulations.
4. The operational principle, which is general in nature, is the principle that can be used to implement the imposition of guarantees.

3.3 Legal Guarantee Arrangements

The study of various works of literature on Civil Law shows that the legal and regulatory systems can be divided into two types, namely: (1) closed system (closed system) and (2) open system (open system). The guarantee legal and regulatory system is a closed system (closed system). What is meant by a closed system is that people cannot hold newly guaranteed rights other than those stipulated in the law. Meanwhile, the contract law regulatory system is an open system. An open system means that people can enter into agreements regarding anything, whether there are rules in the Civil Code or those not listed in the Civil Code. Types of agreements known in the Civil Code include buying and selling, renting, exchanging, borrowing and borrowing money, work agreements, joint ventures, and power of attorney. This type of agreement is called a nominee agreement, which is known and regulated in the Civil Code. Agreements not regulated in the Civil Code, such as leasing, buying leases, uterine contracts, franchises, etc. This type of agreement is called an innominate agreement, which is an agreement that is not regulated in the Civil Code but is known in practice.

3.4 Definition of Coverage

Legally, Article 1131 of the Civil Code states, “All movable and immovable objects belonging to the debtor, both existing and future, become collateral for the debtor’s engagements." It means that every person's actions in the field of wealth will always affect their assets, increasing their wealth/credit and reducing the number of their assets [6].

According to M. Yahya Harahap [7], everyone's wealth will always be dynamic and always change from time to time. Every agreement made or engagement will result in a person's assets increasing or decreasing. The use term guarantee or guarantee agreement is a translation of the term of Borgtocht. Using the term guarantee or guarantee agreement does not give the impression that certain objects are collateral, so the difference with material guarantees appears [8].

According to Jenny Barmawi [9], in guarantees, borg guarantees the debtor's performance obligations with all borg assets, while in material guarantees, there are always certain objects that are specifically designated either by law or by agreement (such as in mortgages or mortgages). as a special.

3.5 Definition of Bank

A bank is a financial institution, which in its daily operations, its main activity is to accept demand deposits, savings, and time deposits. Then the bank is also known as a place to borrow money (credit) for people who need it. According to Kasmir [10] the bank is also known as a place to exchange money, move money or receive all kinds of payments and deposits, such as payments for electricity, telephone, water, taxes, tuition, and other expenses. Another opinion was conveyed by Suyatno [11] bank is a type of financial institution that carries out various services, such as providing loans, circulating currency, monitoring currency, acting as a place for storing valuable objects, and others.

3.6 Banks as Credit/Receivable Providers

According to Kasmir [12], the function of the bank is to act as an intermediary between people who need funds and people who have excess funds, in addition to providing other financial services. Because banks function as financial intermediaries, in this case, the trust factor from the public is the main factor in running the banking business.

According to Law no. 10 of 1998 concerning Banking: Bank is a business entity that collects funds from the public in savings and distributes them to the public in the form of credit or other forms to improve the standard of living of the people at large. From these definitions, it can be explained more broadly that a bank is a company engaged in the financial sector, meaning that banking activities are always related to the financial industry.

3.7 Form of Agreement on Debt Guarantee

Theoretically, there are two kinds of achievement characteristics, namely:

1. Achievements can only be fulfilled or carried out by the debtor himself. This achievement is specific and generally an obligation or achievement born from an engagement to do something, the publication of which is solely dependent on the personal expertise of the debtor.

2. Achievements whose fulfillment can be carried out without the debtor's presence or achievements that do not need to be carried out by the debtor himself.

An engagement to do or do something has a slight difference from an engagement to give or deliver something, and an engagement not to do or do something can be an engagement related to the debtor's obligation to perform a job or service, which can be specific, with the understanding that the type of work or services can only be achieved by certain individuals, which in this case is the debtor in the engagement.

In addition, depending on the type of work and services that are the object of the engagement, it is possible that a job or service can be carried out by anyone who has similar abilities and or expertise, with results that match or are at least identical, comparable, or commensurate with those expected by the creditor from the engagement. If the work or service is specific, then if the debtor is in default, the insurer clearly cannot be burdened with the obligation to fulfill the debtor's engagement, other than fulfilling the replacement engagement in the form of compensation penalties in the form of costs, losses, and interest.

In an engagement to give or deliver something and an engagement not to do or not to do something, depending on the nature of the guarantee provided, the insurer may be obliged to continue to fulfill the principal engagement with or without reimbursement of costs, losses and interest that may be imposed on the debtor.

3.8 Commitments Made in Joint Liability Engagements

In implementing guaranteeing debtors' debts in the field, we often encounter forms of guarantees carried out jointly by several people against debtors' obligations. If we look at the Civil Code, it has regulated the guarantee of debts given by more than one debt guarantor in three articles, starting from Article 1836, Article 1837, and Article 1838 of the Civil Code.

The provisions of Article 1836 of the Civil Code are one of the provisions of the law which makes the guarantor of a debt created by more than one guarantor a form of the bond of responsibility between the guarantor of the debt. For the guarantee of debt created by more than one guarantor to be a form of obligation to bear between the debt guarantor, Article 1836 of the Civil Code provides the following conditions:

1. That the guarantee is made for the same debtor;
2. That the guarantee is given for the same debt (debtor).

Further provisions in article 1837 and article 1838 of the Civil Code talk about the object of a debt guarantee agreement that can be divided. The two requirements refer to certain things that are the same with the same cause. As long as one of the two conditions is not present, then there is never an obligation to bear between the insurers. For this purpose, let us briefly review the meaning of a divisible engagement as regulated in Article 1296 and Article 1297 of the Indonesian Civil Code, which state:

Article 1296:

"An engagement can be divided or not divided; only the subject matter of the engagement is an item whose delivery or an action can be divided or cannot be divided, either real or not."

Article 1297:

"An agreement cannot be divided, even though the goods or deeds that are the subject of the engagement, because of their nature, can be divided if the goods or deeds, according to their purpose, cannot be delivered or carried out part by part."

From the formulation of the two articles, it can be seen that in a jointly or jointly responsible engagement, there is more than one legal subject in each party in the engagement, so in a shareable arrangement, there is more than one implementation of the principle of the engagement.

In connection with an engagement that cannot be divided because the parties want this engagement, it is necessary to pay attention to the original provisions of 1298 of the Civil Code, which states that an engagement is an obligation to bear responsibility; it does not mean that the engagement is inseparable, for This reaffirms to all of us that in a liability agreement, what is considered is the number of subjects, which in this case is more than one creditor and/or debtor. In an active liability engagement, each creditor has the right to collect all obligations in the liability engagement from the debtor. Suppose the obligation in the liability agreement is an obligation to deliver the naturally divisible money. In that case, the debtor can fulfill the contract simultaneously with each creditor until the total amount is equal to the debtor's general obligations.

Likewise, in a passive liability agreement, each debtor in the passive liability agreement has the right to be sued in its entirety by the creditor for all his receivables. Obligations between debtors are meaningless if the nature of the object of the engagements allows for distribution, such as in the responsibility to deliver money. Each debtor is not entitled to provide money to creditors until the total amount is equal to the total amount of money, which must be submitted based on the joint responsibility agreement.

Concerning the provisions of Article 1832, number 4 of this Civil Code, it is clear that if the debtor has been declared bankrupt, it is no longer possible for the guarantor to demand that the debtor's objects be confiscated and sold to pay off the debt. The assets of the bankrupt debtor will be sold by the curator to be distributed jointly and proportionally to all concurrent creditors.

4 Conclusion

The debtor's debt guarantee agreement gives birth to a form of engagement with tough conditions, where the obligations of the guarantor in a debt guarantee only exist when the conditions mentioned above occur. To determine when the insurer is obliged to carry out his engagement, performance, or obligations based on the debt guarantee agreement, it must be known when the breach of contract or default of the debtor is considered to have occurred. This requirement is by the formulation of Article 1820 of the Civil Code, namely the occurrence of a default event from the debtor in the principal engagement guaranteed or borne by the guarantor.

The form of the engagement that is carried out on an obligation to bear or joint responsibility must be stated explicitly (Article 1282 of the Civil Code), and this rule is only excluded in cases where an engagement due to the force of a statutory stipulation is considered to be borne. The provisions of Article 1836 of the Civil Code make the guarantee of debt made by more than one guarantor a form of obligation to bear between the guarantor of the debt.

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