



Position of Receivables in Fiduciary Guarantee Related to the Linkage Program Between Commercial Banks and People's Credit Banks

Ni Made Sintia Tarisa^(✉), Johannes Ibrahim Kosasih, and Putu Ayu Sriasih Wesna

Master of Notary, Universitas Warmadewa, Denpasar, Indonesia
shintiatarisa@gmail.com

Abstract. The linkage program is a solution to overcoming the liquidity of rural banks in banking practice, with the submission of third-party receivables as collateral. The pattern used is executing, where Commercial Banks can directly execute third-party receivables. Legally the rights of Commercial Banks as creditors have been accommodated with this executing pattern agreement accompanied by guarantees in the form of fiduciary and cash collateral. However, the problem in this execution practice cannot be done directly to a third party because the creditor does not enter into a new agreement with a third party. The method used is a normative legal research method, with a conceptual approach and legislation, the legal materials used are the Banking Law, Fiduciary Law, and Civil Code. Applicable legal provisions do not carry out the implementation in practice of the linkage program agreement, but this is used as an effort to overcome the policy of the OJK in the credit policy for MSMEs of 20%. This legal loophole should be minimized with strict supervision from the OJK as a supervisory institution for banks and other financial institutions.

Keywords: Fiduciary Guarantee · Receivable Position · Linkage Program

1 Introduction

Economic development is dependent on economic growth, as stated in the Law on the National Long-Term Development Plan 2005–2025, Law No. 17 of 2007, revising the Law of the Republic of Indonesia No. 25 of 2004 addressing the National Development System. Article 33, paragraphs (2) and (3) of the 1945 Constitution establish the government's responsibility in economic activity. The level of the economy is linked to the availability of goods and services. In this example, the service in question is financial services, one of which is financial institutions, which play a crucial role in economic growth. The government has made various efforts to achieve a balance between the economic sector and income distribution in order to carry out this mission [1]. Banking as a financial system that carries public trust, nationally and internationally, cannot be separated from the roles and responsibilities of three (three) parties, namely the government, the banks themselves, and the public using bank services.

© The Author(s) 2023

I. N. P. Budiarta et al. (Eds.): ICBLT 2022, ASSEHR 721, pp. 669–677, 2023.

https://doi.org/10.2991/978-2-494069-93-0_79

Banks, as financial institutions, perform two primary functions: collecting funds from the public in the form of savings and channeling them to the public in the form of credit or other forms in order to improve people's living standards [2]. The Bank has a role in mobilizing funds and redistributing them through credit to deficit units (people who need funds) [3]. One of the government's efforts to improve the community's welfare is channeling funds or access to credit [4]. Credit disbursed by bank institutions has a variety, both for productive and consumptive purposes [5]. Credit facilities benefit today's society, especially in business and business. Many businesses and businesses were founded through bank credit capital. In addition to business capital, the community also uses bank credit for physical development, education, and investment [6].

In operational activities, the Bank also requires funds in the form of capital to be able to continue to carry out its activities. Therefore, banks can also become debtors in the Linkage Program. This program is a symbiotic mutual collaboration between Commercial Banks and Rural Banks in financing to assist Rural Banks that require adequate liquidity in conducting their business activities. This financing is channeled through agents or partner companies (two steps financing). In addition to BPR, partners who can become bank partners are Multifinance and Sharia Microfinance Institutions. The implementation of this program uses 3 financing patterns: executing, channeling and joint financing. The purpose of the Linkage Program is not only to increase the share of profit-sharing financing, but in this case, it will also increase the penetration and diversification of financing in the MSME sector and consumer financing.

However, not all commercial banks are thriving in distributing financing for MSMEs. Because MSMEs require special treatment in handling. Commercial banks enter into cooperation with Rural Banks through this Linkage Program. The Linkage Program provides credit by Commercial Banks to Rural Banks with special requirements. What is meant by this special requirement is that the distribution of commercial bank credit to rural credit banks does not require collateral for fixed objects or land. However, in this case, to protect the interests of the Linkage giving Bank or commercial Bank, the Linkage giving Bank asks for a guarantee of Jessie's receivables because it only uses receivables as collateral and additional collateral in the form of cash collateral. Claims receivable from debtors to their customers are pledged to creditors by the required amount in the list of guaranteed customers, bound by a fiduciary agreement to protect the interests of creditors, in this case, a commercial bank.

Meanwhile, the Debtor's claim that is required by OJK based on legal provisions is a cessie concept. Cessie is a way of transferring receivables by making an authentic/underhand deed to another party, where the old Agreement is not terminated, only switches to a third party as a new creditor. This Cessie has no consequences for the Debtor before the cessie is notified to him, agreed in writing, or acknowledged.

In the case of the Linkage Program that was put forward in this case, the BPR received the Linkage by submitting a list of its customers' names by the provisions requested by the Commercial Bank, providing the Linkage program to guarantee the funds received in the form of the Linkage Program and bound in the form of a notarial deed and registered as a fiduciary certificate. The legal problem in the case of Commercial Banks and BPRs is a form of linkage program with an executing pattern, in which case the Debtor or

BPR is in default. In this executing pattern, in practice, commercial banks only deal with BPRs for receivables that occur between BPRs and their debtors.

2 Method

The normative juridical technique was employed in the preparation of this thesis. The normative juridical research technique is a scientific research strategy used to uncover the truth based on the logic of legal scholarship from the normative side [7]. In this study, the researcher employs the Statute Approach, Conceptual Approach, and Analytical Approach (Analytical Approach). Researchers employ primary legal resources, secondary legal materials, and tertiary legal materials as sources of legal materials. The 1945 Constitution, the Civil Code, Law Number 7 of 1992 concerning Banking, Law Number 10 of 1998 Amendments to Law Number 7 of 1992 concerning Banking, Law Number 42 of 1999 Regarding Fiduciary Guarantees, and Bank Indonesia Regulation Number 8/26/PBI/2006 Concerning Rural Banks, and Bank Indonesia Regulation Number 14/15/PBI/2012 Concerning Asset Quality Assessment of Commercial Banks are among the primary legal materials used (State Institution of the Republic of Indonesia Year 2012 Number 202 DPNP and Supplementary State Gazette of the Republic of Indonesia Number 5354).

Draft legislation, publications produced by legal experts, legal journals, seminar debates, expert doctrine, legal cases, jurisprudence, findings of recent symposiums linked to study issues, and notes are examples of secondary legal resources used. Others are connected to the topic under investigation. Furthermore, tertiary legal documents, such as legal dictionaries, encyclopedias, and others, are legal materials that give instructions or explanations for primary and secondary legal materials. The technology for assessing legal information is now available. After gathering all of the materials, the legal items are categorised qualitatively. Following that, using more specific legal sources, the legal material is studied with applicable theories, and conclusions are produced to address the problem.

3 Result and Discussion

3.1 Position of Cessie Receivables on the Linkage Program Agreement Between Commercial Banks and Rural Banks

According to the Civil Code, the Agreement is the beginning of the birth of the engagement, which is governed in Civil Code Book III. The Civil Code regulates agreements in Book III addressing Engagement, the second chapter, first through fourth sections. Article 1313 of the Civil Code defines an agreement as “an act by which one or more individuals commit themselves to one or more other people” [8]. The Agreement is one of two legal grounds that might give birth to an engagement, the other being the Law. A legal connection that binds one or more legal subjects to related responsibilities is referred to as an engagement. Engagement is a legal relationship that exists either because of the Law or the Agreement and is exceptional in agreeing [9].

The Bank's legal connection with its clients is a contractual one. When a customer enters into a contractual relationship with a bank, the engagement that results is a contract-based engagement (Agreement). The contractual connection in law is a point of view in a system that Law seeks so that duties develop freely based on the will of the individual. Credit agreements, for example, might develop from the connection between the Bank and the Debtor. Banks are institutions that provide funds for debtors. In the relationship between a bank and a bank customer, rights and obligations arise between each Party. Therefore, there must be an agreement between the Bank and the customer when deciding whether to use the facilities the Bank concerned provides. A contract signed by both parties will usually mark this Agreement.

In general, all agreements are the same, meaning that there is a clear legal subject, then there is the freedom to agree, then there is a clear goal, and each Party can carry out its obligations to fulfill the elements of its achievements. The Linkage Program is a program that connects banks with micro and small business actors through microfinance institutions. The linkage program is a collaboration carried out by commercial banks to Micro Finance Institutions (MFIs) in the form of financing to increase the activities of Micro, Small, and Medium Enterprises (MSMEs) [11]. The Linkage program is a product of commercial banks channeling the funds they collect to MFIs or public financial institutions, in this case, BPRs with MSME customers. This cooperation program is said to be mutually beneficial between Commercial Banks and BPRs, where in this case, Commercial Banks can channel credit to MSMEs in collaboration with BPRs.

Commercial Banks must participate in increasing MSMEs by at least 20% of the total loans disbursed by Commercial Banks themselves as a form of participation in increasing MSMEs in Indonesia, as regulated in Article 2 of Bank Indonesia Regulation No. 14/22/PBI/2012 concerning Credit Provision. So, in that case, this Agreement has the nature of mutualism where one of the parties making the Agreement mutually benefits or benefits from each other.

A bank credit agreement comprises a number of terms or covenants, the majority of which are designed to safeguard creditors when they provide credit. Clauses are a set of financial and legal conditions for providing credit [12]. In the end, the clause prevents the creditor from being able to demand or withdraw cash granted to the Debtor in a favorable position if the Debtor's situation is not covered by the Agreement. From a legal standpoint, the provision is a way of enforcing the law so that the Debtor can comply with the terms of the credit arrangement [13]. The clauses of the credit agreement in the substance clauses of the credit agreement Linkage program between Commercial Banks and BPRs are clauses on credit terms, clauses on interest, cost agreements, and overdrawn penalties, clauses on representation and warranties, clauses on conditions precedent, collateral credit (collateral clause), the clause on affirmative covenant, and clause on Negative Covenant.

Bank credit has risks, hence banks must adhere to solid credit rules while implementing it. Credit guarantees in the sense of trust in the Debtor's capacity to pay off the debt by the Agreement are considerations that the Bank must evaluate to mitigate this risk. Securities are transferred to the bank in banking practice, and the bank will distribute credit depending on the guarantee margin needed by the bank. Banks are often

insured not only by receivables but also by secured and marketable guarantees as a result of credit guarantees in the form of bills or high-risk factoring [14].

The main agreement gives birth to the assurance agreement. The guarantee agreement cannot exist independently of the primary agreement, which is the program linkage agreement. When the main Agreement (linkage program) ends, the assessor agreement (Jessie receivable Agreement) also ends. This guarantee agreement serves to protect the creditor in the event the debtor defaults. The legal relationship between the BPR (the creditor) and the Debtor is called the initial legal relationship. When a BPR transfers its receivables to a commercial bank, the customer, as a third party, must have a legal relationship with the Commercial Bank. In this case, the cession mechanism that occurs should be informed to the BPR customers so that they can settle their obligations to Commercial Banks if the BPR is in default one day.

This means that the position of the BPR Debtor is legally transferred to a Commercial Bank. The concept of Jessie receivables based on Article 613 of the Civil Code in conjunction with Article 19 of Law Number 42 of 1999 in implementing the program linkage agreement has been carried out by both parties. However, the transfer of the position of receivables to Commercial Banks in Article 19 of Law Number 42 of 1999 is not explicit because no other mechanism regulates the transfer of rights and obligations as stipulated in Article 613 of the Civil Code. Based on the fiduciary certificate attached to the provisions of Article 19 of Law Number 42 of 1999, it can be said that there is the vagueness of norms because receivables, as stipulated in the guarantee law, must have legal certainty for the parties involved in the main Agreement.

3.2 Cession's Position of Third Party Receivables and Legal Efforts of the Parties Regarding Default in the Program Linkage Agreement Between Commercial Banks and Rural Banks

An agreement between both parties establishes a legally binding connection between the persons that form it. As a result, in theory, any Agreement entered into by the parties must require the parties to perform their responsibilities reciprocally. However, by agreeing to agree, both parties are free to choose the form of their agreement.

When parties agree, the principle of contract freedom based on Article 1320 in conjunction with Article 1338 of the Civil Code implies that the parties can determine the contents of the Agreement themselves, as well as the freedom for the parties to determine what and with whom the Agreement is entered into. If an agreement meets the legal criteria of the Agreement, it becomes binding on both parties. As a result, the parties' agreement is legally binding, and the agreement must be carried out in good faith.

In an agreement, sometimes, certain parties break their promises or default and do not carry out the rights and obligations that have been agreed upon. Default is a term in Dutch to refer to someone who has committed an act of breaking a promise to an agreement he deliberately made with another party. In simple terms, default is an act neglected by one of the parties in the Agreement, either intentionally or unintentionally.

In practice in the field, sometimes the parties in the Agreement do not determine when a debtor can be declared to have defaulted. Default is an unlawful act that can result in losses for the Party entering the Agreement. If a loss has occurred to one of

the parties from a contractual relationship, it can be used as the basis for a lawsuit. The parties who can file a claim are both the creditor and the creditor according to the level of interest of both parties as stipulated in the Agreement.

The collaboration between Commercial Banks as Linkage Providing Banks and BPRs as Linkage Recipient Banks is called a Linkage Agreement. In this linkage agreement, there is Cessie as a form of transfer of receivables between Commercial Banks and BPRs. Cessie is a method of transferring and/or handing over receivables on behalf of as referred to in Article 613 of the Civil Code. Cassie's words are not contained in the applicable laws in Indonesia; Cessie is only known from legal doctrines and jurisprudence. Cessie is a way of transferring receivables or bills, and the rights arising from an agreement in the form of an authentic or private deed can be transferred to another party. The Civil Code does not have the term cessie. Transfer of receivables with Jessie can occur in banking. One of them is in the Linkage program agreement, which provides credit facilities using receivables as collateral in this cooperation agreement. This receivable guarantee is called a cessie receivable.

The position of the cessie of receivables between Commercial Banks, Commercial Banks, and Rural Banks, related to the Linkage Program agreement, there are several points which are the essential points, as follows:

Position of the parties in the program linkage agreement:

- a. The Commercial Bank (Bank Providing Linkage) position in this Agreement as Cessionary, namely the Party receiving the delivery (the new creditor). In this case, a commercial bank receives a cassie guarantee from a BPR.
- b. The BPR (Linkage Recipient Bank) position in this Agreement as Cedent, namely the Party submitting the invoice on behalf of the (original creditor). In this case, the BPR submits the list of debtors to the Commercial Bank as collateral for the facilities received from the Commercial Bank.
- c. The position of the Customer/Debtor, as Cessus, is the Party with the debt. In this case, the debtors of the Linkage Recipient Bank or BPR are used as collateral by the BPR.

The legal relationship between the BPR (the creditor) and the Debtor is called the initial legal relationship. For example, when a BPR transfers its receivables to a commercial bank, the customer must have a legal relationship with the Commercial Bank as a third party.

In the relationship between a bank and a bank customer, rights and obligations arise between each Party. Therefore, there must be an agreement between the Bank and the customer when deciding whether to use the facilities the Bank concerned provides. A contract signed by both parties will usually mark this Agreement. The Debtor's legal connection with the BPR remains unchanged, which means that the Debtor continues to make installment payments to the BPR and does not move to commercial banks. Therefore, the Linkage Program agreement is a symbiotic mutualism for both parties and/or mutually beneficial benefits for the parties.

In banking practice, in order for an agreement to be considered valid, the parties must fulfill the conditions for the validity of the Agreement in the clauses of the Agreement that are made to give rise to the parties' rights and obligations so that the provisions in the

Agreement are binding between the two parties and must be obeyed as Law. Law. These clauses explain that the clause regarding breach of contract or default in the Agreement tends to have clauses related to the BPR or its debtors.

In practice, the transfer of receivables from Rural Banks to Commercial Banks is fiduciary by Article 19 of Law Number 42 of 1999. Therefore, the position of BPR Debtors is legally transferred to Commercial Banks. The concept of cessie receivables based on Article 613 of the Civil Code in conjunction with Article 19 of Law Number 42 of 1999 in implementing the program linkage agreement has been carried out by both parties. Assurance of cessie receivables transferred by an RB, which is in binding cessie receivables on a fiduciary basis, the Fiduciary Registration Office then issues a fiduciary certificate by the provisions of Article 19 of Law Number 42 of 1999. When an operational problem occurs or when an RB receiving this Linkage defaults, then the function of This fiduciary certificate is so that the fiduciary certificate holder, namely the preferred creditor, has the primary right to get a claim from the guarantee itself and to other assets if the main guarantee is not sufficient to meet the Debtor's debt by Article 1131 of the Civil Code.

Bank lending carries a risk of congestion even though various analyzes have been carried out carefully. A credit analyst cannot predict that credit will always run well. Many factors, including misuse of credit, poor management, and economic conditions, significantly influence the financial health of debtors and bank credit losses [15]. Efforts to minimize the occurrence of non-performing loans that can be done by creditors and reduce the risk of default can be used as anticipation for creditors to issue a credit to debtors. For example, banks set operational standards to reduce risk to analyze prospective debtors eligible for loans.

In this case, the risk can occur after the creditor disburses the credit. Therefore, the creditor always conducts periodic inspections of the Debtor's condition and the credit guarantee. A non-performing loan is caused because the Debtor cannot pay the debt properly by the Agreement. If, in a grant of credit, the Debtor cannot meet the requirements in an agreement or does not fulfill its obligations properly, then there is a default. The default can occur in the linkage program credit agreement between Commercial Banks and BPRs. If one of the parties cannot fulfill its obligations, it can be said to default or breach of contract. The Party most at risk of default is the Commercial Bank. If the BPR cannot fulfill its performance, it will cause a loss to the Commercial Bank.

Legal remedies taken by Commercial Banks in the event of default, in practice non-litigation is if persuasive actions cannot be taken or heeded then the Commercial Bank has the right to execute by disbursing additional collateral, namely this cash collateral as is the guarantee agreement for pawn deposits. Furthermore, because this program linkage agreement aims to be a Mutual Agreement, for the settlement of default, cash collateral is used as collateral that is useful in paying the obligations of the BPR. Therefore, in the case of disbursement of deposits from the linkage program agreement from the pawning Party (BPR) to the pawn recipient or creditor (Commercial Bank), it can be done after the Debtor (BPR) is declared in default as stated in the pawn agreement made by both parties.

The position of this guarantee should have been able to provide administrative rights for the Commercial Bank in the event of a default. However, with this executing pattern, the position of the cession of receivables, which is bound by a fiduciary basis, does not necessarily carry out the execution. Therefore, Commercial Banks cannot directly collect BPR debtors. Legal efforts to anticipate the position of the cession of receivables which legally lacks juridical strength, then there is an additional guarantee in the form of a pledge of deposit or cash collateral, where the regulatory Agreement is stated in Article 7 regarding Credit Guarantees in the Linkage Program Agreement.

In settlement of default or breach of contract, if the persuasive action cannot be carried out or heeded, the creditor has the right to execute by disbursing this cash collateral as in the deposit pledge agreement. In this Agreement, the Debtor gives the power and authority to withdraw the guaranteed deposit based on the Credit Facility document. The pledge of deposit agreement is repressive legal protection. This is because Commercial Banks have administrative rights to exercise this power. This is a legal effort that can be taken by creditors (Commercial Banks) to execute cash collateral (deposits) to disburse them to pay off debt or obligations (BPR).

4 Conclusion

The position of this guarantee should have been able to provide administrative rights for the Commercial Bank in the event of a default. However, with this executing pattern, the position of the cession of receivables, which is bound by a fiduciary basis, does not necessarily carry out the execution. Therefore, Commercial Banks cannot directly collect BPR debtors. Efforts made by Commercial Banks in the linkage program agreement with the BPR in the event of a default, the implementation is carried out by providing a summons for initial guidance, in the form of persuasive billing, if the BPR is negligent in carrying out its obligations. The position of third-party receivables to Commercial Banks cannot be executed due to the absence of transfer of contractual relationships to Commercial Banks. Fiduciary binding and cession receivables only meet the provisions of legal norms, namely the Civil Code and Law Number 42 of 1999.

Peraturan Perundang-Undangan

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Kitab Undang-Undang Hukum Perdata.

Undang-Undang Nomor 10 Tahun 1998 Tentang Perubahan Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan.

Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168, Tambahan Lembaran Negara Republik Indonesia Nomor 3889).

Peraturan Bank Indonesia Nomor 14/15/PBI/2012 Tentang Penilaian Kualitas Aset Bank Umum (Lembaga Negara Republik Indonesia Tahun 2012 Nomor 202 DPNP dan Tambahan Lembaran Negara Republik Indonesia Nomor 5354).

References

1. Murni Fuady, 1999, *Hukum Tentang Pembiayaan Dalam Teori dan Praktek Leasing Factoring. Modal Fentura, Pembiayaan Konsumen Dan Kartu Kredit*. PT Citra aditya Bakti Bandung, hal.158.
2. Johannes Ibrahim, 2020, *Bank dan Leasing*, Sinar Grafika, Jakarta, hal.88
3. Johannes Ibrahim, 2018, *Bank Potential As A Crime Means Through Financial Transaction*, Universitas Warmadewa, hal.92
4. Johannes Ibrahim, 2019, *Akses Perkréditan dan Ragam Fasilitas Kredit* ,Sinar Grafika, Jakarta, Hal.2.
5. Ibid, hal.5.
6. Putu Ayu Sriasih Wesna, 2022, *Penyelesaian Kredit Macet Pada BPR SINAR PUTRA MAS Akibat Pandemi COVID-19*, Universitas Warmadewa, hal. 13
7. Mukti Fajar Nd. Dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, hal. 153.
8. Johannes Ibrahim, 2019, *op.cit.* hal.66.
9. Ni Luh Made Mahendrawati, *The Principle of Balance to Realize Justice of the Parties in standardAgreements fot Bussiness Format*, Atlantis Press, Universitas Warmadewa, hal. 362.
10. Petter Heffey, *Principles of Contract Law*, hal. 5).
11. *Ikatan Bankir Indonesia,2015,Mengelola Bisnis Pembiayaan Bank Syariah*, Gramedia Pustaka Utama, Jakarta,hal.48.
12. Norton Joseph (ed), *Commercial Loan Documentation Guide*, New York: Metthew Bender and CO, 1989, Bab 11.02.,hal.11–9 dan 11–10).
13. Ibid
14. Johannes Ibrahim, 2019, *Op.Cit.* hal.2.
15. Johannes Ibrahim, 2021, *Op.Cit.* hal.71.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

