

Legal Position Agreement with Personal Guarantee at Bank Medan Branch

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Keywords: Legal Agreement, Guarantee and Personal Guarantee.

Abstract: In providing credit facilities, all banks always refer to the Loan to Value of the credit value. The value of the collateral provided is in the form of material guarantees, whether installed on a KPR, KPR, Fiduciary basis or Pawn and Cessie. If there is a lack of guarantee value that is relaxed by the internal and external assessment team, the Bank always asks for additional guarantees in the form of personal guarantees (personal guarantees) or company guarantees (company guarantees). This must be watched out for by bankers or legal officers of a finance company where if a company or individual has provided personal guarantees for a debt from a certain debtor, then it must be given strict provisions, that the guarantor must also be accompanied by a material guarantee.

1 INTRODUCTION

Banks as a company engaged in finance, all banking activities are always related to the financial sector, so talking about banks is inseparable from financial problems. Banking activities that are the first to raise funds from the wider community known as banking activities are funding activities. Raising or seeking funds by buying from the wider community is what is meant by fundraising.

The main activity of a bank is to raise and distribute funds, while the bank's supporting activity is to provide other bank services. Fundraising activities include collecting funds from the public in the form of demand deposits, savings and time deposits. This can be done by providing attractive remuneration such as interest and gifts as a stimulus for society. Fund distribution activities are in the form of providing loans to the community. Meanwhile, other banking services are provided to support the smooth running of these main activities. Currently, it cannot be denied that in the banking world many people use certain temporary work agreements because it is more profitable for the company, both in terms of employees who are always productive, and the company does not need to spend more money to pay severance pay (when employees stop working because the contract expires). Many other situations arise in practice where clear legal procedures cannot be applied. In

this note, attention is paid to the importance of structuring the details of claims and the consequences for which employee claims are formulated incorrectly. Possible solutions available to employees in terms of both general law and statutory are investigated (Barnard, 2010). If we look deeper into the business activities of banks, in carrying out their business, banks in Indonesia must be based on the principles of economic democracy that use the principle of prudence. In the nation-building process, banks have macro and micro functions, this is clearly illustrated through the bank philosophy.

Factors that are thought to contribute to the risk position of public and private actors are evaluated. In addition, the relationship between the risk position of public private buyer-supplier, duration of contract and private, supplier side investment is discussed. The results show that a well-structured long-term contract can: 1) provide the risk mitigation mechanism needed for both public and private actors, and 2) facilitate supplier-side private investment (Hartman, 2020). Banks have a very high level of risk in lending in the form of credit, so it is appropriate to take extra careful and objective measures in approving or applying for credit by debtors so as not to potentially harm the bank in the future. To deal with this risk, Article 2 of the Banking Law mandates the principle that banks in carrying out their business activities must be based

on economic democracy with the principle of prudence. In providing credit, banks are required to have confidence in the ability and ability of the debtor to pay off his debt in accordance with the agreement, if it is clearly written in Article 8 of the Banking Law.

To minimize the possible risks that will occur at the time of lending, banks must act prudently, carefully, carefully and wisely or not carelessly in raising funds and channeling them back to the public. This is a precautionary principle that must be followed and followed by banks in order to reduce risk. Organizations can measure trustworthiness and manage it to build trust and strengthen loyalty intentions among its consumers. A possible extension is to conduct longitudinal studies to map the nature of trust and loyalty that develops over time and stages of customer life. Virtue and problem-solving orientation of FLEs and MPPs on their belief in FLEs and MPPs and loyalty intentions (Shainesh, 2012). The main function of a bank is as a financial intermediary, meaning that all money or funds obtained from public savings must be channeled back to the community in the form of loans / credits. Lending is the provision of money lending by banks to members of the public which is generally accompanied by the provision of credit guarantees by the debtor (borrower).

The credit analysis process must be passed first. When a customer wants to apply for credit to a new bank, the customer will be given a decision to approve or reject the credit. The most important objective of the credit analysis process is for banks to make good and correct credit decisions so as to avoid credit decisions that lead to bad credit. Households adopt contracts that rely on unverifiable outcomes, which cannot be formally contracted when the penalties for breach of contract are weak. In contrast, households adopt contracts that rely on legally contractable and verifiable results when penalties are severe. This evidence is consistent with the terms of the contract that is optimally selected considering what can officially be contracted or not (Michler, 2020).

The history of antitrust law is full of firms that are regulated as single entities under company law, but function as competitors and are treated as such by antitrust laws. This allows productive assets to remain intact, but forces decision makers to behave competitively. Finally, this paper looks at the problem of nascent enterprise platform acquisitions, where the greatest threat is not from horizontal mergers but from complementary acquisitions or differentiated technologies. For this, the tools

currently used in the merger law are less suitable (Hovenkamp, 2020).

In lending, Banks must have confidence based on an in-depth analysis of the debtor's intention and ability as well as the ability to repay credit as agreed. Before credit is granted, to convince the bank that the customer can truly be trusted, the bank first performs a credit analysis. Credit analysis includes customer or company background, business prospects, guarantees provided and other factors. The purpose of this analysis is to make banks believe that the credit they provide is truly safe. Providing credit without prior analysis will be very dangerous for banks.

In providing credit, every bank has risks so that lending must be carried out carefully with due observance to the principles of sound credit by applying the principle of prudence to ensure certainty that the bank will get all debts from debtors in the form of principal and interest (when the loan falls. tempo). Relate to trust as articulated in the organizational stakeholder trust model. Scholars in marketing need to develop a more macro view of the company that examines trust outside of customers to reflect broader stakeholder focus and corporate social responsibility issues. A reputation of trust and a license to operate will be needed to restore and maintain stakeholder confidence in the big banks. Building a trustworthy bank is essential for social and economic progress (Hurley, 2014).

To reduce this risk, the guarantee of credit extension in the sense of confidence in the ability and ability of the debtor to pay off the agreed obligations is an important factor that must be considered by the Bank. To obtain this guarantee, before extending credit, the Bank must carefully assess the character, ability, capital, collateral and business prospects of the debtor. In this case, the Bank must have and implement credit guidelines in accordance with the provisions stipulated by the Financial Services Authority Number 42 / POJK. 03/2017 concerning the obligation to formulate and implement bank credit or financing policies for Commercial Banks.

Certain temporary work agreements only apply to certain jobs, which according to the type and characteristics or work activities will be completed within a certain time, namely after the work is completed or temporary work which is expected to be completed in less than a short time. Time and a maximum of 3 (three) years, the work is seasonal and work is related to new products, new activities, or additional products that are still under trial or investigation. This is clearly written in the

Manpower Law. That moral outrage must be an explicit solution and a philosophically informed approach to judicial interpretation requires expressions of moral anger from judges to address ongoing injustice or threats of injustice aimed at vulnerable communities such as women and religious minorities in the current political climate (Rudolph, 2020).

Lending is the provision of money lending by banks to the public which is generally accompanied by a credit guarantee by the debtor (borrower). Acceptance of credit guarantees is linked to various legal provisions of the guarantee. The loans provided are always secured by credit guarantees which aim to avoid the risk of debtors not to pay their debts. The guarantee given by the debtor must be made an agreement between the creditor and the collateral owner (can be a debtor or other non-debtor) which is called a guarantee binding agreement. The lack of clarity about the validity and adjustment of the new law has sparked disputes over the implementation of the PKB. Based on the good intentions of the PKB parties, changes can be made through negotiations in accordance with the mechanisms stipulated in the Legislation. The position of PKB is an autonomous law that applies to companies and is an important element in the prevention and settlement of Industrial Relations Disputes. Finally, settlement through bipartite, tripartite, and the Industrial Relations Court is a mechanism that can be carried out for disputes of interest (Sudiarawan, 2019).

Lending is intended to give creditor confidence to the debtor even though this trust carries a high risk. Therefore, in providing credit, there are several elements that are often referred to as the credit element, namely:

- Trust is a lender that gives assurance to credit recipients that the credit given will be received back within a certain period of time at a later date. Trust is the belief in giving credit that the credit given (in the form of money, goods or services) will actually be received back at a later date.

- Grace Period is the period between the period of credit extension and repayment of credit. The value of money at the time of granting credit (agio value) is higher than the value of money that will be received at the time of repayment of the credit at a later date. Each credit given has a certain period, including the agreed credit repayment period.

- Risk degree is the level of risk that will be faced due to the time period that separates the provision of credit and repayments of credit at a later date. The longer the payback period, the higher the

risk level. Because there is an element of risk, the credit agreement requires collateral. The risk that there is a grace period for repayment will lead to the risk of non-collection / default on credit. The longer the credit the greater the risk and vice versa. This risk is borne by the bank, whether it is an intentional risk by a negligent customer or an accidental risk. Risk is the risk that may occur during the period between granting and repayment of credit, so as to secure credit disbursement and cover the possibility of default from borrowing customers, it is bound by collateral and collateral.

- Agreement, this agreement includes an agreement between the lender and the credit recipient. This agreement is set forth in an agreement where each party signs its rights and obligations.

Credit basically has a purpose or use to meet human needs. Judging from its nature, this credit can be categorized as consumptive or productive credit depending on the treatment. Each credit given has an agreement that contains the ability to pay within a certain period. The repayment period is usually adjusted to the amount of credit given. This credit is seen from the flow of funds provided between borrowers and lenders and the mechanisms therein. Credit is given to encourage economic activity in certain sectors in order to increase production productivity, which is usually intended for export activities. To provide a sense of security in providing credit, guarantees are needed so that both parties have a sense of responsibility for their respective obligations. Employees' freedom of expression is threatened. To counter this trend, privacy laws, recently surpassed in the EU by the General Data Protection Regulation or GDPR, and more generally the principle of proportionality, can represent an effective instrument to prevent technology from exacerbating the condition of employee subordination (Punta, 2019). By looking at a person's financial capabilities or assets will be the basis for determining the level and type of credit to be given. Each credit given has its own mechanism in the process of withdrawal and repayment.

The bankruptcy decision from the guarantor can be fulfilled by the judge as long as the requirements for the bankruptcy statement letter are met, namely the debtor has more than one creditor and one of the debts is due and can be claimed and the guarantor has escaped from his privileges (Anisah, 2002).

Achievements given are achievements in the form of goods, services or goods, services or money. In the development of credit in the realm of Islam

what is meant by achievement in providing credit in the form of money. Achievement or credit object is not only given in the form of money, but also in the form of goods or services. However, because current Islamic economic life is based on money, credit transactions involving money are what we encounter in lending practices.

An extension of subpoena powers held by agencies such as the SEC, FTC, and EPA and is the lynchpin of a system that relies on private plaintiffs to enforce our most important laws. By forcing parties to disclose large amounts of information, the findings prevent harm and most importantly shape industry-wide practices and the core behavior of regulated entities. This approach has various implications for the scope of findings as well as the cost debate. Therefore, scholars and courts must grapple with the consequences of what I call "regulatory discovery" for the entire legal system (Zambrano, 2020).

Credit in banking activities is the main business activity because the largest income from bank business comes from income from credit business activities. Giving bank credit will be very useful if the credit provided is in accordance with the goals and needs. However, the funds from credit disbursement must be returned by the debtor to the bank, so that the funds from credit disbursement must be used wisely.

Meanwhile, guarantees in banking activities are one of the elements in lending to banks. Collateral can be in the form of something or goods that are made an obligation in the form of a loan. Banks in providing credit are accompanied by certain guarantees. The existence of credit guarantees is one way to reduce bank risk in lending. When a customer provides personal guarantees to a third party creditor, usually a bank or other business lender, the customer agrees to act as guarantor of the other party's debt obligations. That means if the company defaults on the loan, the customer has guaranteed to step in and pay in return.

Customer obligations are secondary to the main obligations between the borrower and the lender, if the borrower does not have payment due, the borrower cannot be found in a position of liability.

Article 1131 of the Civil Code states that all objects or assets of a person become collateral for all debts. If the debtor does not fulfill his obligations, the debtor can with certainty and easily exercise his rights against the debtor by obtaining a higher position than other debt collectors.

There are several types of material guarantees and forms of guarantee which are binding under

Indonesian law. The form of collateral binding depends on the type of object that is guaranteed to move or not the object moves.

All guarantee agreement agreements are *accessoir*, meaning that the guarantee commitment agreement exists or exists depending on the main agreement, namely the credit agreement or debt agreement.

In daily banking law practice, this guarantee is used as a complementary guarantee (which complements the provision of existing guarantees). There is no mention in the individual Guarantor regarding certain assets owned by the Guarantor which are used as collateral for the repayment of debtors' liabilities to the Bank. In providing credit there must be two ways of repayment (way out), the first method of repayment is cash (the first way out of credit is cash), the second way, collateral (the second way out of credit is collateral). The second solution (guarantee) for creditors is an alternative solution if the first alternative does not work as expected.

Because with a guarantee agreement if the debtor is negligent in performing, the guarantor is obliged to replace the debtor's position to carry out the achievement. In a guarantee agreement, the individual guarantor is usually required to relinquish his privileges to protect his position. The release of this privilege causes the individual guarantor to be responsible in the event that the debtor's wealth is insufficient to pay off his debt (Susilowati, 2016).

In practice, the individual guarantee agreement is less profitable because the creditor is only a dual creditor who has to compete with other creditors to fulfill the debtor's obligations, and because the third party also does not bind certain assets in the agreement, the third party often rejects the ability.

Agreement analysis is carried out on the customary law of the agreement which becomes the appropriate law so that it becomes material related to evaluation, there needs to be improvements in the supervision of the applicable regulations (Rajamanickam, 2019). Individual guarantee is someone's guarantee from a third party whose function is to ensure the fulfillment of the debtor's obligations. In other words, an individual guarantee is an agreement between the debtor (creditor) and a third party that guarantees the fulfillment of the debtor's (debtor) obligations.

In the event of an execution in which the Guarantor has to pay debtor's debt to the creditor, the guarantor's debt to the creditor can be taken from one of the Guarantor's assets, except those that have been burdened with other collateral such as

Mortgage, Pawn or Mortgage. However, the implementation of this guarantee agreement is very difficult because there is only the ability of the guarantor, namely a third party or certain company that is used as a guarantee. Without the support of a material guarantee agreement that binds third party individual guarantees cannot be executed. A bank loan is a new form of guarantee that is not covered by general guarantees and special guarantees. This shows that the legal guarantee system in Indonesia is no longer a purely closed system, but has begun to shift to an open system.

This also happens to Bank X Medan Branch where the Bank provides credit to debtors accompanied by personal guarantees, so that in the credit agreement there is a third party that guarantees the creditor the fulfillment of the debtor's obligations. When the debtor defaults, the third party acting as guarantor pays the debtor's remaining debt. But in reality, the execution of a third party is very difficult to do because it is not accompanied by a material guarantee by the Guarantor.

It should be noted that in providing credit facilities, Bank X always refers to the Loan To Value of the credit value against the value of the guarantee provided, namely in the form of material collateral, whether installed as KPR, Mortgage, Fiduciary or Pawning and Cessie, and if there is a lack of collateral value then it is loosened. Usually internal and external assessment teams, banks always ask for additional guarantees in the form of personal guarantees or company guarantees.

The laws and regulations governing accountability in articles 1820-1850, protection is only given to the guarantor with several privileges. Banks tend to be less protected because banks cannot take steps to resolve the credit debtor concerned. Whereas the underwriter is not cooperative in carrying out the achievement of defaulting debtors, the protection of the Personal Guarantee creditors obtained through the clause in the underwriting agreement is intended to provide legal protection for creditors of the financial services authority which regulates (that the guarantee agreement must be authentic deeds and submission of counter guarantees by the insurer and its formulation). The clause in the underwriting agreement proposed by the researcher aims to equalize the clause in the underwriting agreement as a form of legal protection for creditors and so that important clauses are not included in the underwriting agreement (Wulandari, 2017).

This is what bankers or legal officers of a financing company must be aware of, where if a

company or individual has provided personal guarantees for a debt from a particular debtor, it must be given clear provisions, that the guarantor must also be accompanied by a material guarantee. Supreme Courts, lower federal courts, and state courts routinely handle disputes arising from the multilateral nature of intergovernmental agreements. The main framework that courts use to resolve such disputes is private contract law, but they also adapt the principles of such contracts - often in an ad hoc manner - to accommodate public parties and their public objectives. By drawing the cases together across contexts, parties can see the doctrinal patterns, jurisprudential conundrums, and theoretical implications that stem from the dual character of contract law and public law. A treaty law for American federalism can be established (Fahey, 2020). In the banking world, the process of granting and assessing credit between banks is not much different. These differences are usually only in the procedures and requirements that are set in each bank, which varies according to their respective considerations.

These capital outflows will be associated with low income volatility, while capital inflows will be associated with high income volatility. The negative effect of financial liberalization on income volatility in developing countries is due to the fact that the majority of these countries have capital inflows that are larger than those of capital outflows. Therefore, excess capital inflows in developing countries increase pressure and vulnerability to crises (Feriansyah, 2018). The process of providing credit can generally be distinguished between individual loans and loans by legal entities, and can also be seen from a consumptive or productive perspective.

The process of credit analysis and approval will be carried out in accordance with the Bank's work guidelines and cannot be separated from the provisions of Bank Indonesia which require each Bank to apply the principles of prudence and risk management in the context of providing funds because lending (is the main activity of banks and is the main source of bank failure. and contains a high risk that can affect the soundness and survival of the bank). Therefore, it is necessary to clearly regulate the parties involved in the credit extension process. There must be a clear separation between the functions, duties and powers and responsibilities of each work unit involved in credit processing.

Lending should not be arbitrary and will be monitored. There are debtors who have experienced a decline in credit quality but still have a fairly good business prospect (according to the provisions of the

Bank Indonesia regulation that banks carry out credit restructuring).

Credit restructuring is an effort to increase bank credit activity for debtors experiencing difficulties in fulfilling their obligations. Credit restructuring can only be carried out by banks against debtors who meet the criteria. The debtor has difficulty paying the principal and / or interest on the loan. Debtors still have good business prospects and are considered capable of meeting obligations after the credit restructuring. Credit restructuring cannot be carried out for the sole purpose of improving credit quality or avoiding an increase in the formation of PPA without considering the criteria for debtors as mentioned above.

The loan to be restructured must be analyzed based on the debtor's business prospects and the ability to pay based on cash flow income. Loans to be restructured must be analyzed by an independent financial consultant who has a business license and a good reputation. Each stage in the implementation of credit recovery and the results of the analysis carried out by banks and independent financial consultants on restructured loans must be completely and clearly documented. This loan is one of the main studies that will be analyzed and used as a reference in accordance with the provisions of the Bank Indonesia regulation that banks carry out credit restructuring.

2 METHOD

This study uses empirical legal research that comes from field research with a comparison of regulations and prevailing events compared to legal research topics related to applicable regulations. Then a comparison of the provisions to get a better change value is found against the legal findings. As a source of analysis, it is obtained from legal materials, namely statutory regulations, journals, materials and existing bank regulations.

This research looks at the rules governing the legal position that becomes personal collateral in the bank, both in company regulations and in applicable state regulations. The results of this study will be a comparison that produces helpful rules and becomes a good result.

3 RESULTS AND DISCUSSIONS

3.1 Legal Position of an Agreement with Individual Guarantee

Article 1820 of the Civil Code up to Article 1848 of the Civil Code regulates individual guarantees. In practice, the form and material of the credit agreement between one bank and another bank are not the same. This happened in order to adapt to the needs of each party. Thus the credit agreement does not have a generally accepted form, it's just that in practice many things are usually included in the credit agreement (for example in the form of definitions of terms used in the agreement, the amount and time limit of the loan, determination of loan interest and penalties). If a debtor is negligent in paying his debts and other things that sometimes benefit the creditor (because sometimes the debtor loses money), it is necessary to make it difficult for the debtor not to sign a credit agreement.

However, prohibition number 8 of 1999 concerning consumer protection in Article 18 paragraph (2) has also been regulated, which states that business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly or is difficult to understand. In fact, according to Article 18 paragraph (3) of Law Number 8 Year 1999, the agreement was declared null and void by law.

In practice, the bank applies the elements of a credit agreement between the debtor, creditor and guarantor, including:

- In accordance with the agreement between the debtor and bank which will be outlined in the credit agreement where the bank promises to provide loan facilities according to the needs of the debtor in developing his business, accompanied by terms and conditions that must be met by the debtor and the debtor also promises to return all debts and interest such as promised to the bank.
- The debtor / guarantor who enters into a credit agreement with the bank must have the ability to take legal actions in accordance with the provisions of the prevailing laws and regulations and is the person who has the right to take action on the collateral object that will be used as collateral (used as collateral to the bank).
- The credit agreement / guarantee agreement must contain something that is the rights and obligations of the parties between the creditor, debtor and guarantor, if a dispute occurs in the future, in this case what is meant is the obligation of

the debtor / guarantor to pay debtor debt as promised.

- The credit agreement and guarantee agreement made by the parties must not conflict with applicable laws and regulations.

Because individual / company guarantees in banking practice in Indonesia are only additional guarantees and refer to more moral obligations, the implementation of individual / company guarantees is still very difficult. In an individual / company guarantee, there is no certain part of the surety's assets that is designated as collateral. This causes credit to be in a dual position, which means that if a debtor has obligations to several creditors, the creditor has an equal position. Thus, the fulfillment of the guarantor's obligations is carried out proportionally in accordance with the debtor's debt to each creditor. The action that has been taken by the bank is to sue the individual guarantor through a commercial court, namely by the bankruptcy of the individual guarantor to immediately pay off the remaining debtor's debt to the bank. Subsequently, filing a bankruptcy suit against an individual guarantor must be accompanied by at least one other creditor.

In general, the provision of credit by banks always refers to the principle of prudence, and the credit limit given is based on the loan to value of the collateral value after being assessed by an internal or external assessment team, and the credit limit for the value of the collateral is around 70% - 80%. For example, the debtor submits a loan of Rp. 10 billion and after being analyzed it is feasible to be financed with a loan value of 70% with a guarantee of Rp. 12 billion, so the total loan that can be given is only Rp. 8.4 billion. The difference will be given an additional guarantee in the form of an individual guarantee and if the debtor fails to pay, the bank always prioritizes the implementation of the main collateral then submits additional guarantees.

However, there are exceptions to the nature of *accessoire*, namely that someone can enter into a guarantee agreement and it will remain valid even if the principle agreement is canceled (if the cancellation is the result of an exception that only concerns the debtor's personal). For example, an agreement made by a child who is not yet an adult is asked to be canceled, while the coverage agreement remains valid.

3.2 Settlement of Individual Guarantee of Credit Problems

Responsibility for personal guarantee (Personal Guarantee) has joint responsibility for all personal assets that are owned for sale or auctioned publicly as repayment of all debtor debts as agreed in the personal guarantee agreement made with the bank (if there is a claim from the bank in default).

Banks can demand debtors to conduct an auction for the implementation of collateral for assets given to banks that have mortgage or fiduciary powers that have executive power and preference rights against other creditors and make ordinary civil suits against personal guarantor (to pay off debtor's debt immediately where the debtor has failed to pay loans provided by banks).

However, due to the demands for personal guarantees, the bank's position as a creditor is only concurrent and no material guarantee is given to the bank to bind the guarantor. In practice, the bank always prioritizes the collection of the debtor in implementing the material guarantees given which have the choice of preference. The certainty of payment of debtor debts from the auction results on the material guarantees provided by the debtor is still lacking to pay off all debtor deductions, so the next step for the bank will consider billing or suing the personal guarantor to pay debtor debts either civil claims or bankruptcy claims from personal guarantor if the personal guarantor denies promise.

The guarantor has special rights guaranteed by law. Guarantee privileges are:

- The right to request that the debtor's debt be fulfilled by confiscating and then selling the debtor's assets first. If it turns out that the debtor's assets are still insufficient, the new creditor asks the guarantor to pay the remaining debt that has not been fulfilled (Article 1831 of the Civil Code).

- Fulfillment of debts as referred to in Article 1430 of the Civil Code. The guarantor has the right to fulfill the debt between creditors and debtors. Thus, this causes the debtor's debt to creditors to pay off because the debtor has receivables equal to the amount owed to creditors.

- At the request of the guarantor, the creditor is not obliged to sell or confiscate the debtor's assets (Article 1833 of the Civil Code).

- In the case of a guarantor consisting of several people or several companies, the guarantor has the right to request settlement of the debt that is borne together in accordance with their respective proportions. If one guarantor is unable to pay, then the other guarantor must compensate to fulfill the

guarantor's obligations by paying off the debt. If the inability occurs after the debt is divided, there is no obligation of the surety to fulfill the obligations of the surety. The guarantor can settle the debt fulfillment obligations at the initiative of the creditor (Article 1837 and Article 1838 of the Civil Code).

- The guarantor has the right to ask for compensation from the debtor or be exempted from his obligation to provide individual / corporate guarantees to the creditor for the related debtor's debt. This applies if the surety is sued before a judge to pay the debtor's debt. There is an agreement between the debtor and the guarantor that after a certain period of time the guarantor will be released from his obligation to guarantee the debtor's debt. The credit agreement does not specify the length of time the guarantor must bear debtor's debt to the creditor. Guarantor can request to stop acting as guarantor after the last 10 years, except for guarantees related to trusts.

- The guarantor has the right to file an objection that the debtor can use to the creditor. Denial should not only be related to the debtor's personal (Article 1847 of the Civil Code).

- The guarantor has the right to demand the debtor to fulfill his obligations to the creditor or ask the debtor to release the guarantor from the obligation to pay the debtor's debt to the creditor (Article 1850 of the Civil Code).

This special right is actually a special right given by law to the guarantor when the guarantor makes a guarantee agreement. However, these rights in practice can make it difficult for a creditor to demand fulfillment of his obligations to the guarantor when the debtor is in default. With this right, the surety can avoid his obligations at all costs.

Therefore, almost all forms of individual guarantee agreement usually have a clause that refers to article 1832 of the Civil Code that overrides all guarantor privileges.

Debtors who no longer have business prospects and the ability to pay principal and interest on debt are classified as bad credit and will specifically be handled by a special team that works together with lawyers to carry out the process of executing collateral debtors in terms of security, fiduciary, under lien with rights preference or against individual guarantees such as personal guarantees and corporate guarantees that have concurrent rights.

And the settlement of bad credit that is handled by the collection team does not all have to be done through the court, but the bank still prioritizes the settlement of deliberations first (for example, still giving the opportunity to the debtor or guarantor to

sell the guarantee in advance of the payment of the debt and also provide a good discount on the principal or interest to be paid to facilitate the debtor's ability to pay off debts). If the steps as above have been taken and the debtor is still not willing to pay off his debt by deliberation, the final step for the bank is to take legal action by implementing a clear guarantee in general. The auction proceeds can be used to pay off debtors' debt if there is an excess. Through the court it will be returned to the debtor or guarantor, and if the auction proceeds are still not sufficient to pay off the debt, the bank is still entitled to collectively collect from the debtor to pay off the debt.

However, in practice it is not as easy as the process in general. At Bank X Medan branch itself it is rather difficult to carry out execution due to tracking assets belonging to individual guarantor and requires a relatively large fee. Until now, one of the Medan branch banks in Medan has never implemented an individual guarantee. However, at PT Bank X another branch has indirectly become a separatist creditor for the bankruptcy lawsuit filed by other banks on individual guarantees in the Supreme Court decision No. 8 / PDT-SUS-PKPU / 2018 /PNNIAGA.MKS. During the bankruptcy period in accordance with Article 55 paragraph 1 of the Bankruptcy Law, separatist creditors can exercise their own executive rights as if there was no bankruptcy within 2 (two) months from the commencement of bankruptcy.

Bankruptcy lawsuit against debtors or individual guarantor is a last resort or alternative taken by the bank with the following considerations: Bankruptcy is the general confiscation of all assets of the debtor or individual bankrupt guarantor whose management and settlement is carried out by the curator under the supervision of the supervisory judge as referred to in Article 1 paragraph 1 of Law Number 37 Year 2004 concerning Bankruptcy.

4 CONCLUSIONS

Credit agreement with personal guarantee at Bank X Medan branch is an accessory agreement. The purpose and content of the coverage is to provide a guarantee for the fulfillment of the principal agreement and the existence of the coverage in relation to the main agreement serving the principle agreement. Settlement of non-performing loans with individual guarantees is carried out by Bank X's Medan branch, namely prioritizing deliberative settlement and if the debtor is still not willing to pay

off his debt by deliberation, the bank's last step is to take legal action by implementing debtor guarantees. If the debtor's guarantee is insufficient to pay off his debt to the bank, the bank will hold the guarantor accountable.

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