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“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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The 5th International Conference and Call for Paper Faculty of Law 2019 Legal Reconstruction in Indonesia Based on Human Right

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Legal Review of Personal Warranties Made Against The Notary of Lending

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Abstrak

The purpose of this research is carried out because to find out whether the individual guarantee has guaranteed the settlement of problem loans at PT. Bank Mandiri Semarang Branch and how the Role of Notaries in Providing Credit using Individual Collateral at PT. Bank Mandiri Semarang Branch. This writing uses an empirical juridical method. Based on the research, it is concluded that individual guarantees in providing credit sometimes do not work as expected, in the form of lending there are risks, one of which is bad credit or problem credit. Banks will use various means so that the credit given can be withdrawn, before settlement is carried out through legal channels. Bank Mandiri (Persero) will issue summons to debtors up to three times. If the debtor does not heed the subpoena sent by the Bank, the Bank will collect directly. If the efforts that have been made are unsuccessful, then Bank Mandiri (Persero) will eventually take legal action. The role of notaries in the credit distribution system carried out by banks is to provide legal certainty for parties who enter into credit agreements, In addition to that, the roles of Notaries and Land Deed Making Officials are also the authorities to check the person who is pledged to ensure whether the guarantee is valid in legal eyes or not or to avoid if there is a possibility that there is still a legal dispute or legal case in the guarantee.

Key words: individual guarantee, made before a notary, against credit extension

A. INTRODUCTION

The importance of banks for the economy of a country, among others, is because banks function in terms of creating money, circulating money, providing money to support business activities, a place to secure money, a place to invest, and other financial services.¹

A bank is a business entity whose activities include the activities of collecting funds from the public in various forms (current accounts, deposits, savings, etc.) which of course require special requirements to establish or operate.²

The essential element of bank credit is the trust of the bank as a creditor against a borrower as a debtor. This trust arises because the debtor has fulfilled all the terms and

conditions for obtaining bank credit, including the clear purpose of the credit designation, the existence of collateral or collateral objects, and so on.³

One of the things that is required by a bank as a creditor of the appropriateness of the assessment of a debtor customer in extending credit, namely the existence of protection in the form of guarantees that must be provided by the debtor to ensure repayment of his debt for security and legal certainty, especially if after the agreed period, the debtor does not pay off his debt or defaults.

In practice, to date Individual Guarantee users are still required to provide credit among national banks, including for:⁴

1. Loans launched for companies, both legal entities and business entities, on the grounds that credit on behalf of the

¹ Kasir, 2006, *Dasar-dasar Perbankan*, Edisi I, Raja Grafindo Persada, Jakarta, p. 2.

² Zainal Asikin, 1997, *Pokok-pokok Hukum Perbankan di Indonesia*, Cetakan Kedua, Raja Grafindo Persada, Jakarta, p. 25.

³ Hermansyah, 2005, *Hukum Perbankan Nasional Indonesia*, Kencana Prenada Media, Jakarta, p. 56.

⁴ Yunika Putri, Head of Credit at Bank Mandiri Semarang Branch

company must be guaranteed personally by key persons in the company, including shareholders, directors or commissioners who manage and supervise the running of the company;

2. Credit that is disbursed to individuals who for certain reasons are required to be given additional guarantees in the form of Personal Guarantee. The reasons include:
 - a. The fixed assets guarantee is insufficient to cover the credit amount.
 - b. Debtor's credibility is still in doubt in managing his business.
 - c. The Debtor's business is a joint venture with other people.
 - d. Relatively large amount of credit

At PT. Bank Mandiri Semarang Branch has differences in the provision of credit with individual guarantees in terms of the amount of the credit limit, namely as follows:

1. *Ceiling* credit below up to Rp. 5,000,000,000, -
The requirements for the imposition of individual guarantees are rarely done, because the credit limit is below Rp. 5,000,000,000, -, the value of the main collateral (fix assets) is required to cover the entire credit ceiling so that only certain cases are required to add individual guarantees.
2. *Ceiling* credit above Rp. 5,000,000,000, -
It is always required to increase personal guarantees for the reasons mentioned above and to increase the confidence of the bank because a large amount of credit carries a large risk as well.

From the above background, it is necessary to do research on Individual Collateral Made Before Notaries Against Credit Lending at PT. Bank Mandiri Semarang Branch ". The formulation of the problem is as follows: Is the Individual Guarantee able to guarantee the settlement of problem loans at PT. Bank Mandiri Semarang Branch? How is the role of the notary in providing credit with individual agreements at PT. Bank Mandiri Semarang Branch?

B. DISCUSSION

1. Personal Guarantee has been able to Guarantee the Settlement of Non-Performing Loans at PT. Bank Mandiri Semarang Branch

- a. Factors that cause non-performing loans

Internal factors as the cause for the emergence of non-performing loans are more dominated by various factors, most of which originate from the banks themselves which, among others, are due to the following:⁵

- 1) Credit Extension Policy which tends to be expansive.
- 2) Irregularities in the implementation of credit procedures.
- 3) Weak administration and credit supervision systems.
- 4) Weak credit information system regarding troubled bank debtors.

- b. Legal Aspects of Individual Guarantee Documents

The objective of the individual guarantee is to provide a guarantee for the fulfillment of the provisions in the main agreement and therefore it is *accessoir* in nature. In practice at Bank Mandiri (Persero) it is given in written form in the form of a notary deed. This Individual Guarantee Agreement may not be presumed but must be expressly stated.⁶

- c. Non-Performing Credit Rescue and Settlement Actions

Credit salvage measures undertaken by Bank Mandiri (Persero) in credit business activities as an effort to enable debtors to fulfill their obligations, are carried out, among others, in the following ways:⁷

- 1) Credit term extension;

⁵ Yunnika Putri, Head of Credit at Bank Mandiri (Persero) Semarang Branch

⁶ Sub Division for Legal Affairs of Bank Mandiri Head Office, Legal Aspects of Credit Documents, Training Centers IV Central Java & DIY.

⁷ Head of Non-Performing Credit at Bank Mandiri (Persero) Semarang Branch.

- 2) Changes in payment / installment schedule (including changes in the amount of installments both for principal, interest, penalties or other fees, change in grace period);
- 3) Reduction in arrears of loan principal;
- 4) Lower lending rates;
- 5) Reduction of arrears on credit interest;
- 6) Additional credit facilities;
- 7) Acquisition of debtor's assets according to applicable regulations;
- 8) Credit conversion into temporary equity participation in debtor companies;

Collection efforts carried out by the ROC appointed to handle the account, while the dispute resolution in court is carried out by the Sub Litigation Staff. Legal Division and appointed lawyer.

d. Non-Performing Credit Settlement Actions Using Individual Collateral

Credit settlement actions at Bank Mandiri (Persero), as mentioned above can be done in two ways, namely collection outside the judicial process and collection through the judicial process. Likewise, when using individual guarantees, Bank Mandiri (Persero) will also, wherever possible, undertake collection efforts outside the court process to the guarantor. The RO and ROC also approached the guarantor in a friendly manner to be able to help settle loans from problematic debtors.

2. The role of a notary in extending credit using individual guarantees made by the Semarang branch of Bank Mandiri.

The role of notaries in the credit distribution system carried out by banks is to provide legal certainty for parties who enter into credit agreements, In addition to that, the roles of Notaries and Land Deed Making Officials are also the authorities to check the person who is pledged to ensure

whether the guarantee is valid in legal eyes or not or to avoid if there is a possibility that there is still a legal dispute or legal case in the guarantee.

The notary also has an additional role after the credit agreement between Bank Mandiri (Persero) and its customers is completed, if this is not done by the Notary after the agreement is completed, it can lead to a legal case where the collateral is still under collateral with the previous agreement, causing the collateral to not can be used again as personal collateral in a credit agreement in a future agreement, because in the records of the State Land Agency the individual guarantee is still bound by an agreement with the previous agreement, so here the Roya function is used to release the Personal Guarantee from the previous agreement which has ended. so that the person who made the guarantee is not involved in an agreement process.⁸

C. CLOSING

Based on the research it can be concluded that:

- a) Individual Guarantee In providing credit at PT. Bank Mandiri Semarang Branch, sometimes does not go as expected, in the form of credit distribution contains risks, one of which is bad credit or problem credit.

Banks will use various means so that the credit given can be withdrawn, before settlement is carried out through legal channels. Bank Mandiri (Persero) will issue summons to debtors up to three times. If the debtor does not heed the subpoena sent by the Bank, the Bank will collect directly. If the efforts that have been made are unsuccessful, then Bank Mandiri (Persero) will eventually take legal action.

If the alternative resolution is unsuccessful, then the settlement of the problematic account can be resolved

⁸ The Notary and Land Deed Making Officer Mrs. Ratnaningsih in the working area of Demak Regency.

immediately by means of litigation. Litigation is the last resort carried out if the settlement efforts by means of collection (credit collection) and compromise (compromised settlement) have been carried out optimally but have not been completed. The litigation process is carried out by means of execution or by filing a civil suit and / or criminal proceedings.

- b) The Role of Notaries in Providing Credit with Individual Collateral.

The role of notaries in the credit distribution system carried out by banks is to provide legal certainty for parties who enter into credit agreements, In addition to that, the roles of Notaries and Land Deed Making Officials are also the authorities to check the person who is pledged to ensure whether the guarantee is valid in legal eyes or not or to avoid if there is a possibility that there is still a legal dispute or legal case in the guarantee.

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