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Legal Effects Incompatibility of the Principal Agreement with Additional Agreements

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Abstract: The provision of credit facilities by financial institutions and banking institutions is fraught with various risks, including defaults or non-payment by debtors. To anticipate such risks, lawmakers have provided creditors with general security facilities, as stipulated in Articles 1131 and 1132 of the Indonesian Civil Code. Under this general security, creditors are not given any special treatment in fulfilling their receivables. Consequently, creditors often feel that general security alone is insufficient. Therefore, creditors require debtors to provide specific collateral for debt repayment. The provision of such specific collateral is formalized in a security agreement made between the creditor and the debtor. This study aims to further examine the relationship between the principal agreement and the security agreement, as well as the legal consequences arising from a security agreement that does not conform to the principal agreement. The research adopts a conceptual approach and a statutory approach. Through this method, it can be determined that the security agreement must comply with the principal agreement as long as the parties do not agree otherwise or deviate from the applicable legal provisions. The explanation of Article 11, paragraph (1), No. 4 of the 1996 Mortgage Law.

Keyword: Guarantee Agreement, Principal Agreement , Supplementary Agreement.

INTRODUCTION

In Book Three of the Civil Code, it regulates about Obligations or Agreements. An obligation is a bond in the field of property (*vermogens recht*) between two or more persons, where one party has the right to something and the other party is obligated to fulfill it. Based on the provisions in Book III of the Civil Code, there are elements of an agreement that include the existence of parties, mutual consent between the parties, a goal to be achieved, the performance to be achieved, a certain form, and finally, certain conditions.

According to Article 1313 of the Civil Code, it is stated that “An agreement is an act whereby one or more persons bind themselves to one or more others.” Therefore, an agreement creates an obligation between the parties who make the agreement. An agreement also represents a legal relationship between two parties, based on which one party has the right to demand performance from the other party, and the other party is obligated to fulfill that performance. In contract law, there are two terms commonly used, namely “*Verbintenis*” and

“Overeenkomst.” In general, the meaning of *verbinten* is an obligation, a debt, or a contract, while *overeenkomst* refers to an agreement or contract.

One type of contract involving two or more parties in its execution is the reciprocal agreement. “A Reciprocal Agreement is an agreement that creates basic obligations for both parties.” Based on Article 1266 of the Civil Code, only in reciprocal agreements are there conditions for annulment. If one party fails to perform its obligations, the other party has the right to request the cancellation of the agreement.”

A reciprocal agreement is an agreement that creates rights and obligations for both parties, and these rights and obligations are interrelated. What is meant by “interrelated” is that if, in the obligation arising from the agreement, one party has a right, then the other party has an obligation.

In carrying out this performance, it is not only what has been explicitly and carefully specified in the agreement’s content, but also encompasses everything that must be carried out according to decency, custom, and the law, all of which must be executed in good faith. To determine whether the performance has been carried out appropriately or as it should, it must be assessed at the time of executing the agreement.

An agreement is a form of legal relationship that has binding legal force for the parties involved in a legal relationship. As is the case with any agreement, the debtor as a party must fulfill its obligations or performance. If one party fails to perform the terms of the agreement, it is called a default. Default refers to the failure or negligence of fulfilling the obligations as stipulated in the agreement made between the creditor and debtor.

Linguistically, default comes from the Dutch word “wanprestatie,” which consists of the words “wan” and “prestatie.” “Wan” in Dutch means bad or improper, while “prestatie” means obligations that must be fulfilled by a debtor or the fulfillment of obligations arising from the obligation relationship. Therefore, linguistically, default means a poor performance (failure to fulfill obligations).

This insecurity leads the creditor to seek another form of protection that holds a special and distinctive position. This form of protection is called a special guarantee, which is a guarantee aimed at the debtor’s property, specifically designated to ensure the fulfillment of the creditor’s claim. Since this is a specific agreement and to ensure its legal basis is the same or equivalent to the law, this special guarantee is incorporated into an agreement that holds the same position as the agreement (the principle of *pacta sunt servanda*). This type of agreement is known as a guarantee agreement.

Based on the description above, the issues to be raised are as follows: Should a supplementary (accessory) agreement align with the main agreement according to the applicable laws and regulations? And what are the legal consequences if the supplementary (accessory) agreement does not comply with the main agreement?

METHOD

This research is conducted using a Normative method. Normative legal research involves the study of regulations, jurisprudence, contracts, and the living values of law in society. On the other hand, doctrinal legal research focuses on the study of legal principles, legal literature, opinions of highly qualified legal scholars, and comparative legal studies. In this research, the normative legal method is used to analyze statutory regulations, while doctrinal legal research is applied to analyze legal literature and the opinions of scholars relevant to this study.

The approaches used to analyze the issues in this research include the conceptual approach and the statutory approach. The conceptual approach is based on the opinions of experts (doctrines) related to the legal matter of the inconsistency between supplementary (accessory) agreements and the main agreement. The statutory approach is employed by collecting all relevant laws and regulations related to the legal issue being discussed

RESULTS AND DISCUSSION

The Validity of Discrepancies Between the Accessory Agreement and the Principal Agreement

One form of law that plays a real and important role in society is Contract Law. The term "agreement" comes from the Dutch word *overeenkomst*, and in English, it is known as "contract/agreement." An agreement is defined in Article 1313 of the Civil Code, which states: "An agreement is an act by which one or more persons bind themselves to one or more others." Contract law is the law that arises when one party binds themselves to another party. It can also be said that contract law is the law that arises when a person promises another person to do something. In this case, both parties have agreed to enter into an agreement without any coercion or decisions that are unilateral.

The legal relationship based on an agreement functions to ensure that all the expectations formed from the promises of the parties can be fulfilled and carried out. Therefore, an agreement serves as a means to ensure that what the parties intend to achieve can be realized.

As explained in Book III of the Civil Code regarding Obligations, which adopts an open system, meaning that anyone is free to establish any kind of obligation, whether it is already named in the law or not. This open system is limited by three conditions, namely:

- a. The obligation must not involve matters prohibited by law.
- b. The obligation must not contradict public order.
- c. The obligation must not conflict with morality.

In line with the use of this open system, Article 1233 of the Civil Code states that an obligation can arise either from an agreement or from the law. Furthermore, this open system aligns with the principle of freedom of contract (freedom of contract), which means that everyone is free to bind themselves to others and provides balance between the parties entering into the agreement. According to R. Subekti, all agreements bind as laws for those who make them.

Article 1320 of the Civil Code regulates the requirements for the validity of an agreement, one of which includes:

1. Mutual agreement of the parties involved

The parties who enter into the agreement must do so without coercion, error, or fraud. This is also related to Article 1321 of the Civil Code.

2. Capacity to enter into an obligation

The parties entering into the agreement must not violate Article 1330, which stipulates that individuals who are not of legal age, women who are married unless there is a prenuptial agreement, and those under guardianship, are not competent to make agreements.

3. A definite subject matter

The agreement must regulate the object that is agreed upon or a specific goal that the parties aim to achieve.

A lawful cause

The object of the agreement or the goal to be achieved by the parties must not be in conflict with the law, public order, or morality.

In addition to being subject to Book III of the Civil Code, obligations arising from agreements, including credit agreements with collateral, are also governed by Book II of the Civil Code, as clearly stated in Chapter Nineteen, Articles 1131 and 1132 of the Civil Code regarding credit guarantees. Due to its complementary function, a guarantee agreement depends on the main agreement. In other words, the main agreement is the primary agreement, while the guarantee agreement is an ancillary agreement that stands on its own. In contrast, the guarantee agreement is a subsidiary that depends on the main agreement.

As a consequence of being an accessory agreement, the existence of a guarantee agreement has the following legal consequences: first, the existence (or emergence) of the guarantee is dependent on the main agreement. Second, the termination of the guarantee is dependent on the termination of the main agreement. Third, if the main agreement is invalid, the ancillary agreement is also invalid. Fourth, the ancillary agreement transfers with the transfer of the main agreement. If the main agreement is transferred, the ancillary agreement will also transfer.

From the explanation above, it is clear that the contents of a guarantee agreement, which is an accessory agreement, must align with the contents of the main agreement. However, this can differ if the parties wish to deviate from the provisions of the applicable laws, by creating an addendum, restructuring, or renewing the main agreement.

Contract law recognizes several important principles that form the basis of the parties' intent to achieve their objectives. One of these principles is the "complementary principle," which means that the provisions of the law may not be followed if the parties wish to and create their own provisions that deviate from the legal provisions.

However, if the agreement made by the parties does not specify otherwise, the legal provisions will apply. Based on this principle, the word "boleh" (may) means that there is no obligation, or it does not imply "must," but rather means "permitted." From this, it can be understood that the principle provides a meaning of choice, meaning that it is not prohibited to deviate from the statutory provisions. Therefore, in this context, the inconsistency between the main agreement and its supplementary agreement is considered facultative.

Based on this, determining whether the inconsistency between the main agreement and its supplementary agreement is a determining factor for the validity of the agreement for the parties cannot be separated from the mutual agreement of the parties involved. This mutual agreement is the basis for distinguishing between an addendum, restructuring, or renewal in the main agreement, which serves as the foundation for the supplementary agreement. This distinction carries with it a different meaning as well.

Furthermore, Article 1338 paragraph (1) states: "All agreements made legally shall apply as law for those who make them. An agreement cannot be revoked except by mutual consent of both parties..." Based on this provision, the legislation implicitly provides space and recognizes the validity of the inconsistency between the main agreement and its supplementary agreement based on the agreement of the parties.

Legal Consequences of Inconsistencies Between the Accessory Agreement (Accessoir) and the Principal Agreement (Perjanjian Pokok)

From the perspective of civil law principles, a guarantee agreement arises from a credit agreement. In theory, a guarantee agreement is an 'ancillary agreement' that is accessory in nature, while the credit agreement is the main agreement. Therefore, the existence or non-existence of a guarantee agreement highly depends on the credit agreement as the primary agreement. A guarantee agreement must be made based on the existence of a primary agreement; hence, the accessory nature of the guarantee brings about legal consequences in that the accessory is dependent on the main agreement. In other words, an accessory agreement is one that is made based on or related to a primary agreement. An accessory agreement arises or exists because there is a primary agreement that underpins it. This supplementary agreement is meant to provide additional security to the creditor, and it can take the form of either a property guarantee or a personal guarantee.

Referring to the provisions of Article 1338 paragraph (3) of the Civil Code, the parties involved in an agreement must perform it in good faith, as this principle serves as the foundation for the contractual relationship between the parties at various stages of the agreement. Property agreements can be classified into two types: the main agreement and the accessory agreement. The main agreement is typically a loan or debt agreement, which aims to obtain credit facilities

from a banking institution or a non-bank financial institution. The main agreement is followed by a guarantee agreement to ensure greater security for the creditor.

An accessory agreement is defined as an agreement that is supplementary and related to the main agreement. Therefore, the nature of a guarantee agreement is that it is an accessory agreement, meaning it follows the main agreement. Therefore, the nature of a guarantee agreement is an accessory agreement, meaning it follows the main agreement.

The term "guarantee" comes from the word *jamin* which means to bear responsibility, so a guarantee can be understood as a liability or responsibility. As formulated in Article 1131 of the Civil Code: "All goods, whether movable or immovable, whether existing or to exist in the future, become collateral for all obligations."

The presence of a guarantee in a guarantee agreement is crucial for the creditor, as the creditor has an interest in ensuring that the debtor will truly fulfill their obligation, which is to repay the debt. A guarantee agreement is an accessory agreement that arises due to the existence of the main agreement. A credit agreement is the main agreement, which gives rise to an additional agreement in the form of a guarantee agreement because the credit agreement requires the presence of a guarantee.

A guarantee that arises by law does not require an agreement between the creditor and the debtor. The manifestation of a guarantee based on the provisions of Article 1131 of the Civil Code (BW) stipulates that all of the debtor's property, whether movable or immovable, whether existing or to exist in the future, serves as collateral for all of the debtor's debts

A guarantee agreement, although it does not give rise to an obligation, can result in the creation of a right that provides a stronger position for the creditor. If the guarantee involves an object, the right that arises is a property collateral right. In accordance with the legal provisions on guarantees in Indonesia, the property collateral rights can take the form of a pledge, mortgage, security interest, or fiduciary security right. According to Article 1320 of the Civil Code, there are four requirements that must be met for a valid agreement to occur, as follows:

1. The agreement of those who bind themselves
2. The capacity to make an obligation
3. A certain subject matter
4. A lawful cause or a cause that is not prohibited

The accessory nature of the collateral right can result in the following legal consequences:

1. The existence and termination of the supplementary agreement depend on the main agreement
2. If the main agreement is void, the supplementary agreement is also void
3. If the main agreement is transferred, the supplementary agreement also transfers
4. If the main agreement is transferred due to a *cessie* (substitution of creditors) or subrogation (the substitution of rights by a third party), the supplementary agreement also transfers without specific delivery.

The legal consequences for a debtor who fails to perform or commits a breach of contract (*wanprestasi*) may give rise to rights for the creditor, including:

- a. Demanding the fulfillment of the obligation
- b. Demanding the termination of the obligation or, if the obligation is reciprocal, requesting the cancellation of the obligation
- c. Demanding compensation for damages
- d. Demanding the fulfillment of the obligation along with compensation for damages
- e. Demanding the termination or cancellation of the obligation along with compensation for damages.

The legal consequences arising from a breach of contract (*wanprestasi*) can also be caused by *force majeure*. *Force majeure* is one of the justifications that release a person from the obligation

to compensate for damages (Article 1244 and Article 1445 of the Civil Code). According to the law, there are three conditions that must be met for force majeure to apply, namely:

- a. Failure to perform the obligation;
- b. The cause lies outside the debtor's control;
- c. The cause is unforeseen and cannot be held accountable to the debtor.

In a credit agreement as the main agreement, it is very possible to carry out a restructuring, addendum, or renewal based on various reasons. One of the reasons could be that the parties feel there are still deficiencies, and additional provisions are required in the main agreement.

Addendum is an English term. An addendum, within the scope of agreements, is understood as an attachment, supplement, or addition. In other words, an addendum is an additional clause in the agreement that is physically separate from the main agreement but legally attached to the main agreement. According to Syaifuddin, an addendum is "a document containing changes and/or additions to one or more specific articles of the original document."

CONCLUSION

In a credit agreement as the main agreement, it is very possible to carry out a restructuring, addendum, or renewal based on various reasons. One of the reasons could be that the parties feel there are still deficiencies, and additional provisions are required in the main agreement. Addendum is an English term. An addendum, within the scope of agreements, is understood as an attachment, supplement, or addition. In other words, an addendum is an additional clause in the agreement that is physically separate from the main agreement but legally attached to the main agreement. According to Syaifuddin, an addendum is "a document containing changes and/or additions to one or more specific articles of the original document."

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