DOI: https://doi.org/10.38035/jlph.v4i5
Received: 23 June 2024, **Revised:** 27 July 2024, **Publish:** 28 July 2024
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Banking Ïinduciaíy Píinciples in Anticipating Bad Loan Default (PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch)

Marwan[1], Rika Anggraini[2], Noor Iza[3]
[1] Yogyakarta Multimedia College, Indonesia, marwan@mmtc.ac.id
[2] Diponegoro University Semarang, Indonesia, rikaanggrainifikri@yahoo.co.id
[3] Yogyakarta Multimedia College, Indonesia, nooriza@mmtc.ac.id

Corresponding Author: marwan@mmtc.ac.id

Abstract: Credit provided by banks basically contains risks, so in its implementation banks must pay attention to sound credit principles, including banks are not allowed to provide credit without a written agreement. Efforts to reduce the risk of loss in providing credit, require credit guarantees in the sense of confidence in the ability and ability of debtors to pay off their debts in accordance with the agreement. The problems in this study are: (1) How is the existence of the implementation of individual guarantees for lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch in the perspective of the Banking Law and legal guarantees? (2) What are the legal implications for default in the implementation of individual guarantees for lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch? The research approach used is a *socio-legal research approach.* Research data is sourced from doctrinal and non-doctrinal research data. The data is then processed through data selection, data classification and data preparation, then analyzed qualitatively. The results show: (1) The existence of individual guarantees for lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch in the perspective of the Banking Law is in accordance with the provisions of Article 8 that in providing credit, Commercial Banks must have confidence in the ability and ability of debtors to pay off their debts in accordance with the agreement. Meanwhile, from the perspective of legal guarantees, additional collateral is in accordance with Bank Indonesia policy. The receipt of collateral in the form of individual guarantees is basically only as an addition to confidence that the credit will run well due to the control of the insurer over the health of the debtor's business. (2) The legal implication for the occurrence of default in the implementation of individual guarantees for lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch is that the bank can directly collect the Guarantor to fulfill its obligations, if in the agreement the guarantor has expressly waived the privilege to demand that the debtor's assets be confiscated first. The Bank can collect the Guarantor through a lawsuit in the District Court and then execute it.

Keyword: Individual Guarantee, Credit, Bank.

INTRODUCTION

The credit agreement between the customer and the bank is stated in the form of a written credit agreement. Agreements in written form provide more legal certainty for the parties, but in addition to these benefits, many debtors actually complain about the credit agreements they make, this is because the credit application process until the signing of the agreement is too complicated. Currently, to obtain credit has also been stated in the form of a written agreement and ideally the agreement must certainly be agreed upon by both parties, which contains all wishes and all mechanisms from the beginning to the end of the agreement process as well as the distribution of each responsibility if something happens outside of what has been agreed.

Credit agreements in written form do provide more legal certainty for the parties, but in addition to these benefits, many debtors actually complain about the credit agreements they make, this is because the credit application process until the signing of the agreement is too complicated. At this time to acquire a potential debtor is really "suspected" in advance. Bank trust only exists if the prospective debtor has passed various due diligence including the prospective debtor's personal life.

The use of *standard contracts* by the bank is certainly a dilemma for prospective debtors. While on the one hand he is in a condition that is in dire need of funds for his survival personally, his family or his business field. On the other hand, banks that are expected to be able to provide solutions in the form of new credit funds are willing to help if prospective debtors are willing to sign agreements whose contents are determined unilaterally by creditors. The choice of simply signing the agreement may be burdensome to the creditor, with the consequences of obtaining credit or not signing it with the consequence of not obtaining credit (*take it or leave it*). Not to mention the exoneration clause that further minimizes or even removes the bank's responsibility as a creditor.

Another problem is about the severity of the risk imposed on the debtor. Most debtors say that this problem arises due to the material credit agreement that is disproportionate in the distribution of responsibilities between the parties because usually agreements are made in the form of *standard contracts* that do not provide protection for debtors.

Prospective debtors are finally forced to sign the *standard contract* in the hope that the credit provided can solve economic problems and rerun the debtor's business that had stopped. In reality, this is only temporary help. Behind that, it actually gives birth to a bigger problem. Debtors must fulfill all obligations for the provision of credit facilities while their business is still in the "learning to run" stage. If the debtor is unable to pay the credit on time, usually the bank in the agreement applies an interest- bearing interest system where late payment of loan interest at a predetermined time will also interest. Finally, the debt has not been paid in full, the debtor has been burdened again by interest that continues to swell. Such phenomena show how low the bargaining position for debtors when dealing with banks in a credit agreement. Especially if the debtors are small economic actors where on a practical level, obtaining bank credit is much more difficult and goes through a long bureaucracy than middle to upper economic actors.

Some legal experts do say that the juridical assumption of legal protection for debtors is something outdated. The reason stated is because after the credit agreement is made, it is precisely the bank that is in the weak party because it is the debtor who then neglects the obligation to pay credit. This is an exaggerated opinion because it is impossible for a debtor to deliberately forget and neglect his obligation to pay credit bills while at every delay he is subject to "sanctions" in the form of interest on interest which causes his debt to increase even beyond the principal debt.

The definition of bank credit according to Article 1 number 11 of Law Number 10 of 1998 concerning Banking is the provision of money, or bills that can be likened to it, based

on an agreement or loan agreement between the bank and other parties that requires the loan to pay off its debt within a certain period of time with the amount of interest, compensation, or profit sharing.

Based on this understanding, it can be seen that there is a counterperformance that will be received by creditors in the future in the form of interest, rewards, or financial distribution, thus it is clearly illustrated that credit in the economic sense, is a delay in paying the achievements given now, whether in the form of goods, money or services.

Credit provided by banks basically contains risks, so in its implementation banks must pay attention to sound credit principles, including banks are not allowed to provide credit without a written agreement; giving credit to businesses that have been calculated to be unsound from the beginning, and will bring losses; providing credit beyond the maximum lending limit (*legal lending limit*); Banks are not allowed to provide credit for the purchase of shares and working capital in the context of buying and selling shares.

Efforts to reduce the risk of loss in providing credit, require credit guarantees in the sense of confidence in the ability and ability of debtors to pay off their debts in accordance with the agreement. This factor of guarantee is important for the Bank to pay attention to, therefore in Article 8 of Law Number 10 of 1998 concerning Banking it is determined that in providing credit, Commercial Banks must have confidence in the ability and ability of debtors to pay off their debts in accordance with the agreement.

In accordance with the description above, it is known that bank guarantees are issued by banks to borrow the implementation of the promised performance guaranteed to the recipient of the guarantee if it is guaranteed not to perform the performance. The meaning is that a bank guarantee institution is a form of underwriting agreement *(borghtoch*), as stipulated in Article 1820 of the Civil Code, which states that a guarantee is an agreement in the name of a third party for the benefit of the debtor binding himself to fulfill the debtor's bond when this person himself does not fulfill it.

A bank guarantee agreement like a guarantee agreement is generally an *assesoir* agreement (supplementary agreement) that accompanies a principal agreement. The principal agreement made by the guaranteed party and the recipient of the guarantee is the basis for the Bank guarantee agreement. loans and other financial services. The Bank carries out the function of serving financing needs and streamlining the payment system for the economic sector.

Banking as a financial institution has a very strategic role in economic activities through its business activities to raise public funds and channel credit for productive and consumptive businesses, as well as being a determinant of the direction for the formulation of government policies in the monetary and financial sectors in supporting the stability of national development, especially to be able to become a safe storage place for funds, a place that is expected to carry out credit activities for the sake of smooth business and trade[5]

The presence of banks as financial service providers is inseparable from the needs of the public to apply for loans or loans to the Bank. Credit is a term that is often equated with debt or loans whose returns are carried out in installments. This shows that a person's efforts to meet financial or financial needs can be taken with loans or loans to the Bank. *Finuciary principles of* banking in anticipating bad loan defaults (*PT Bank BTPN mitra usaha rakyat tbk Teluk Betung Bandar Lampung branch)*

METHOD

This research was conducted using a qualitative descriptive approach so that the results of the research will be conveyed through various sentences that can be understood. The type of research used is qualitative research. Data collection techniques are carried out by observational interviews and collecting various documents related to the research focus. The data that has been collected is then studied in depth to determine reliable research results.

RESULTS AND DISCUSSION

The Existence of Individual Guarantee Implementation for Lending at PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch in the Perspective of Banking Law and Legal Guarantee

Individual guarantee for lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch is basically a guarantee agreement as stipulated in Article 1821 paragraph (1) of the Civil Code, which says that: There is no personal guarantee, if there is no valid principal engagement. In accordance with these provisions, there is a legal principle: without a principal engagement, there is no underwriting.

Kausa (the common goal to be achieved by the parties) by closing the underwriting agreement is to guarantee the implementation of the debtor's engagement with creditors in another agreement. Another agreement to be guaranteed implementation is called the principal agreement, which gives birth to the principal engagements. Thus, the causal of the underwriting agreement is to strengthen the underlying agreement. This is in accordance with the nature of the guarantee agreement, which is *accessoir* to a principal agreement.

This shows the difference with a warranty agreement, because for the existence of a warranty agreement, it is not required that the party to whom the person gives the warranty, is bound to give, do, or not do something. In accordance with the *accessoir nature* of the personal guarantee agreement, the agreement depends on other legal relationships. Such agreements have the intent to affirm, strengthen, change, or abolish other existing legal relationships. The close relationship and dependence of the personal guarantee agreement from the principal engagement is also evident from the provisions of Articles 1822 and 1847 of the Civil Code.

The collateral cannot be liable for an amount greater or on more onerous terms than the main debtor. Underwriting may be held for only part of the debt, or on less conditions. If the underwriting is held for more than the debt, or on more onerous terms, then the engagement is not at all void, but it is valid only for what is covered by the principal engagement. What is established is only a logical consequence again of the nature of underwriting as an *accessoir* agreement, as described above. Engagements are devoted to a basic covenant, not exceeding the engagements issued by the principal covenant. The countermeasures that can be advanced by the main debtor can basically also be advanced by the *borg*. Indeed, as to how closely related the principal agreement is to the *accessoir* agreement and how closely dependent the *accessoir* engagement is from the principal agreement, no definite general provision can be given that one may be looser than the other.

Based on the description above, the author can analyze the existence of the implementation of individual guarantees for the provision of credit for the company as credit collateral that aims to bind the moral *obligations* of the insurer itself. As a guarantee agreement, the guarantee agreement will carry legal consequences between the guarantor and the creditor. A guarantee agreement is an agreement between a guarantor and a creditor that guarantees the repayment of the debtor's debt when the debtor himself does not fulfill it (default). The guarantor is a third party that binds itself to the creditor to guarantee the repayment of the debtor's debt.

A guarantor who has bound himself as a guarantor carries legal consequences for the Guarantor to pay off the debtor (the main debtor) when the debtor defaults, but the Guarantor's obligation to pay off the debtor's debt is only carried out after the Creditor executes the debtor's assets whose results are insufficient to pay off the debt. As long as the Creditor has not executed or sold the debtor's assets, the Guarantor has no obligation to pay the debtor's debt that it guarantees.

The guarantor has bound himself as a guarantor does not necessarily have the obligation to pay the debtor's debt. It can be said that the responsibility of the guarantor is

only as a reserve or subsidiary, in the event that the sale of the debtor's assets is insufficient or the debtor has no property that can be sold at all. This is in accordance with Article 1831 of the Civil Code which states that the guarantor is not obliged to pay to the Creditor, other than if the debtor is negligent, while the property of the debtor must first be confiscated and sold to pay off the debt. Based on the provisions of Article 1831 of the Civil Code, it appears that the existence of this guarantee has no meaning that can strengthen the position of a creditor because the new guarantor is responsible for paying the debtor's debt if the debtor's property has been sold and the results are insufficient to pay off the debt.

The guarantor who asks the Creditor to execute the debtor's assets first, is required to show the debtor's assets and incur costs for the purposes of confiscation and auction. The guarantor is not allowed to show the debtor's property that is in dispute in court, or has become collateral with the burden of liability or fiduciary rights or objects belonging to debtors who are outside the territory of Indonesia. The Guarantor's request for the Creditor to confiscate and auction the debtor's assets first, must be made first when answering the claim from the Creditor in court (1833 and 1834 of the Civil Code).

However, Article 1832 of the Civil Code provides an exception to the provisions of Article 1831 of the Civil Code so as to provide an opportunity for creditors to be able to claim directly to a Guarantor to pay off the debt in full without having to sell the debtor's property first, in the event that the guarantor has waived his privilege to demand a prior auction of the debtor's property. For guarantors who have waived their privileges expressly stated in the guarantee deed (guarantee agreement), creditors can conduct auctions of the guarantor's assets without having to wait for the debtor's assets to be confiscated first.

A guarantor who has paid (debtor's debt) to creditors has obligations and rights to the debtor, namely the obligation of the guarantor to notify the debtor that the guarantor has made payment of the debtor's debt by detailing the amounts of debt paid. This notification of the guarantor to the debtor aims to avoid the possibility that the debtor has paid or the debtor is demanding the cancellation of the debt agreement. If the debtor has paid the debt to the Creditor or the debtor is making a claim for cancellation of the debt agreement, then without the knowledge of the debtor the Guarantor pays to the Creditor, it will bring legal consequences that the Guarantor cannot demand repayment to the debtor. This does not reduce the right of the Guarantor to ask the Creditor for the return of the money to return what has been paid based on payments that are not required by him (Article 1359 of the Civil Code).

Written notification to the debtor is also required as evidence for the Guarantor to demand back to the debtor to pay the guarantor the amount of payments that have been made to the Creditor along with the interest and fees that have been incurred by the Guarantor.

According to the perspective of legal guarantees, the law gives two rights to the Guarantor who has paid the debtor's debt, namely:

1. The right to claim back to the debtor so that the debtor pays back what the Guarantor has paid to the Creditor in the amount paid to his Creditor or the amount of the guarantor's reclaim to the debtor is adjusted to the amount of the Guarantor's notice to the debtor which of course includes principal debt, interest, penalties and other costs or the amount in accordance with the Guarantee agreement. The right to reclaim is granted by Article 1839 of the Civil Code. The right to reclaim the debtor is called the right of regression arising because it is granted by law.
2. The rights of the Guarantor supersede by law all the rights of the Creditor to the debtor (Article 1840 of the Civil Code). This replacement of a Creditor's position in treaty law is called "subrogation" (Article 1402 paragraph (3) of the Civil Code). With this subrogation, legally all agreements originally made between the old creditor and the debtor, namely the credit agreement and its follow- up agreement, namely the guarantee agreement (such as

lien/mortgage, lien or fiduciary if any) are valid and binding for the Guarantor as the new creditor and debtor.

The guarantor as the new creditor must ask the old creditor for all documents such as credit agreements, binding guarantees and so on. The Guarantor who replaces the Creditor due to subrogation has the obligation to register the Right of Liability to the Land Office if the receivables transferred to the Guarantor are guaranteed with the Right of Liability. The Land Office will then record the transfer of the Right of Liability in the Right of Liability land book and the land book of the right to land that is the object of the Right to Cover and copy the records on the certificate of Right of Liability and the certificate of title to the land concerned (Article 16 of the Law on Rights of Dependents).

Based on the two rights of the Guarantor mentioned above, in practice the most important is precisely the right of Subrogation rather than the original right (right to reclaim) because the right based on this subrogation is usually followed by material guarantees (lien, Fiduciary, lien). With this right of subrogation, if the debtor does not pay back to the Guarantor (new creditor) the guarantor can execute the material security that gives the preferred right. While the original right is the right to claim back to the debtor, there is no material guarantee such as Liability, fiduciary lien, so the position of the Guarantor must be carried out together with other Creditors (concurrent rights).

If there are several Guarantors who have bound themselves to guarantee the same debtor and for the same debt, then the Guarantor who has paid off the debtor has the right to claim the other Guarantor according to their share. Some guarantors who insure the same debtor from for one debt are treated as those who owe the same guarantee guarantee, unless they use the privilege of seeking the settlement of the debt (1831 and 1844 of the Civil Code)

Based on the description above, it can be analyzed that the credit provided by the bank contains risks, so that in its implementation the bank must pay attention to sound credit principles, including banks are not allowed to provide credit without a written agreement; giving credit to businesses that have been calculated to be unsound from the beginning, and will bring losses; providing credit beyond the maximum lending limit (legal lending limit); Banks are not allowed to provide credit for the purchase of shares and working capital in the context of buying and selling shares.

In order to reduce the risk of loss in providing credit, a guarantee of credit is needed in the sense of confidence in the ability and ability of the debtor to pay off its debt as agreed. This guarantee factor is important for banks to pay attention to, so Article 8 of Law Number 10 of 1998 concerning Banking stipulates that "In providing credit, Commercial Banks must have confidence in the ability and ability of debtors to pay off their debts in accordance with the agreement".

Based on the description above, it can be stated that the implementation of individual guarantees for lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch in the perspective of the Banking Law is in accordance with the provisions of Article 8 that in providing credit, Commercial Banks must have confidence in the ability and ability of debtors to pay off their debts in accordance with the agreement. Meanwhile, from the perspective of legal guarantees, additional collateral is in accordance with Bank Indonesia policy. The receipt of collateral in the form of individual guarantees is basically only as an addition to confidence that the credit will run well due to the control of the insurer over the health of the debtor's business.

This is in accordance with the theory on credit as a model agreement made by financial companies or financial institutions to consumers, for various purposes both consumption and business, where credit returns are carried out in installments. Consumer credit is included in financial services that can be carried out by both banks and non-bank financial institutions in the form of credit companies.

In accordance with this theory, it can be stated that the role of banks as financial institutions cannot be separated from credit problems, even bank activities as financial institutions, lending is its main activity. The amount of credit disbursed will determine the bank's profits. If the bank is unable to disburse credit, while the funds collected from deposits are large, it causes the bank to lose. Therefore, credit management must be carried out as well as possible starting from planning the amount of credit, determining interest rates, lending procedures, lending analysis to the process of controlling bad loans. The definition of credit according to the Banking Law is the provision of money or bills that can be likened to it, based on an agreement or loan agreement between a bank and another party that requires the borrower to pay off his debt after a certain period of time with its value can be measured in money. In fact, running any business certainly contains a level of loss. This risk can occur due to an inevitable disaster such as being hit by a natural disaster, but the most fatal risk is due to customers who are able but do not want to pay their obligations. There is a risk of loss where customers no longer refuse to pay all their obligations either temporarily or forever must be quickly anticipated by the banking world, so that it can be ascertained that the credit is bad or no longer paid.

Regarding credit provided by banks contain risks, so in its implementation banks must pay attention to sound credit principles, including banks are not allowed to provide credit without a written agreement; giving credit to businesses that have been calculated to be unsound from the beginning, and will bring losses; providing credit beyond the maximum lending limit (legal lending limit); Banks are not allowed to provide credit for the purchase of shares and working capital in the context of buying and selling shares

In an effort to reduce the risk of loss in providing credit, credit guarantees are needed in the sense of confidence in the ability and ability of debtors to pay off their debts as agreed. This factor of guarantee is important for banks to pay attention to. Article 8 of the Banking Law stipulates that in providing credit, Commercial Banks must have confidence in the debtor's ability and ability to pay off their debts in accordance with the agreement.

The bank in obtaining such confidence before granting credit the bank must make a careful assessment of the character of the ability, collateral capital, and business prospects of the debtor, however, in the Banking Law regarding guarantees for credit is not so difficult, it is only important that there is still a guarantee, then if based on other elements confidence can be obtained on the debtor's ability to return the debt, Collateral can only be goods, projects, or collection rights financed with the credit concerned. Similarly, land whose ownership is based on girik,, etc. similar can also be used as a nuisance. So that banks are not obliged to ask for additional collateral in the form of goods that are not directly related to the objects they finance.

The existence of convenience in terms of credit guarantees is the realization of banking based on economic democracy, with its main function as a collector and distributor of public funds, has a strategic role to support the implementation of national development, in order to increase equitable development, and its results, economic growth, and national stability, towards improving the standard of living of many people. Despite such convenience, the guarantee must remain ideal because the guarantee has the task of smoothing, securing credit, namely by giving rights and power to the bank to obtain the benefit of these collateral items in the event of debtor default.

Guarantee is an agreement by which a third party for the benefit of the debtor, binds himself to fulfill the debtor's agreement, binds himself to fulfill, the debtor's agreement, when this person himself does not fulfill it, this is in accordance with Article 1820 of the Civil Code.

In accordance with the context of individual guarantees, there is a third party who binds himself to the creditor to fulfill the debtor's agreement, if the debtor does not fulfill his agreement. The meaning is that the provision of *personal guarantees* there are two

agreements or two contractual relationships. The first agreement is an agreement arising from the contractual relationship between creditors and debtors in the form of *a loan agreement*. The second agreement is an agreement arising from a contractual relationship between a third party as a guarantor (guarantor) and a Creditor; which is in the form of a guarantee agreement. The agreement arising from the first agreement, namely the credit agreement, is the principal agreement, while the agreement arising from the second agreement, namely the guarantee agreement, is the second agreement, namely the *guarantee agreement*, is an *accessoir* agreement. The word *accessoir* means that without an agreement arising from the principal agreement, there can be no agreement arising from the provision of guarantees.

As is known, all property of a person, both movable and immovable, both existing and new will in the future be dependent for all personal obligations as stipulated in Article 1131 of the Civil Code, however, the guarantee in general is often considered less secure, because of the completion that the wealth of the debtor to a wakku can run out, also the guarantee in general applies to all creditors, So if there are many creditors, there is a possibility that some of them will no longer get a share. Therefore, often a creditor asks to be given a special guarantee and this special guarantee can be in the form of material guarantees or in the form of individual guarantees.

Legal Implications of Default in the Implementation of Individual Guarantees for Lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch.

The implementation of individual guarantees for lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch is faced with a dispute between the bank as the creditor and the customer as the debtor. Disputes generally relate to defaults by debtors.

According to Nopryan Haryanto, as Credit *Officer* of PT Bank BTPN Mitra Usaha Rakyat Teluk Betung Bandar Lampung Branch, it is known that given his position which is not as a preferred creditor, the bank in determining someone can be used as an insurer for its debtors can make efforts to really pay attention to the character of the insurer including reputation in bearing the debts of guaranteed debtors.[7]

Usually, the bank in addition to having an assessment of the financial condition and reputation of the insurer, is usually another assessment such as, the insurer is part of the management that manages the business. In addition, to avoid difficulties in the future with the privileges of the insurer, the following steps will be taken: The waiver of privileges from the insurer must be expressly stated in the deed of the insurer; a) The day/date of the underwriting agreement must be made on the day/date after or at least the same as when the debenture was made; b) For personal *guarantee* there must be spousal / wife consent, while for *corporate guarantee* the signing of the deed of guarantee must be carried out by parties who can legally bind the company with other parties. Based on the results of the study, it can also be seen that as an insurer, *borg* cannot be bound by material guarantees such as the Right of Liability for their own property.

In accordance with the description above, it is known that the legal basis for personal guarantees or *personal guarantees* is contained in Article 1820 of the Civil Code. According to the provisions of this article in a *personal guarantee* there is a third party who binds himself to the creditor to fulfill the debtor's agreement, if the debtor does not fulfill his agreement.

Thus, in a personal *guarantee* we find two agreements or two contractual relationships. The first agreement is an agreement arising from the contractual relationship between creditors and debtors in the form of *a loan agreement*. The second agreement is an agreement arising from a contractual relationship between a third party as a guarantor (guarantor) and a Creditor; which is in the form of a guarantee agreement.

The agreement arising from the first agreement, namely the credit agreement, is the principal agreement. While the agreement arising from the second agreement, namely the guarantee agreement or *guarantee agreement*, is the second agreement, namely the guarantee agreement or *guarantee agreement*, is an *accessoir* agreement. By the word *accessoir* here it is meant that without an agreement arising from the main agreement there can be no agreement arising from the provision of guarantees.

Based on among the most important rights possessed by a guarantor who is always required to be released when the guarantor signs the guarantee is:

1. The right for the Debtor to be collected in advance

   As mentioned in the provisions of Article 1831 of the Civil Code. The legal basis for requesting that the Debtor waive its Rights under the provisions of Article 1981 of the Civil Code, is regulated by Article 1832 of the Civil Code. When the guarantor has waived his right for the debtor to be collected and so that the debtor's goods must be confiscated and sold first to pay off the debt (Article 1832 of the Civil Code).
2. The right to determine the solution of debts

   In the event that there is more than one guarantor, the guarantor can demand that the debt guaranteed by each guarantor be broken first, according to the balance. This right of guarantor belongs to him under the provisions of Article 1837 of the Civil Code. Of course, a creditor tries to avoid this situation, so that there is no need to bother collecting or obtaining repayment of receivables from each guarantor in accordance with their respective balances. To achieve this purpose the creditor requests, that at the time of signing the grant, if the guarantee is provided by more than one guarantor, each guarantor expresses his willingness to waive his rights possessed under Article 1837 of the Civil Code. The Creditor can collect the fulfillment of his debt directly from one of the guarantors chosen by him who in his estimation can pay off all the Receivables of the Creditor.
3. A debtor has the right to make bills against debts owned by the Debtor

   Because a grant agreement is eccessoir, the guarantor can basically also carry out the countermeasures owned by the Debtor. This guarantor is recognized by Article 1847 of the Civil Code. To strengthen its position, the Creditor also requested that the guarantor waive his rights which he has under Article 1847 of the Civil Code.
4. The guarantor is generally also required to waive the rights owned by him under Article 1848 of the Civil Code

   By making payments in the context of providing collateral, a guarantor is actually in his position towards the Debtor, after paying off the debts of the Debtor to his Creditor replacing the position of the creditor. Article 1948 of the Civil Code states that if due to the fault of the Creditor, a guarantor is harmed so that he cannot exercise his subrogation rights against the Debtor, then he is released from his position as guarantor. This usually occurs if the creditor provides credit to the Debtor, in addition to being guaranteed by personal guarantees by the guarantor, is also guaranteed by the right of liability for immovable property belonging to the Debtor himself.

The Creditor in this latter situation, exercising his right to demand repayment of his receivables to the Debtor by selling through auction the execution of immovable goods pledged by the Debtor, then the Creditor must be pledged by the Debtor, then the Creditor must notify the guarantor in advance. This is intended to prevent the guarantor from suffering losses, namely still having to pay off the debtor's debt borne by the Creditor, in the event that the acquisition of the execution auction of immovable property, was insufficient to pay off all debts of the Debtor. The Creditor, in the event that the underwriter is notified of the plan to conduct an execution auction on the immovable property, the guarantor may make efforts to find a buyer with the intention that the proceeds of the execution auction are sufficient to pay off all debts owed by the Debtor to its Creditors (especially if with the increase in interest and

penalties the debtor's debt has become so large that it exceeds the mortgage ceiling). With this latter effort, the guarantor will not be harmed in exercising his subrogation rights against the debtor.

According to the explanation of Budi Kristiyanto as a Notary, it is known that it is known that in the agreements granting guarantees for the release of rights owned by the guarantor is commonly called "Waiver" (Official waiver or revocation letter). Careful creditors always strive so that the "Waiver" given by the guarantor is complete. In an agreement, the guarantee is accesoir, meaning that even if a guarantor is required to perform some "Waiver" as described above, a guarantee agreement is still *accessoir*; in the sense that if the principal agreement is void then the guarantee agreement will be null and void. To prevent this from happening, the Creditor seeks another legal construction made possible by the provisions of Article 1316 of the Civil Code.

According to the provisions of this article, in addition to providing collateral, a guarantor provides *indemnity* (Indemnity or guarantee of loss) to the Creditor. By providing *indemnity*, it creates a contractual relationship and an agreement between the guarantor and the Creditor, which stands independently of the principal agreement. This *indemnity* grant gives birth to an independent agreement between the *indemnity* giver and the Creditor, which is not *accessoir* to the principal agreement (Receivable debt agreement between the Creditor and the Debtor); so that even if there is a bond of the principal agreement is void, this *indemnity grant agreement* still stands so that the creditor's position is strengthened.

The debtor represents and warrants to the bank that the debtor is not involved in any case or dispute; not be in a state of bankruptcy; is not in default or declared in default by other third parties and the collateral submitted (if any) to the bank is the true property of the Debtor or Guarantor and the guarantee is not in dispute or potential dispute and is free from encumbrances and is not being pledged to other parties; all debtors' loans or debts to other creditors are current (collectibility 1 (one) in accordance with applicable Bank Indonesia regulations).

From the date of the Credit Agreement until the repayment of all obligations owed by the debtor to the bank under the Credit Agreement, the debtor has obligations and prohibitions. The obligations of the debtor are:

1. Conduct its business in a reasonable and efficient manner and use the Credit Facility solely for the purposes as stipulated in the Credit Agreement.
2. Give permission to the bank or officers authorized by the bank to inspect the debtor's books, records and administration at any time, and check the condition of collateral;
3. Submit to the Bank, at any time whether requested or unsolicited, all documents and / or information / information / information / data in a complete, accurate, correct and current manner and in accordance with the actual situation regarding the debtor's financial condition and events or circumstances that may affect the debtor's financial condition;
4. Submit to the bank all documents required in the Credit Agreement;
5. Extend or renew all licenses owned by debtors in order to run their business to the relevant agency;
6. Pay taxes and other expenses determined by the government in accordance with the provisions of applicable law;
7. Notify the bank in writing of any change of address, data and other important information no later than 14 (fourteen) calendar days before the change of address or data becomes effective. If such changes are not notified, then any notice shall be deemed to have been duly given to the last address recorded in the Bank's data.

The prohibition for the debtor is (1) Selling or in other ways transferring rights or renting/giving up the use of all or part of the debtor's business assets/assets, both movable and immovable property belonging to the debtor, except in order to carry out the debtor's daily business. (2) Rent, sell, eliminate and transfer to third parties assets related to

guarantees that have been and will be handed over to the Bank without prior written approval from the Bank.

The legal implication is that based on the provisions of Articles 1820-1821 of the Civil Code, the characteristics of the underwriting agreement are additional agreements that accompany the principal agreement. The principal agreement made by the guarantee, in this case the debtor and the recipient of the guarantee (bank as creditor) is the basis for making a Bank guarantee. The rights arising from a guarantee are contractual and not material rights. So that the position of the creditor in this case is preferred, the underwriting cannot be expected and the insurer is the target after the debtor.

When the debtor defaults, the Guarantor who has bound himself is obliged to pay the debtor's debt to the Creditor. The creditor directly bills the Guarantor to fulfill obligations as a Guarantor. The Creditor can collect directly to the Guarantor if in the guarantee agreement the Guarantor has expressly waived the privilege in the form of the right to demand that the debtor's assets be confiscated first, but if the Guarantor does not voluntarily pay the debtor's debt to the Creditor. If the creditor has collected the Guarantor in an appropriate manner, but the Guarantor still does not make payments, according to the author, the Creditor can execute to the Guarantor.

Execution of the Guarantor can be done by filing a lawsuit through the District Court

1. File a lawsuit against the guarantor and debtor as well as defendant-II and defendant-II respectively. The lawsuit is filed through the district court where the debtor or Guarantor is domiciled. It can also file a lawsuit only against the Guarantor as a defendant, because according to the jurisprudence of the Supreme Court stipulates that a person who has bound himself as a Guarantor can be assessed as a debtor himself so that he can be sued separately from the original debtor.
2. In filing the lawsuit either by way of point 1 or by way of point 2, it must be followed by a request to the district court to confiscate the guarantee (concervatoir beslag), especially the assets of the Guarantor so that the Guarantor does not transfer his assets. Confiscation of bail is needed to guarantee if the lawsuit filed has obtained a permanent legal decision. The court decision has little meaning if later the Guarantor does not have any more property for example because his property has been sold or transferred, therefore the filing of a lawsuit followed by the seizure of the guarantor's property security is absolute.
3. To find out exactly what and where the guarantor's assets can be placed confiscated collateral (*concervatoir beslag*), creditors must conduct an investigation or investigation through observation and ask the agency authorized to issue a letter of ownership of property according to the type of property. For example, property in the form of land and houses can ask the Office of the National Land Agency where the land is located. At the Land Office you can see in the land book because in the land book it will be recorded in whose name the owner of the land is. If the object is in the form of a motorcycle or car, you can ask at the Police station (Samsat) on whose behalf the car or motorbike is.
4. After believing that the property under investigation belongs to the defendant, it can immediately ask the court to confiscate bail.
5. The purpose of filing a lawsuit against the guarantor alone or with the debtor through the district court is to obtain a permanent court decision, meaning a court decision that no longer has legal remedies.
6. Based on the permanent court decision, then the creditor can apply for execution of the guarantor's assets that have been placed under collateral or the guarantor's property that has not been placed under bail through the district court. On the execution application, the district court will execute the guarantor's property that has been confiscated through a public auction and the proceeds are used to pay off the debtor's debt.

As is known, all property of a person, both movable and immovable, both existing and new will in the future be dependent for all his individual engagements (Article 1131 of

the Civil Code). However, the guarantee in general is often considered less secure, because the completion that the wealth owed to a wakku can be exhausted, also the guarantee in general applies to all creditors, so that if there are many creditors, there is a possibility that some of them will no longer get a share. A creditor often asks to be given a special guarantee and this special guarantee can be a material guarantee (Mortgage, lien, fiduciary) and can also be an individual guarantee or debt guarantee Guarantee as an agreement with which a third party, for the benefit of the debtor, when this person himself does not fulfill it. Such is the definition given by Article 1820 of the Civil Code about certain objects, so in the case of this guarantee only an individual bond is created.

Based on the description above, it can be stated that thelegal application for default in the implementation of individual guarantees for lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch is that the bank can directly bill the Guarantor to fulfill its obligations as a Guarantor. The Creditor can collect directly to the Guarantor if in the guarantee agreement the Guarantor has expressly waived the privilege in the form of the right to demand that the debtor's assets be confiscated first, but if the Guarantor does not voluntarily pay the debtor's debt to the Creditor. If the creditor has collected the Guarantor by filing a lawsuit through the District Court and executing it to the Guarantor.

The above is in accordance with the theory of guarantee as an agreement with which a third party, for the benefit of the debtor, when this person himself does not fulfill it. Such is the definition given by Article 1820 of the Civil Code about certain objects, so in the case of this guarantee only an individual bond is created. According to Article 1820 of the Civil Code, underwriting is an agreement in the name of a third party for the benefit of the debtor, binding himself to fulfill the debtor's bond, when this person himself does not fulfill it.

In general, it can be said that disputes that are considered detrimental to the civil rights of one party consist of two things as above, namely default and unlawful acts. A case is considered a dispute of default if one party feels aggrieved by the other party. The legal relationship between the parties is usually made in writing first. So that if there are things that are violated as stated in the study, then this dispute is included as a default / default. If between the parties there is no legal relationship such as an agreement between them, but then there is a violation committed by one party and then considered detrimental to the civil rights of the other party where the violation is considered an act that violates applicable legal regulations, then this default is included as an unlawful act, so that the settlement is carried out through applicable legal provisions.

CONCLUSION

Based on the results of research and discussion, it can be concluded as follows:

1. The existence of individual guarantees for lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch in the perspective of the Banking Law is in accordance with the provisions of Article 8 that in providing credit, Commercial Banks must have confidence in the ability and ability of debtors to pay off their debts in accordance with the agreement. Meanwhile, from the perspective of legal guarantees, additional collateral is in accordance with Bank Indonesia policy. The receipt of collateral in the form of individual guarantees is basically only as additional collateral to increase confidence that credit will run well due to the control of the insurer over the health of the debtor's business.
2. The legal implication of default in the implementation of individual guarantees for lending to PT Bank BTPN Mitra Usaha Rakyat Tbk Teluk Betung Bandar Lampung Branch is that the bank can directly bill the Guarantor to fulfill its obligations, if in the agreement the guarantor has expressly waived the privilege to demand that the debtor's assets be

confiscated first. The Bank can collect the Guarantor through a lawsuit in the District Court and then execute it.

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