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Civil Law Liability of Debtors in Credit Agreements with Individual Guarantees

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Abstract: Credit agreements with personal guarantees often cause legal problems when the debtor defaults. Individual guarantees cannot be bound with a mortgage instrument or fiduciary guarantee, thus increasing the risk for banks. This research aims to understand and systematically examine the concept of regulating personal guarantees according to positive law in Indonesia and the legal consequences that arise if the debtor defaults in a credit agreement with personal guarantees. This research uses normative juridical method with concept approach. The data sources of this research are primary legal materials such as laws and jurisprudence, as well as secondary legal materials such as legal textbooks and journals. The results show that personal guarantees have an important function in advancing the economy through lending. However, this guarantee also poses a high risk for banks if not accompanied by careful analysis. Law No. 4 of 2023 on Financial Sector Development and Strengthening strengthens the role of the Financial Services Authority in supervising credit agreements with personal guarantees to maintain financial sector stability.

Keyword: Individual Liability Guarantee, Debtor Default, Credit Agreement, Civil Law.

INTRODUCTION

Law intends to publish order among interested members of society. Law is one of the norms or regulations made by society, born from society, and for society as well. Customary law, or law derived from accepted practices of society, is one of the forms of law mentioned. The importance of trust in the agreement of a civil relationship must also be well emphasized. In many cases, a valid agreement does require a clear and spoken agreement from all parties involved. In the context of civil law, trust and agreement are important foundations in carrying out agreements.

When stating that these agreements must be made by those who are legally competent and do not violate the norms or regulations that already exist in the Civil Code, it must emphasize the importance of compliance with applicable laws. This is a very important principle in any legal system. In addition, incorporating this provision into the 1945

Constitution confirms the state's commitment to the principle of the rule of law, which affirms that Indonesia is a state governed by law and that government power is limited by law. This will reflect an excellent picture of the importance of law in society and how it is reflected in existing beliefs, treaties and legal provisions (Hadi, 2022). Society is a form of living association, which is usually named a social system (Nabilasari Lesmana & Yustiawan, 2023). The social system includes political, economic, social, defense and security and legal sub-systems. So when associated with the social system, law is a sub-system or inter-sub-system. Between these sub-systems, there is a reciprocal relationship, which means that there is a relationship of mutual influence and influence between society and law. In order to reach its national goal of making people better off, Indonesia, one of the emerging countries, works hard. The business sector is the most important part of this plan to raise people's standard of life and well-being (Prasetyawati & Hanoraga, 2015) Quality education and high skill levels are indeed an important foundation for dealing with the ongoing economic and technological changes and are certainly very relevant to the challenges facing society in today's modern economy. High skills and creativity enable individuals to adapt quickly to change and create new opportunities in the economy. In the midst of increasingly fierce competition, the ability to innovate and create added value is key to maintaining competitiveness and improving people's welfare. In addition, by having high skills and creativity, individuals can also become successful entrepreneurs. Setting up a business entity or creating one's own job not only helps reduce the unemployment rate, but also contributes positively to overall economic growth. Therefore, it is important for the government and educational institutions to ensure that the education and training provided is in line with the changing demands of the job market, and encourages the development of skills and creativity needed to face future challenges in the economy (Prasetyawati & Hanoraga, 2015). In the context of lending, a credit agreement is a legal instrument that regulates the relationship between the lender (usually a bank or other financial institution) and the beneficiary (the party borrowing money) (Dewi & Kurniawan, 2020). This agreement includes various provisions such as the loan amount, repayment period, interest rate, and the rights and obligations of both parties (Kurniawan & Lulo, 2023). In credit agreements, there are two types of agreements that are often encountered: principal agreements and accessory agreements. An agreement outlining the terms and conditions of a loan is known as the principle agreement. While accessory agreements are agreements that are related to the main agreement and have the purpose of ensuring the implementation of the main agreement. For example, a guarantee or collateral provided by the credit recipient to the lender as a guarantee of loan repayment.

In practice, a credit agreement usually consists of a principal agreement and several accessory agreements, such as a guarantee agreement or a guarantee agreement (Barus et al., 2022). They are intertwined and form the overall legal framework that governs the relationship between the two parties to the loan transaction (Siregar, 2020). In ancient times, many communities formed agreements in oral or unwritten form. This happened because of mutual trust among community members, based on the belief that each individual would act honestly. This is still often the case in rural communities or in environments with a simple and innocent mindset. However, oral agreements often cause difficulties in the event of disputes between the parties involved. Without a written document governing the agreement, it is difficult to clarify the terms of the agreement, the rights and obligations of each party, and the manner in which disputes may arise. Therefore, in the modern context, it is advisable to always draft agreements in writing, especially for matters involving important legal or financial aspects. Written documents can serve as clear and strong evidence in resolving disputes or disagreements in the future (Hariwijaya et al., 2020). Funding plays an important role in supporting consumptive and productive growth for both individuals and businesses. Credit is one of the funding instruments that is often used, especially when the capital owned

is insufficient to support business improvement. Credit allows individuals or businesses to obtain additional funds from financial institutions or other parties on the condition that they return the funds within a certain period of time with the payment of certain interest or fees. This allows them to access more funds than they have directly, which can be used for various purposes, such as business development, investment, asset purchase, and so on. However, it is important for borrowers to carefully consider their ability to repay the credit obtained, as well as understand the consequences and risks associated with using credit. Too much debt or poorly managed credit can lead to serious financial problems in the future (Hamin, 2017). The establishment of a legal connection between the contending parties is essential for the establishment of a civil responsibility claim in civil law. Examples of non-contractual relationships include those between highway users and pedestrians, landowners and land users, and others whose legal relationships do not stem from an agreement. The essence of a tort is when a person acts contrary to his or her legal obligations, violates the subjective rights of others, violates the rules of morality, or contravenes the principles of decency, accuracy, and caution in public life. This can include various types of actions, such as breach of contract, violation of property rights, mistreatment, fraud, and so on. In a civil lawsuit, the aggrieved party can file a claim to obtain damages or compensation for the losses suffered as a result of the unlawful act. Such suits are often decided based on the principle of the responsibility of the party who committed the tort (Hamin, 2017)

Article 1754 of the Civil Code (KUHPerdata) regulates two terms related to financial transactions, namely lending and borrowing agreements and credit agreements. A loan agreement is an agreement in which one party gives a certain amount of goods to another party on the condition that the second party will return the same goods in the same amount and condition. This is similar to lending goods, where the loaned goods must then be returned to the owner after use. Examples can be loans of heavy equipment or other equipment. In addition, it is explained that a credit agreement is a preliminary agreement before the transfer of money. In this agreement, there is an agreement between the lender and the recipient of the loan regarding their legal relationship. That is, there is an agreement between the lender (usually a financial institution) and the borrower regarding the terms, period, and repayment procedures of the loan. These two agreements are important instruments in financial and business relationships, and their regulation in the Civil Code provides a clear legal basis for their implementation (Baruldzaman, 2019). Therefore, in a broader context, a credit agreement can also be called a real principal agreement. This means that the credit agreement is the main agreement that determines the relationship between the credit grantor (usually a bank) and the credit recipient (customer/debtor). This credit agreement has its assessor, namely the collateral agreement, whose existence depends on the main agreement. The real meaning of the credit agreement is that the occurrence of the agreement depends on the delivery of money by the bank to the debtor customer. This means that a credit agreement is not only a verbal or written agreement, but also requires concrete action in the form of delivery of money. A credit agreement can also be considered a standardized agreement, where banks usually have a standardized form that contains the general terms and conditions of the loan. However, there is flexibility to customize certain provisions according to the needs of each customer. Banks usually have a draft credit agreement prepared, where customers can fill in their personal details and information about the loan they are taking out. However, the term and form of the agreement are standardized. If the customer accepts all the terms and conditions set by the bank, then the customer is obliged to sign the credit agreement. However, if the customer refuses, then there is no obligation to sign the agreement. If an agreement occurs, then one of the conditions that must be met is an agreement. With the signing of the credit agreement by both parties, it means that the credit agreement is valid and binding between the creditor (bank) and the debtor (customer). An

agreement in which the parties involved have rights and obligations that must be fulfilled in accordance with what has been agreed. An agreement is an event in which two or more people, or two or more parties, promise each other to do something or act in accordance with what has been agreed. In a legal context, an agreement is an agreement made by two or more parties, where each party agrees to comply with what has been stipulated in the agreement. In an agreement, there are usually terms and conditions that regulate the rights and obligations of each party. These include the right to obtain agreed benefits or performance rights, as well as the obligation to fulfill promised commitments. These obligations often include the payment of money, the delivery of goods or services, or the performance of certain actions as agreed. The existence of an agreement provides clarity and legal certainty for the parties involved, and provides a strong basis for resolving disputes or disagreements that may arise in the future. Therefore, it is important for parties to fully understand their rights and obligations before signing or agreeing to an agreement (Indriyani, 2006).

Credit agreements made by banking institutions so that they are binding on debtors will directly affect the performance of banks if the debtor experiences delays in payment or even defaults. When this happens, the Non Performing Loan rate at the bank will increase so that special supervision is needed from the Financial Services Authority. Moreover, if the collateral submitted as a credit agreement binder is a personal guarantee, the level of risk will be much greater because the position of the guarantee cannot be bound by the Mortgage or Fiduciary Guarantee instrument. That in order to strengthen the stability of the financial sector so that the Indonesian economy becomes resilient, independent and equitable where no one is harmed, both creditors, namely banks and debtors, the Government through Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (hereinafter referred to as the P2SK Law) must adjust between regulations and practices in the field in this case the application of credit to the community so that broadly the development and strengthening of the financial sector can be realized due to the development of an increasingly complex and diverse financial services industry. Indeed, the position of the P2SK Law is intended as a strengthening of the legal umbrella for institutions as well as affirmation of the role and position of the Financial Services Authority. In addition, if Bank Indonesia is the guardian of inflation, then in the P2SK Law the role of Bank Indonesia is expanded in terms of helping maintain financial system stability and economic growth. That in relation to this research, if it is related to the conditions and the enactment of the P2SK Law, indirectly the role of banks must prioritize the principle of prudence, especially in accepting guarantees from debtors as an accessory agreement to support if the debtor defaults. In general, material collateral, be it movable or immovable objects, can be easily assessed regarding the market value of the object as collateral, while individuals as collateral in a credit agreement require several steps to obtain individual assets to support the debtor's credit agreement. This certainly makes it difficult for banks if they are not careful in receiving and analyzing personal guarantees submitted by debtors and is not in line with the spirit and urgency of the enactment of the P2SK Law.

Based on this background, the purpose of this research aims to seek, discover, develop and test the truth of knowledge. In particular, this research aims to understand and examine, in a complete, detailed, clear, and systematic manner, the concept of regulating personal guarantees according to positive law in Indonesia, as well as the legal consequences that occur if the debtor defaults in a credit agreement with personal guarantees.

METHOD

This research is juridical normative. What is meant by normative legal research is doctrinal research which is usually called library research or document study (Irwansyah, 2020). Normative or doctrinal legal research is named because this research is carried out

covering several things related to library research or document studies because this research is dominated by secondary data contained in libraries, laws and regulations, the norm system becomes the object of study, for example ideal legal values, legal theories, legal principles, legal principles, legal teachings, court decisions and public policies.

This research is used normative juridical which is a normative juridical approach with the type of Conceptual Approach and Statute Approach. The concept approach is used in order to equalize perceptions and understanding of legal language that has many interpretations (multi-interpretation). Opinions and some understandings contained in legal science that can provide explanations for researchers in finding ideas that produce understanding related to legal concepts and principles related to the issues studied, namely the civil legal liability of debtors in credit agreements with individual collateral. Since the focus of normative research is on different legal standards, a statutory methodology is necessary to ensure the study is both thorough and objective. Legal documents that are authoritative or have binding legal effect are known as primary legal materials. That is, the Constitution, laws, jurisprudence, treaties, and the fundamental principles of Pancasila are all part of it. The main sources of law in Indonesian legislation include the Republic of Indonesia Constitution from 1945, the Civil Code from the same year, Law 4 of 2003 on the Development and Strengthening of the Financial Sector, and Law of the Republic of Indonesia Number 10 of 1998 on Amendments to Law Number 7 of 1992 on Banking. Law books, academic journals, research findings, and expert opinions are all examples of primary legal materials, while secondary legal materials are those that are both directly related to and able to aid in the analysis and understanding of primary legal materials. The technique of collecting legal materials used in this research is obtained from library research, namely the collection of legal materials through literature by examining and studying various references to law books, articles on the civil legal liability of debtors in credit agreements with personal guarantees and laws and regulations relating to credit agreements with personal guarantees. The legal material analysis technique used in this research is a qualitative juridical descriptive technique. Qualitative juridical descriptive technique is a basic technique for analyzing legal materials, which describes a condition of legal prepositions. (Ali, 2021). This means that researchers explain what is related to a legal phenomenon or legal situation. A legal phenomenon is an event that has a legal element, appearing in a certain place at a certain time. By being a state of law, a law that is still vague, where the laws and regulations do not clearly regulate where civil legal liability related to the provision of personal guarantees in credit agreements where all legal materials obtained both primary and secondary legal materials are combined into materials in this study, then pressed based on laws and regulations that can show descriptively qualitative juridical.

RESULTS AND DISCUSSION

Security Agreement under Indonesian Law

Function and Position of Collateral

The position of collateral basically has a function in terms of advancing the country's economic level through lending in the midst of society. Along with the existence of banking institutions, collateral is used as a condition for granting credit to the community. So it is not surprising that everyone who wants to apply for credit in the bank is required to submit collateral as one of the main requirements. The collateral required by banks is basically

assessed based on several criteria against the applicant and/or debtor itself. These assessments include the financial condition of the debtor, the character of the debtor, the capital owned, the ability to pay and the provision of the guarantee itself. So in summary, the function of collateral in everyday life is to facilitate the economic pace of society through the provision of bank credit, although the guarantee itself is not all identical to banking**.** Guarantee is defined as something given to the lender to create confidence that the loan recipient will fulfill obligations that can be valued in money arising from an agreement. Collateral is an agreement between the creditor and the debtor where there is a promise to one another. If the promise is not fulfilled within a certain time, then the position of the guarantee has an important role. Assets that are pledged to the recipient of the guarantee cannot be returned just like that because they are legally bound to the main agreement as repayment of receivables (Bahsan, 2020). Therefore, all goods delivered by the debtor must be valued at the time of the analysis of the closing of the agreement or the fulfillment of the first performance. In general, collateral serves to keep an agreement in place by doing the following: a) giving the creditor the power to get their money back if the debtor doesn't pay back the loan by the due date; b) making sure the debtor doesn't bail out of the business while hurting himself or his company; and c) encouraging the debtor to keep his word, particularly when it comes to repaying the loan according to the terms agreed upon, so that neither the debtor nor any third party who co-guarantees loses the assets that were pledged (Usman, 2004).

Based on its value, there are 2 (two) aspects that are needed in the valuation of a guarantee so as not to harm creditors in the future, namely:

1. Economy Aspect

This aspect relates to the absolute requirements that must exist in a guarantee, namely that it can be traded, the value of the guarantee is greater than the value of the agreement, easy to market or sell, the value of the guarantee is stable, the location of the guarantee is strategic and in good condition, the physical guarantee is not easily damaged and has economic benefits for a long time.

2. Juridical Aspect

In addition to economic aspects, there are supporting categories that are no less important in collateral, namely that the guarantee is the debtor's own property, there is real power in the debtor, it is not in a state of dispute, there is legality related to the guarantee and it is not being pledged to other parties (Helfert & Wibowo, 1991). Collateral value is the value of the assets used as collateral for the guarantor or the type of security agreement considered as the maximum amount of the agreement that can be given against the pledge of these assets. Keeping in mind their own position, creditors usually set the value of collateral lower than its market value. This is done to provide a means of security in the event that the creditor is unable to fulfill a performance in the future.

Collateral Arrangements in Covenant Law

Collateral is closely related to collateral law, as it was determined at the 1977 Yogyakarta National Law Development Agency Seminar that collateral is an action to guarantee the fulfillment of monetary-valued obligations arising from a legal engagement (Badrulzaman, 1991). As for the definition of collateral, Hartono Hadisoeprapto offered an alternative view: it is anything the creditor gives to the debtor in exchange for the creditor's assurance that the debtor would pay back the loan in a monetary amount (Hadisoeprapto, 2017). In the era of the Dutch East Indies government, legal provisions governing the law of guarantee can be studied in Book II of the Civil Code and Stb. 1908 Number 542 as amended by Stb. 1937 Number 190 concerning Credietverband. In Book II of the Civil Code, the legal provisions relating to security law are pawn (pand) and mortgage. Pand is regulated in Article

1150 of the Civil Code up to Article 1160 of the Civil Code, while mortgage is regulated in Article 1162 up to Article 1232 of the Civil Code. The legal norms of guarantee are known to be divided into general guarantee and special guarantee. Definitively, general guarantee is regulated in Article 1131 of the Civil Code which states: "*All debtor's property, both movable and immovable, both existing and future, shall be liable for all obligations*". Conceptually, according to this article, a debtor who in the event of an engagement and/or agreement does not include collateral for the implementation of rights and obligations, when the debtor defaults, all of his assets become collateral for the fulfillment of these achievements. This means that in the event of an engagement and/or agreement made only based on trust alone. Then, definitively, special guarantees are regulated in Article 1132 of the Civil Code which states: *"The property becomes joint security for all those who owe it, the income, the sale of the objects is divided according to the size of the debt".* According to this article, the author analyzes that the property that becomes collateral, when the debtor defaults, gives the creditor the authority and power based on the collateral binding agreement to obtain repayment of receivables from the sale of the debtor's property. It is stated that special collateral when viewed from its nature regarding whether it is bound by movable or immovable objects, in this case there are different arrangements as mentioned above. In terms of the binding of special guarantees for immovable property, it refers to Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as the Mortgage Rights Law), where the presence of the Mortgage Rights Law is politically to increase national development which focuses on the economic sector considering the flow of large enough funds so that it requires a strong security institution and is able to provide legal certainty for interested parties in it to encourage the improvement of the national economy. According to its nature and position, Hak Tanggungan is intended for the binding of specific immovable property collateral for debt repayment by providing a certain position or priority to the creditors of the holder of the mortgage. Article 3 paragraph (1) of the Mortgage Rights Law states: *"The debt secured by a Mortgage Right can be an existing debt or money that has been agreed to a certain amount or an amount that at the time the application for execution of the Mortgage Right is submitted can be determined based on a debt and credit agreement or other agreements that give rise to the debt and credit relationship concerned*".

Meanwhile, there is a special collateral arrangement for the binding of movable property, namely the enactment of Law Number 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as the Fiduciary Guarantee Law) where politically the presence of this law is a companion to other collateral institutions to accommodate the enormous needs in terms of increasing the business world. Fiduciary guarantee is defined as a security interest in tangible and intangible personal property as well as real estate (including buildings) that cannot be mortgaged (as defined in the Mortgage Rights Law). The fiduciary retains ownership of the collateral and has priority over other creditors when it comes to repaying certain debts. It should be underlined that the binding of a fiduciary guarantee is an accesioir agreement that refers to the provisions of Article 4 of the Fiduciary Guarantee Law which states: *"Fiduciary Guarantee is an ancillary agreement to a principal agreement that creates an obligation for the parties to fulfill a performance"*. In addition to the two special guarantees as mentioned earlier, the purpose of the Mortgage Rights and Fiduciary Guarantees refers to the same agreement object, namely a debt agreement by providing privileges to the creditor holding the special guarantee. It should also be understood that special guarantees are also regulated in Book II of the Civil Code regarding personal guarantees (borgtoch). By definition, Article 1820 of the Civil Code regulates personal guarantees which states: *"Lien is an agreement by which a third party, for the benefit of a debtor, binds himself to fulfill his obligations when this person himself does not fulfill his obligations.".* The rights conferred by personal guarantee agreements are relative, meaning

that they are only defendable against the parties to the arrangement. Creditors and third parties often enter into personal guarantee arrangements with the intention of helping the debtor. A third party agrees to repay the debt of the debtor on the debtor's behalf under the terms of this arrangement. A personal guarantee is an assurance that a third party will pay off the debt in the event that the debtor goes into default at a later date (Satrio, 2009). Creditors and third parties can establish personal security rights through security agreements. The right to enforce a personal guarantee agreement is relative, meaning it may only be used against the parties to the arrangement (Hasan & Salam, 2010). Personal guarantees include borg, joint liability and bank guarantee. Personal guarantees have the following qualities: a) A direct link with a particular individual; b) Is limited to defense against specific creditors; and c) Generally against the debtor's property (Satrio, 2009) then what is included in the personal guarantee is;

1. The insurer (borg) is another person who can be charged.
2. Tanggung-menanggung, which is similar to tanggung-renteng.
3. Warranty agreement (Hasan & Salam, 2010)

The object of property is the target of the discussion, in the law of guarantee, the object of guarantee lies in what is submitted by the debtor which can be valued in money. Meanwhile, the scope of the guarantee is the classification of the guarantee itself. In the rules of civil law, there are often several classifications and / or fields of application of civil law. It can also be interpreted when a person who has an engagement and / or agreement with someone at the same time that a person is juridically bound to his property both now owned and future wealth if the person is injured by a promise.

Forms of Debtor's Responsibility for Defaulting in Credit Agreements with Individual Guarantees

1. Creditor Assessment Benchmarks Related to Individual Guarantees

An agreement, in addition to the purpose of providing legal protection to the parties, especially in debt and credit agreements, has the aim of providing balanced achievements and providing legal protection if the debtor is in default. Given that if the debtor defaults by not being able to return the performance given by the creditor, the collateral previously inserted in the credit agreement or debt agreement can function as a compensation or repayment. As mentioned earlier, in property collateral, the debtor provides object collateral to the creditor as a guarantee for the debt borrowed by the debtor. If the debtor does not fulfill his performance or does not pay according to the time period or the payment is due, the creditor can claim the right of execution on the collateral provided. The position of the agreement is indispensable in every money borrowing, especially credit where there is a guarantee that may not be commonly used in credit agreement traffic but is recognized, namely a personal guarantee agreement (borgtoch) which is an agreement between a creditor and a third party who fully guarantees another person's agreement with him binding himself to pay off or fulfill the parent agreement (Naja, 2018). A personal guarantee agreement can even be entered into without the knowledge of the debtor. According to Article 1131 of the Civil Code, personal guarantees are made up of all of a debtor's property, both now and in the future. This means that the debtor is responsible for all of his debts, unless there is a third party who is present as a guarantor or insurer for the agreement made between the creditor and the debtor. When someone owes money to someone else, they need someone to guarantee their payments. This is called a guarantor, and they agree to fully back up the debtor's obligations in the event that they can't pay back the loan. In the law, a guarantor, also called a "personal guarantee," is someone who personally agrees to pay off someone else's loan. In the event that the guarantor is a person, then what needs to be considered is the condition of the social status and economic status of the guarantor itself. The guarantor's

economic and social bona fides in the community become one of the determinants and can be used as a basic reason for granting credit approval with personal guarantees. Why is this necessary because the character of the guarantor is also a reference to the banking prudential principle in providing a credit decision. Creditors must be able to get legal protection when an individual promise deal is legally binding. Article 1824 of the Civil Code says that debt promises are not assumed, they must be made clear. This piece says that to protect creditors legally, the agreement to insure should be confirmed in writing or even in front of a notary through a real deed, as is proper for a credit agreement. Given that basically the content of a guarantee agreement, in this case a personal guarantee agreement, imposes more obligations on the guarantor and it is not too much to say that the personal guarantee agreement is one-sided. So in this case, the assessment of the granting of personal guarantees by creditors should be given carefully not only referring to the principle of binding agreements in the Civil Code, but also referring to the principle of banking prudence (Supramono, 1995). In general protection, the parties automatically have an obligation to guarantee each other's performance that has been agreed upon. This applies without the need for a special or specific agreement. In this way, the creditor has the legal right to collect repayment of his debt from the sale of the debtor's assets up to the amount of their individual receivables in the event that the debtor fails to meet his obligations. In a broader sense creditors believe that collateral does not adequately protect their interests. To ensure future payments are adequately protected, creditors can request that debtors sign special guarantees. These agreements grant the creditors the legal right to share in the sale of specific debt repayment goods, regardless of whether other creditors are involved, in the event that the debtor fails to pay their obligations (Panggabean, 2014).

So it can be said that the position of personal guarantees provides a little security to creditors with several considerations and benchmarks of course where the main objective is to restore the agreement in all circumstances if there is no breach of promise. The guarantor in this case must be carefully assessed both including social and especially economic conditions to avoid the inability to execute the guarantor if the debtor defaults if he does not have better economic capabilities than the debtor.

2. Relationship Between Individual Guarantee and Credit Agreement

Today's economic growth is growing over time. On the one hand, advances in technology also have an impact on the ease with which people can get things. In today's digitalization era, anything can be accessed easily by the community to meet their needs. The ease of obtaining information to the need to obtain basic community rights. The role of the state to fulfill the needs and facilities provided to the community also continues to progress. The response to digital development affects the pattern of public services that are the State's obligation to the community. To achieve a welfare state, it is necessary to have an orderly pattern of public services that is also supported by a harmonious legal climate and culture. As said in the theory of legal effectiveness, the operation of the law is returned to the factors of norms, community culture and law enforcement officials. These three factors must go hand in hand to create benefits and legal certainty. Naturally, if legal certainty can be realized, legal protection to the community will be fulfilled. So vital is the basic concept of culture to understand each other's interests that the fulfillment of the basic rights of the community will be easy to implement. The role of the state as a facilitator of the basic needs of the community will not be too dominant if the community is easy to access and obtain their basic rights as human beings and communities sheltered by the state. One of the basic needs that is very important for the community is the need for shelter and housing. In various regions, especially in big cities or even the capital city, obtaining housing and shelter can be said to be only a wishful thinking. This is due to the limited availability of land for the construction of

housing or shelter, especially for low-income people. The basic human needs guaranteed by the 1945 Constitution do not exclude those with income indicators or social strata. All of them are equal as human beings. Through the provisions of Article 28H paragraph (1) of the 1945 Constitution as the cornerstone of the State constitution, it is very clear that everyone has the right to obtain welfare and get a place to live and a good environment. The implementation of obtaining good and decent housing and shelter can be interpreted as the State's obligation to provide the availability of land for settlement development, setting affordable prices to equitable financing facilities. A tangible manifestation of the ease felt by the community to obtain housing and shelter is the existence of home ownership loans. So people can have a place to live by paying in installments where the facility is provided by the bank. Facilities for home ownership loans are one of the roles and tools for channeling funds to the community. Of course the bank in channeling funds to the community is guided by the principle of prudence. The banking sector, as one of the nation's financial institutions, plays a crucial role in sustaining the economy. The original intent of banking was to serve as a go-between for people who had extra cash on hand and those who needed it. Banks accomplish this by taking deposits from members of the community and then lending those funds out to those in need, among other services, to ensure a steady flow of capital across all economic sectors (Sjahdeini, 1993). The presence of banks is increasingly important in the midst of society. As stated by Stephen Liestyo, banking as part of the lifestyle of the consumer community is constantly innovating and providing services following trends, in certain cases becoming a trend setter, and customers are happy to enjoy it. Various banking facilities can only be enjoyed by customers only (Liestyo, 2005). Therefore, banks as financial institutions that manage public funds, require expertise to manage banking businesses professionally because if public confidence falls in banks, people will compete to withdraw funds from banks so that it has an impact on economic flows. Therefore, banks are also known as the heart of a country's economy (Hermansyah, 2005). That not only as a distributor of funds to the community, banking institutions also provide mortgage credit facilities as one of the functions of channeling the needs and convenience of the community specifically for home ownership. Indeed, home ownership credit is basically a credit agreement between the Bank and the debtor for financing home ownership. The object to be carried out is a financing facility in the form of a house where the payment method is carried out by the debtor in installments. As a form of improving the welfare of the community in any credit facility, banks must base it on three pillars, namely business prospects, performance and the ability of prospective debtors (Sutojo, 2015) The Bank in providing home ownership credit facilities initially had no legal relationship with the developer and / or debtor. After the takeover related to financing, the Bank then acts as the creditor and the home buyer in installments is called the debtor. The process for a credit agreement to be carried out until the duration of the agreement goes through several processes including the application process to credit implementation. Of course, banks in carrying out activities cannot run alone but must establish a partnership with a professional in their field in connection with the binding of a credit agreement as a form of implementation of the prudential principle. Why banks choose a professional to bind a credit agreement is because the nature of a credit agreement made before a professional has an authentic nature and also has perfect and decisive evidentiary power in the future. A legal relationship is a relationship that is born or exists from a certain legal action. From the legal relationship will arise a right and obligation of each party where to fulfill these rights and obligations do not always have to have an engagement in it. It is possible for a legal relationship to be born from an unlawful act that forces the other party to carry out an obligation. Rights and obligations due to legal relations that arise have consequences for realizing legal order in society. The function of law is as a medium to regulate patterns of community behavior and social interaction, one of which regulates the

concept of community rights and obligations. In legal arrangements there are instructions on what to do and what not to do in the hope of order and order (Salman, 2017) In addition, the function of law is to increase people's thinking power to be more critical. Why is this so because people by knowing their rights and obligations are also expected to provide justice to each other because life will really need order, comfort to provide legal certainty to one another. The reality in people's lives is that there has been a shift in the order of values and culture resulting in neglect of legal values in society. So that to comply with the rule of law in the form of rights and obligations as a form of implementation of human rights is increasingly eroded. This is also the reason that law enforcement, legal culture and legal substance do not support each other. The substance of the law should give orientation to morality and uphold the ideals of law in its enforcement. Legal morality can be interpreted from the values that live in society, the values that live in society can be realized if the enforcement is in accordance with the ideals of law for the benefit of public welfare. Isn't the law made for humans and not humans for the law? (Bruggink, 2009). Implementation to realize the ideals of law must be through a perspective on the values of Pancasila and religious teachings and laws that live in society. The basis for the discovery and emergence of law to be more useful, fair and full of shade in its enforcement. That is actually the desired legal morality. Morality like this is not easy to realize because there may be a conflict of interest such as the birth of a legal relationship between two legal subjects or between the substance of the law to another substance that contradicts each other. Proving the truth of morality over legal certainty in law enforcement in society really requires a joint philosophy of law and the application of Pancasila values. This is important because according to the adage that there is no law without morality. Therefore, the truth, discretion on a moral basis in various decisions, policies or laws applied by the authorities must always be in favor of justice, certainty and also expediency (Latif, 2018). The state power can balance and neutralize the dominance of power by not neglecting the role of realizing peace and the role as mediator in a conflict both horizontally and vertically. A developing society requires legal engineering and regulation in a progressive form to realize the aspired law. So the function of the law is not only to maintain order, but the law is also expected to maintain the means for societal change. The proper application of the law in society is dependent on both public understanding of the law and the resources available to the legal system; after all, corrupt police officers can wreak havoc by misinterpreting and failing to enforce even the most basic laws. The integrity of all those who apply the law is required to be good because it is very vulnerable to the opening of opportunities for data manipulation practices so that they harm each other or even the wider community. According to the author, such supervision is very minimal in the realm of private law. The realm of private law, even though it is the business and responsibility of the party who makes it, does not mean that there is neglect by the State as a law maker. The State as the ruler and suggestion of control should have the political power to shape the law. Politics is understood as a means and value taken to justify the order of society. Do not let the politics of law cause uncertainty to the detriment of a group of people or certain groups. Legal politics is a basic policy for organizing state policy in the field of law that will, is and has passed, where the source of legal politics is the values that apply in society to achieve the aspired state goals. The politics of law of one country is different from other countries, this is adjusted to the historical background, outlook on life, social culture and political will of each country. The modern state can sanction violations of the rule of law by the authorities. Because law enforcement is the monopoly of the ruler and the means of legal politics that has is the ruler. In essence, law is power but power that seeks order, not the other way around the law is used as a means of seizing power by using means that are detrimental to society and the State (Erwin, 2013) Discussing the position of banks in society as a distributor of funds and collecting funds, the prudential aspect or trust from the

public must be maintained. Because in addition to saving funds from the community, the position of the bank is also a means of economic stability in a broad sense. Therefore, the relationship between banks and the community cannot be separated from one another. In terms of lending in the community, the bank will offer several facilities to obtain capital, for consumptive purposes or even home ownership. But the legal relationship that arises between the community or more specifically the debtor and the bank is a civil relationship based on a money lending agreement or credit agreement.

Banks in channeling credit to the public, especially debtors or customers, have another side, namely the potential risk of non-performing loans in the future from debtors or what is commonly referred to as defaults from debtors so that it disrupts the health and operations of banks, so that in its implementation banks must pay attention to sound credit principles in order to reduce and anticipate these risks. Even though the bank in providing credit to the debtor is based on an agreement where the position of the agreement is actually sufficient with the valid terms of the agreement as in Article 1320 of the Civil Code, but in the event that the creditor is a bank, principles and principles other than Article 1320 of the Civil Code should also be used as the basis for granting credit. In banking, before granting credit must be guided by:

1. Character

The debtor's personality before being granted credit must first be analyzed by the bank, the bank should conduct research on the debtor's track record and behavior to find out the true character of the debtor. This is important to ensure that the goodwill to provide payments is always smooth.

2. Capacity

Capacity here is an overview of the debtor's ability to make a profit in connection with his work. This has to do with the credit decision where the reason for granting credit is that the bank guarantees periodic returns that do not exceed a certain time limit.

3. Capital

The next condition to be assessed is the ability of the debtor if he has the availability of income and projected profits to be obtained. If this is not found, it will be very risky if the bank gives a credit decision.

4. Collateral

The aspect of collateral is very important in relation to credit agreements, where with a certain amount, collateral serves to provide a privileged position to creditors to obtain repayment from the sale of collateral if the debtor defaults in the future.

5. Condition of Economics

The work and business activities of the debtor to be credited by the bank are able to keep up with economic developments including inflation and fluctuations as long as the agreement period has not ended with repayment (Sembiring, 2017). The five terms and principles of granting credit from banks to debtors are mandatory because banks conceptually must always maintain prudence in every step and stage in the distribution of credit in the community. Specifically, the implementation of prudential aspects in providing collateral, the bank must be able to assess when faced with a credit agreement with personal guarantees. Credit agreements that rely on personal guarantees are identical to those that use special guarantees in accordance with the Civil Code. A credit agreement is the primary agreement that binds the bank and debtor legally, while a guarantee agreement is a supplementary agreement that helps to strengthen the main agreement. Because collateral is legally bound, a civil connection is created between the legal subject and the bank in the role of guarantor.

Debtor's Responsibility Due to Default of Credit Agreement with Personal Guarantee

Debt relations and/or actions that are often carried out by several entrepreneurs for the smooth running of their business are certainly inseparable from payment problems. It is not uncommon for one of the entrepreneurs to be constrained by late payments or even unable to pay due to business being hampered or due to other factors so that this can happen. The concept of accounts payable in the rule of law can be interpreted as an engagement relationship, where an engagement relationship can be defined as a legal relationship in the field of property law between two or more people where one party is entitled to demand something from the other party and the other party is obliged to fulfill that demand (Meliala, 2014). The conception of an engagement relationship in debt and credit can also be interpreted as an agreement or contractual relationship. In the practice of debt and credit among entrepreneurs or the majority of Indonesian society, the granting of debt must be accompanied by the provision of collateral. That is the practice of granting debts in the community, especially banking services. Especially if the party is an entrepreneur whose debt value is high, the provision of collateral seems to be an instrument that must be included. For a creditor to have faith that the debtor will keep their end of an agreement, the debtor or a third party must provide collateral. Separated into two groups in Civil Law are material collateral and personal collateral (Sofwan, 2013).

Material security is a promise in the form of an unquestionable right to a thing, and it has these features: it has a direct connection to the debtor's specific goal, can be defended against anyone, always follows the goal (Droit de suit), which means the right will go with the goal wherever the goal is, is based on the principle of priority (rights born first will take precedence over rights born later), gives preference, and can be transferred (Sofwan, 2013). People who have a property right to be paid back must be paid first, and the case is in the form of a property lawsuit. The security holder works as a favored creditor, which means that they are the creditor whose repayment comes first (Usanti & Bakarbessy, 2014). Personal guarantees are those that result in a direct connection to specific people or to the debtor's assets as a whole (Sofwan, 2013). Personal guarantee with the title of guarantee or borgtocht which is regulated in Chapter XVII Book III BW, the rights that are born are relative rights (Usanti & Bakarbessy, 2014), Only certain parties to the agreement are liable to challenge this right. Since the capacity of third parties to satisfy the debtor's obligations is what is bound in a personal guarantee agreement, rather than a specific object, the general guarantee provisions outlined in Articles 1131 and 1132 BW apply in the event that the debtor breaches the promise. Being a primary agreement, the core of a debt and credit agreement is a named agreement. A guarantee agreement, meantime, is a supplementary arrangement. In the event that the primary agreement is dissolved or rendered invalid, the supplementary agreement will also be deemed null and void. Conversely, in the event that the supplementary agreement is dissolved or rendered invalid, the primary agreement will continue to be valid. The purpose and objective of the provision of collateral in the binding relationship is to guarantee the repayment of the achievement and / or to guarantee the fulfillment of the counter-achievement in accordance with the contents of the agreement, and if there is a defect of will by one of the parties, the provision of collateral can be as a provision of achievements that should be received. Legal consequences can occur after a decree and/or decision from the authorized party, then the consequences are closely related to the implementation of the rights and obligations of the parties. The implementation of demands for rights and obligations can be realized by filing a civil lawsuit in court which will later be decided by a panel of judges. In civil claims that fall under private law, the disputing parties cannot ask the State to implement the judge's decision, because the nature of private law is entirely left to the parties. Because its essence is personal. Likewise, regarding the implementation of the verdict, the

party won by the judge cannot be satisfied with just capitalizing on the verdict won, but on the basis of the verdict it must be implemented in reality.

CONCLUSION

The conclusion obtained from the results of research on the legal liability of the insurer in a credit agreement with personal guarantee is that the guarantee arrangements according to Indonesian law are divided into general guarantees and special guarantees where both are regulated in the Civil Code. In general collateral, it becomes the basis for the creditor to request repayment of the agreement made by the debtor if the debtor defaults by not distinguishing whether it is a movable or immovable object, while special collateral is more specific if the debtor submits a movable object, the binding is carried out through a fiduciary institution and if the debtor submits an immovable object, the binding is carried out through Mortgage Rights and besides that, it is also recognized that special collateral binding uses personal guarantees (borgtoch). The form of responsibility of the debtor who defaults in a credit agreement with personal guarantee is the personal property of the insurer to fulfill the creditor's achievement, namely the bank, if the main debtor defaults. However, the insurer or guarantor has special rights based on Article 1832 of the Civil Code and before the insurer's or guarantor's property is auctioned to pay off the debtor's debt, then according to the provisions of Article 1831 of the Civil Code, the property of the main debtor must be confiscated first.

The suggestion that the author can give to this research is that the first thing that must be done by the bank as a creditor in a credit agreement if the debtor submits an individual guarantee as an insurer for a credit agreement is to research and analyze the insurer's condition from various aspects, especially economic, social and track record aspects and is related to the 5C principle in granting banking credit. In the case of binding an agreement using personal guarantees, the bank as the creditor should also know and record the assets of the insurer and / or guarantor so that if the main debtor defaults, the bank can easily execute and auction the insurer's assets.

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