

LEGAL POSITION OF VILLAGE UNIT COOPERATIVE MANAGEMENT (KUD) AS PERSONAL GUARANTEE IN PROBLEM LOAN SETTLEMENT (Study at PT. Bank Rakyat Indonesia Koto Gadang Unit Dharmasraya Branch and KUD Bina Usaha Dharmasraya)

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Abstract: Indonesia is a state of law, all aspects that exist must be guided by applicable laws, one of which is the law of guarantees. Guarantee law is a method that regulates juridical structures that allow the provision of credit facilities, by pledging the objects purchased as collateral. Guarantees can be classified into 2, namely material guarantees and personal guarantees or so-called guarantees using a third party. This study was conducted on a third party used by Bank Rakyat Indonesia Koto Gadang Unit, namely the management in the KUD Bina Usaha. KUD Bina Usaha which is engaged in community oil palm plantations, which later the palm oil income managed by the KUD will be paid to Bank BRI for credit installment payments. But over time credit with a personal guarantee (personal guarantee) this raises the problem of bad loans.

Key Words: Personal Guarantee, Credit, Cooperative.

1. INTRODUCTION:

Guarantee law is a method that regulates juridical structures that allow the provision of credit facilities, by pledging the objects purchased as collateral.[1]

Banks in channeling credit to the public in addition to using material guarantees, some also use individual guarantees called *Personal Guarantees*.

The provision of bank credit must have confidence based on an in-depth analysis of the good faith and ability and ability of the debtor to pay off the debt in accordance with the agreement.

In fact, in addition to using guarantees or collateral in the form of material, banks also use *personal guarantees*, which are guarantees with third parties.

Cooperative administrators who are used as *personal guarantees* are people who are elected for a maximum term of five years in accordance with the cooperative's budget in accordance with Article 29 of Law Number 25 of 1992 concerning Cooperatives.

2. THEORITICAL FRAMEWORK:

a. Theory of Legal Effectiveness

The term effectiveness theory is based on an English translation, namely *effectiveness of the legal theory*, in Dutch it is *effectiviteit van de juridische theorie* and in German it is *wirkamskeit der rechtlichen theorie*. [2]

b. Theory of Authority

According to Article 1 point 6 of Law Number 30 of 2014 concerning Government Administration Government Authority, hereinafter referred to as Authority, is the power of Government Agencies and/or Officials or other state administrators to act in the realm of public law.

c. Covenant Theory

According to M. Yahya Harahap, the meaning of an agreement is a legal relationship involving the law of wealth between 2 (two) or more people, which gives rights to one party and obligations to the other party regarding an achievement. [3]

3. LITERATURE REVIEW:

Individual guarantee is a guarantee in the form of a statement of ability given by a third party, in order to guarantee the fulfillment of the debtor's obligations to the creditor if the debtor is in default (default).[4]

Cooperation was later adopted as a cooperative term which was standardized into an economic language known as a cooperative, which means an economic organization with voluntary membership.[5]

According to the Big Indonesian Dictionary, one of the meanings of credit is a loan of money with repayments in installments or a loan up to a certain amount permitted by a bank or other entity.[6]

5. METHOD:

The approach method used in this study is an empirical juridical approach, which is a method or procedure used to solve problems by first examining the existing secondary data and then continuing with research on primary data in the field.[7]

6. DISCUSSION:

Indonesia is a state of law, all aspects that exist must be guided by applicable laws, one of which is the law of guarantees.

The bank is one of the *financial intermediaries*, as a financial intermediary institution, the bank has excess funds (*surplus of funds*) and distributes it to parties who need funds (*lack of funds*).[8] The funds disbursed by the bank are in the form of credit.

Cooperatives are business entities consisting of people or cooperative legal entities based on their activities based on cooperative principles, as well as a people's economic movement based on the principle of kinship.[9]

The management of cooperatives who are used as *personal guarantees* are people who are elected for a maximum term of five years in accordance with the cooperative's budget in accordance with Article 29 of Law Number 25 of 1992 concerning Cooperatives.

Related to the above, PT. Bank Rakyat Indonesia (Persero) Tbk also provides credit facilities to KUD members by using cooperative management as a *personal guarantee*.

7. ANALYSIS:

In the opinion of Elijana S, a High Judge at the Supreme Court of the Republic of Indonesia, that the property that can be confiscated is the property of a Debtor.[10]

Based on the provisions if the debtor is unable to pay his receivables or is in default, the creditor is given the authority to conduct an auction of the debtor's property, then the proceeds from the auction are to pay off the creditor's debt.

Thus, if the debtor is declared in default while the debtor's assets are not sufficient to cover the debtor's debts, then the guarantor's property which has not been encumbered with mortgage rights and other collateral rights can be included in the confiscation property as much as what has been agreed in the guarantee agreement. in accordance with justice and obeying the moral principle that whoever promises must keep the promise.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The legal position of the guarantor or *personal guarantee* if the main debtor is declared in default, the guarantor is obliged to provide accountability to the creditor if the main debtor is unable to fulfill its obligations in accordance with the contents of the guarantee agreement that has been agreed upon by the creditor and guarantor. If the guarantor does not also show good faith, to fulfill his obligations, the creditor can request the court to confiscate the assets of the guarantor or *personal guarantee*.
- To resolve these problems, the guarantor, namely the KUD as a *personal guarantee*, will provide verbal warnings to members who have bad credit and provide written warnings. A written warning is usually given if a member who has bad credit does not also pay the installments even though the members are considered capable of paying. If the warning is not carried out by members who have bad credit arrears, the KUD fully surrenders its authority to the Bank.

9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- The Bank Rakyat Indonesia Koto Gadang Unit in entering into a personal guarantee credit agreement must pay attention to the terms and conditions specified in the agreement, so that there is no breach of contract in the future. Making a credit agreement using a personal guarantee should be made before a Notary as an authentic deed, so that it can guarantee legal certainty for the parties, creditors, debtors and personal guarantees to avoid default in the future which will cause financial losses to PT. BRI Unit Koto Gadang.
- The KUD as a personal guarantee must be more aggressive and active in giving verbal and written warnings to its members to make credit payments, although here the personal guarantee is only an accessoir or additional but its participation is expected to cooperate with the bank.

REFERENCES:

1. Sri Soedewi Mascjhoen, *Hukum Jaminan di Indonesia pokok-pokok hukum jaminan dan jaminan perorangan*, Liberty, Yogyakarta, 2007, page 25.
2. Otje Salman dkk, *Teori Hukum, Mengingat, Mengumpulkan, Dan Membuka Kembali*, Rafika Aditama Press, Jakarta, 2004. page 21.
3. M. Yahya Harahap, *Segi-Segi Hukum perjanjian*, Bandung, Alumni, 2006. page 6.
4. Hasanudin Rahmat, *Aspek-Aspek Hukum Pemberian Kredit Perbankan Di Indonesia*, Citra Aditya Bakti, Bandung, 1998, page 164 .
5. R.T. Sutantya Rahardja Hadhikusuma, *Hukum Koperasi Indonesia*, PT Raja Grafindo Persada, Jakarta, 2005, page 1.
6. <http://kamusbahasaindonesia.org/wewenang>
7. Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cetakan Ketiga, Jakarta, UI Press, 1984, page 52.
8. Neni Sri Imaniyati, *Hukum Bisnis Telaah tentang Pelaku dan Kegiatan Ekonomi*, Graha Ilmu, Yogyakarta, 2009, page 92.
9. Article 1 of Law Number 25 of 1992 concerning Cooperatives.
10. Elijana S., 1992, *Pengadilan Niaga, Pelaksanaan dan Dampaknya*, Bina Cipta, Jakarta, page 402.