

## RETURN OF PT JAMKRIDA RIAU SUBROGATION RIGHTS RELATED TO PAYMENT OF LOAN CLAIMS TO PT BANK RIAU KEPRI

<sup>1</sup>Hafid Akbar, <sup>2</sup>Prof. Firman Hasan., <sup>3</sup>Dr. M. Hasbi,  
<sup>1</sup>Master Of Notary Student, <sup>2</sup>Master Of Law Lecture, <sup>3</sup>Master Of Law Lecture  
Faculty Of Law, Andalas University, Padang, West Sumatera, Indonesia  
Email – akbarhafid571@gmail.com

**Abstract:** *Subrogation must be stated clearly because subrogation is different from debt relief. This study aims to determine how to arrange for the return of subrogation rights to PT Jamkrida Riau in the event of a bad credit claim by PT Bank Riau Kepri and how to apply subrogation in the Civil Code at PT Jamkrida Riau.*

**Key Words:** *Claims, Subrogation, Claim Payment.*

### 1. INTRODUCTION:

Capital is the main problem that must be resolved so that MSMEs are able to run their business smoothly, especially to meet working capital needs and in the context of investment in business development. Lack of capital clearly hinders the development of Micro, Small and Medium Enterprises (MSMEs), although the demand for products for MSME businesses is increasing, but due to lack of capital, banks as financial institutions that provide loans often refuse requests for credit applications due to not being able to meet the requirements criteria.

The credit guarantee agency for MSMEs in Riau Province is carried out by PT. Jamkrida Riau in collaboration with PT Bank Riau Kepri through Cooperation Agreement Number: 003/PKS-PK/JR/III-2016 Regarding Credit Guarantee, in which PT Jamkrida Riau is the credit guarantor for Bank Riau Kepri customers. Where each company is a Regional Owned Enterprise of Riau Province. Apart from this, PT Jamkrida Riau also acts as: (1) Productive Credit Guarantee, (2) Consumer Credit Guarantee, (3) *Surety Bond*, (4) *Custom Bond*, and (5) Counter Guarantee Guarantee. In practice, the guarantor company is entitled to a subrogation receivable equal to the portion of the guaranteed credit.

### 2. THEORITICAL FRAMEWORK:

#### a. Legal Certainty Theory

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented.[1]

#### b. Authority Theory

According to Salim HS, Authority theory comes from two syllables, namely theory and authority.[2]

#### c. Theory of Legal Protection

According to Satjipto Raharjo, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law.[3]

### 3. LITERATURE REVIEW:

Provisions for subrogation are regulated from Article 1400 to Article 1403 of the Civil Code. Article 1400 of the Civil Code provides a formulation regarding subrogation, namely Subrogation is the transfer of creditor rights to a third party who pays to creditors, can occur because of approval or because of the law.

Bank is a financial institution that is a place for individuals, private business entities, state-owned enterprises, and even government institutions to store their funds.[4]

Bad credit or non-performing financing is a financing condition where there is a deviation from *terms of lending* in the repayment of the financing so that there is a delay, legal action is required, or it is suspected that there is a potential loss. [5]

Insurance or coverage is related to risk. Insurance is a way to manage that risk. The risk can be positive or negative.[6]

## 5. METHOD:

The method used in this research is a normative juridical approach, namely *alibrary research*, which is a method of collecting data by studying books, laws and regulations, and writings related to this research.[7]

## 6. DISCUSSION:

When referring to the notion of subrogation according to the Civil Code (KUHPERdata), PT Jamkrida Riau as a guarantor has a position as a new creditor after the submission of a claim from the guarantee recipient is paid. However, in reality, PT Jamkrida Riau only has the right to collect from the bank concerned so that it can immediately collect the debtor to be able to pay off the credit. The collection carried out by the bank is to make direct billing to the customer concerned to sell assets through the auction system at the KPKNL (State Assets and Auction Service Office) if the collateral from the customer or debtor is in the form of a Certificate of Ownership that has been installed Mortgage, or underhand sales for collateral in the form of a Certificate of Indemnity (SKGR) or a similar letter.

For the recipient of the guarantee, in this case is Bank Riau Kepri, this subrogation reduces some of the risk if the credit quality of the customer becomes bad and can reduce the *Non Performing Loan* (NPL) of the bank itself. However, the Guarantee Company itself cannot immediately close the payment that has been issued from the bad credit claim submitted by the bank because PT Jamkrida Riau is unable to directly execute the collateral in order to return the subrogation to the previously paid claim. And there is also no certainty when the subrogation will be completed by the Guarantee Beneficiary, namely Bank Riau Kepri.

## 7. ANALYSIS:

### A. Legal Arrangements for Return of Subrogation Rights at PT Jamkrida Riau

The obligation of Bank Riau Kepri as the Guarantee Recipient to collect the Guaranteed party/Customer after the claim is paid by PT Jamkrida Riau as the Guarantor Company as regulated in the Cooperation Agreement does not provide legal certainty for PT Jamkrida Riau in obtaining *recoveries* from Subrogation so that it can cause potential losses that have an impact on the annual profit and loss of PT Jamkrida Riau. Bank Riau Kepri can be suspected of neglecting the obligation to make collections stipulated in the Cooperation Agreement. Based on the Civil Code regarding the consequences of an agreement, Article 1338 states that "All agreements made legally are valid as law for those who make them." not as a new creditor, whereas in principle, subrogation is the replacement of an old creditor to a new creditor due to the payment of the debtor's debt.

### B. Application of Subrogation

In accordance with the definition contained in Article 1400 to Article 1403 of the Civil Code ("KUH Perdata"), subrogation is the replacement of the rights (receivables) of old creditors by third parties/new creditors who have paid, so it can be concluded that subrogation occurs because of a payment made by a third party to the previous creditor. So in terms of the application of subrogation at PT Jamkrida Riau, it is different from the term *cessie*. What is meant by *cessie* is in the form of submission of invoices on behalf of (not by appointment or by order). Meanwhile, Subrogation can be submitted on behalf of, on behalf of the bearer, as well as on appointment. There are subtle differences between *cessie* and subrogation: (1) *Cessie* occurs only by agreement, whereas subrogation can occur due to agreement or law; (2) In *Cessie*, the consent of the debtor is not required (simply being notified). Meanwhile, subrogation can be carried out at the initiative of the debtor; (3) In the *cessie*, the role of the creditor is required, while in the subrogation that occurs because of the law, the role of the creditor is not required; (4) *Cessie* occurs as a result of a civil event, while in subrogation it occurs due to a payment. (5) In the *cessie*, it is required to have a private deed or an authentic deed (the term "or" means facultative, you can choose one of them as an alternative). Whereas in subrogation, if the initiative comes from the debtor, then it is carried out with an authentic deed. (Article 1402 Paragraph 2 of the Criminal Code). In addition to differentiating the term from *cessie*, there is one other term in the loan agreement, namely *Novasi*.

## 8. CONCLUSION :

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

- 1) In the practice and business operations of PT Jamkrida Riau, many people who are customers of Bank Riau Kepri have been helped to get the opportunity to enjoy credit as MSMEs, but this has also affected the ability of these customers to settle loans at the Bank. Settlement of bad loans between debtors and creditors is basically stated in the clause contained in the credit agreement between the two parties. The party who gets legal protection in this case is PT Bank Riau Kepri, where when a bad credit case occurs by a customer, PT Bank Riau Kepri will file a claim to PT Jamkrida Riau as the person in charge of creditor credit.
- 2) The return of the subrogation rights to claims that have been paid by PT Jamkrida Riau is carried out if the guarantor has paid the credit debt installments to Bank Riau Kepri. Then the bank returned it to PT Jamkrida Riau in accordance with the credit cover that had previously been guaranteed by PT Jamkrida Riau. This subrogation refund is stated in the Cooperation Agreement between PT Riau Regional Credit Guarantee (PT Jamkrida Riau) and PT Bank Riau Kepri number: 003/PKS-PK/JR/III-2016 concerning Credit Guarantee. Specifically for the return of Subrogation Rights, it is stated in Article 21 Subrogation and Credit Settlement.

## REFERENCES:

1. Sudikno Mertokusumo, 2007, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, page 160.
2. Salim HS, 2013, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, Jakarta, Raja Grafindo Persada, page 183.
3. Satjipto Raharjo, 2000, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000, page 5.
4. Hermansyah, 2013, *Hukum Perbankan Nasional Indonesia*, Jakarta, Kencana Prenada Media Group, page. 7.
5. Veithzal Rivai & Arviyan Arifin, 2010, *Islamic Banking; Sebuah Teori, Konsep, dan Aplikasi*, (Jakarta: Bumi Aksara), page 146.
6. Ridwan Khairandy, 2013, *Pokok- Pokok Hukum Dagang Indonesia*, Ctk. Pertama, FH UII Press, Yogyakarta, page 387.
7. Soerjono Soekanto, Sri Mamudji, 2003, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, PT. Raja Grafindo, Jakarta, page 23.