

## Personal Guarantee Responsibility for Debtors Who Default on Banking Credit

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**Abstract.** *The aim of this research is to understand the concept of personal guarantee and the process of resolving personal guarantees for debtors who are in default. This research uses normative methods namely doctrinal legal research or commonly referred to as library-based legal research which focuses on studying primary and secondary legal materials. The result obtained is that in the context of a credit agreement, personal guarantee responsibility is the obligation of a third party, called the guarantor, to guarantee credit payments if the main party borrowing the money (the debtor) experiences default, that is, fails to fulfill its obligations in accordance with the credit agreement. Personal guarantee responsibility is a form of protection given to banks or financial institutions that provide credit by securing credit payments through personal guarantees. In a situation of default by the debtor, the guarantor becomes the party responsible for paying off outstanding credit obligations.*

**Keywords:** Agreement; Credit; Default; Guarantee; Personal.

### 1. Introduction

Personal guarantee in the banking context refers to a situation where an individual or third party provides collateral for a loan or credit provided by a bank to a primary debtor (usually a company or business).<sup>1</sup>A personal guarantee gives the bank the certainty that if the principal debtor fails to repay the loan, the personal guarantor will be responsible for repaying the obligation.<sup>2</sup>

Personal guarantee in the context of a credit agreement is a form of guarantee

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<sup>1</sup>Ayu Annisa and Muhammad Adiguna Bimasakti, Position of Main Debtor and Personal Guarantor in Application for Bankruptcy Declaration, Guepedia, Jakarta, p. 16.

<sup>2</sup>OC Kaligis, 2021, Anthology of Legal Writings Volume 11, Alumni, Bandung, p. 131

provided by an individual or third party (personal guarantor) to a financial institution or creditor.<sup>3</sup>This guarantee shows that the personal guarantor is willing to be responsible for paying off the main debtor's financial obligations if the main debtor defaults or fails to repay the loan in accordance with the specified requirements.<sup>4</sup> The legal basis for personal guarantees is explained in Article 1820 of the Civil Code, namely "an agreement where a third party, for the benefit of the debtor, binds himself to fulfill the debtor's obligation if this person does not fulfill it".

Banking cases involving personal guarantees are common in the financial world. Decision Number 677/PDT/2020/PT.DKI explains that the Plaintiff is a legal subject, not in a state of detention, bankruptcy, and so on. should have full legal capacity (power and authority) to file this lawsuit because all of the Plaintiff's joint assets are joint inheritance, not confiscated. The issue in this case concerns the personal guarantee agreement made by Defendant I in the presence of Defendant II (notary), or which was made "off the shelf" and then notarized or submitted to the position of Co-Defendant II, as a personal guarantor for the obligations/debts of Defendant I to Defendant II, because there was a legal error in his discovery of the personal guarantee in the context of applicable marriage law.

The Personal Guarantee was made separately by Defendant I on March 4 2015 and registered (Warmerking) by Notary II Notary in Jakarta with number W.296/III/IPE/2015 dated March 30 2015; compared to the Personal Guarantee made by Defendant I on March 4 2015 and ratified by Co-Defendant II, Notary in Jakarta with Number L.44/III/IPE/2015 dated March 4 2015 In terms of various Personal Guarantees made By violating applicable positive legal norms, please remember that the Personal Guarantee as a whole was not made with the knowledge or consent of the Plaintiff as a whole who is the legal wife of Defendant I. These cases show the importance of understanding the terms of the personal guarantee before signing it, and the importance of being careful. Be careful when entering into financial agreements that involve personal guarantees.

If we look at the actions carried out by the Defendant, it violates the provisions of Article 1329 of the Civil Code which explains that: "Every person is competent to enter into agreements, if this is so stated by law." Article 1330 of the Civil Code: "Incompetence to make an agreement is: 1). People who are not yet adults; 2). Those placed under guardianship; 3). Female persons, in cases determined by law, and in general all persons with whom the law prohibits entering into certain

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<sup>3</sup>Aris Puji Purwatiningsih, 2023, Textbook of Business Law, NEM, Pekalongan, p. 49.

<sup>4</sup>Munir Fuady, 2018, Company Law in the Business Law Paradigm, Citra Aditya Bakti, Bandung, p. 119

agreements.”<sup>5</sup> By signing the personal guarantee letter above, Defendant I did not get permission from the plaintiff, so the personal guarantee given by Defendant I to Defendant II did not meet the requirements for the validity of the agreement, especially in terms of authority. Therefore, it is declared invalid and/or contrary to applicable laws and regulations.

The case in Decision Number 677/PDT/2020/PT.DKI also violates several provisions in Article 1338 of the Civil Code "Agreements made in good faith are binding on the parties, and must be fulfilled wholeheartedly." This article emphasizes the importance of good faith (equality and honesty) in making agreements.<sup>6</sup>The parties are considered equal and must comply with the agreement wholeheartedly. Article 1339 Civil Code "Agreements made are valid as long as they do not conflict with law, morality, public order and binding order." This article emphasizes that a valid agreement must not conflict with applicable legal and moral principles, reflecting the principles of equality and justice before the law.<sup>7</sup>Article 1365 of the Civil Code "Every act that violates the law, which causes harm to another person, requires the person who commits the act to compensate for the loss." This article emphasizes the principle of responsibility for unlawful acts, prioritizing justice for parties who suffer losses.<sup>8</sup>

The principles above reflect the values of equality and justice in the Civil Code, although these principles are not stated explicitly in the form of a separate article. Civil law tries to ensure that agreements are made in good faith, without causing injustice or unfair loss to either party.<sup>9</sup>

In this case, the wife can file a lawsuit to cancel the agreement based on Article 1333 of the Indonesian Civil Code (KUHPperdata), which states that: "An agreement made by the husband unilaterally and which concerns joint property or the wife's property which he controls as well as children's property which cannot be considered valid, must not have binding force without the wife's consent and the judge's approval."

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<sup>5</sup>Edi Santoso, 2018, *The Influence of the Globalization Era on Business Law in Indonesia*, Prenada Media, Jakarta, p. 128.

<sup>6</sup>Ibid.

<sup>7</sup>Abdul Wahid, et al, 2022, *Miscellaneous Understanding Contract Law in Indonesia*, Deepublish, Yogyakarta, p. 52.

<sup>8</sup>Ibid.

<sup>9</sup>Ibid...

## 2. Research Methods

The type of research that the author conducted, namely normative research, is doctrinal legal research or what is usually referred to as library-based legal research which focuses on studying primary and secondary legal materials.<sup>10</sup>The laws and regulations used are related to personal guarantee responsibilities for debtors who default on banking credit.

The nature of the research used is descriptive-analytical, which is a form of research that explains applicable laws and regulations, linked to legal theory and the practice of implementing positive law related to problems.<sup>11</sup>Meanwhile, to answer the problem, a statutory approach is used.<sup>12</sup> Data analysis in this research uses qualitative analysis, namely data that is not in the form of numbers which can be obtained from recordings, observations or written materials (laws, documents, books, etc.) in the form of verbal expressions).<sup>13</sup>

## 3. Results and Discussion

### 3.1. Personal Guarantee Legal Concept

Personal Guarantee Law (personal guarantee) is a legal concept relating to the responsibility of a person or legal entity (usually an individual or company) to guarantee the payment or fulfillment of another party's financial obligations, if the party receiving the obligation fails or is unable to fulfill it.<sup>14</sup>This is a form of collateral generally used in business transactions, loans, or commercial agreements.<sup>15</sup>

Article 1820 of the Civil Code is the legal basis for a personal guarantee, namely "an agreement where a third party, for the benefit of the debtor, commits himself to fulfill the debtor's obligation if this person does not fulfill it".

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<sup>10</sup>Soetandyo Wignyosoebroto, 2010, Understanding of Legal Research Methodology, Postgraduate Legal Studies Program, Sebelas Maret University, Surakarta, p. 20

<sup>11</sup>Mukti Fajar and Yulianto Achmad, 2017, Dualism of Normative and Empirical Legal Research, Print IV, Student Library, Yogyakarta. matter. 33.

<sup>12</sup>Johnny Ibrahim, 2007, Normative Legal Research Theory & Methodology, Bayumedia, Malang, p. 302.

<sup>13</sup>Suteki and Galang Taufan, 2018, Legal Research Methodology: Philosophy, Theory and Practice, Rajawali Press, Depok, p. 213.

<sup>14</sup>Indonesian Bankers Association, 2015, Getting to Know Banking Operations, Gramedia Pustaka, Jakarta, p. 123.

<sup>15</sup>Ibid.

The following are several important points related to the legal concept of Personal Guarantee:<sup>16</sup>

- a. **Party Providing Guarantee:** The party providing personal guarantee is called a surety or guarantor. They are subject to legal obligations to fulfill guaranteed obligations if the primary party cannot fulfill them.
- b. **Party Receiving Guarantee:** The party receiving the guarantee is the beneficiary of the personal guarantee. This could be the creditor party in a loan transaction or the party receiving the product or service in a business context.
- c. **Types of Obligations Guaranteed:** Personal guarantees can be used in a variety of contexts, including bank loans, leases, purchases of goods or services, and business contracts. The guarantor agrees to pay if the primary party fails to fulfill its obligations.
- d. **Limitations and Conditions:** Personal guarantees can have various conditions and limitations. For example, the guarantor may only be obligated to pay up to a certain amount or under certain circumstances. These provisions are regulated in the personal guarantee agreement.
- e. **Financial Obligations:** The guarantor may be forced to pay a certain amount of money or be responsible for the payment of the principal party's debts. They may also be responsible for interest and related additional fees.
- f. **Risks and Considerations:** If asked to serve as a guarantor, it is important to understand the risks and legal consequences associated with this role. This could have financial and reputational impacts if key parties fail to meet their obligations.
- g. **Legality and Legal Protection:** In many jurisdictions, the concept of personal guarantee is governed by law, and there are rules governing how personal guarantee agreements can be created and enforced. In some cases, consumer protection may also be provided to avoid harmful practices.

Before agreeing to become a guarantor or placing a personal guarantee on another person, it is important to understand the legal implications. Personal guarantees can have serious financial consequences if the primary party fails to fulfill their obligations.

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<sup>16</sup>ibid.

Research conducted by Rachmah, Susilowati and Suharto explains that<sup>17</sup>Companies that have limited responsibility in managing finances and carrying out their activities can establish legal relationships with third parties. To run a business, capital is needed. Capital for business activities can be obtained from funding sources within and outside the business. A company can obtain external capital by providing credit. In doing this, creditors often require collateral. Debtors can provide collateral to creditors, in particular by providing personal guarantees. The position of the personal guarantor (personal guarantee) in the event that a limited liability company goes bankrupt can be declared as the debtor, because if there is a guarantee agreement, if the debtor does not carry it out, the guarantor is obliged to replace the guarantor's position. guarantor. debtor. to perform services. In suretyship agreements, individual guarantors are often required to waive lien rights to protect their position. The loss of this privilege creates the responsibility of the individual guarantor if the debtor's assets are insufficient to pay off the debt.

### **3.2. Settlement of Personal Guarantees for Debtors in Default**

The judge's considerations from Decision Number 677/PDT/2020/PT.DKI regarding personal guarantees for debtors who are in default are thatThe plaintiff is the wife of Defendant I, based on Marriage Deed Number 956/01/XI/1993 dated 31 October 1993 issued by the Department of Religion, Tebet, South Jakarta. And it is true that between the plaintiff and defendant I there was no division of assets, so the assets acquired during the marriage are joint property. The applicant signed a personal guarantee letter because there was no information from defendant II and defendant II regarding the need for the applicant's signature as the wife of defendant I, in accordance with law no. 1 of 1974 concerning Marriage and Defendant I, was not aware of the need for the plaintiff's signature when the personal guarantee agreement was entered into.

Judgein adjudicating personal guarantee cases onDecision Number 677/PDT/2020/PT.DKI decides; a) accept the appeal request from the original Appellant, Plaintiff. b) confirm the decision of the South Jakarta District Court, dated 19 November 2019, Number 510/Pdt.G/2019/PN.Jkt.Sel, which is requested for appeal. c) sentence the original Appellant to the Plaintiff to pay court costs for both levels of justice, which at the appeal level amounted to Rp. 150,000,- (one hundred and fifty thousand rupiah).

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<sup>17</sup>Annisa Amalia Rachmah, Ety Susilowati and R. Suharto, Juridical Analysis of the Position of Individual Guarantor (Personal Guarantee) in Limited Company Bankruptcy, Diponegoro Law Journal, Vol. 5, no. 4 (2016).

Research conducted by Rahmi Ayunda and Muhammad Ariq Fidhillah<sup>18</sup> explained that developments in this modern era have given rise to changes in various basic human needs to be able to fulfill various aspects of social life. Of course, fulfilling these aspects of life requires sacrifice. A high level of concern for human welfare requires people to take action to obtain work and income to realize their life interests. However, humans will never be satisfied with what they have. Therefore, apart from working, anyone can earn money by borrowing money from cooperatives, banks or others. Efforts to resolve problem loans take place in three stages, namely the first stage of restructuring, the second stage of repackaging, and the last stage of restructuring.

The article of the Civil Code (Civil Code) which regulates the consequences of acts of breach of contract or breach of contract is Article 1243 of the Civil Code.

Article 1243 Civil Code:

Paragraph (1) If the debtor fails to pay the debt, the creditor has the right to request settlement of the debt or compensation that does not include payment of the debt, by submitting an application to the court in small claims court, unless according to the law or contractual customs this is not permitted.

Paragraph (2) Compensation for losses includes all losses that are a direct result of the debtor's denial.

Paragraph (3) Requests for compensation are only permitted if the failure is not caused by unavoidable obstacles by the debtor, or by the creditor's fault, or by another person, or by force majeure.

Paragraph (4) Debt settlement must be paid with predetermined or customary interest, which is paid in such a manner.

Paragraph (5) If there is a reasonable agreement, the debtor who is in default must pay a certain amount for each time he is late."

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<sup>18</sup>Rahmi Ayunda and Muhammad Ariq Fadhillah, Personal Guarantee Responsibility for Handling Problematic Credit in the Perspective of the Civil Code, UNDIKSHA Journal of Citizenship Education, Vol. 3, no. 3 (2021)

Article 1243 of the Civil Code regulates that if a debtor (the party who has the debt) does not fulfill his obligations, the creditor (the party who has the right to payment of the debt) has the right to take one or more of the following actions:<sup>19</sup>

- a. Requesting Debt Settlement: Creditors can apply to the court to collect debt payments that have not been fulfilled by the debtor.
- b. Requesting Compensation: Creditors can submit claims for compensation to debtors as a result of delays in debt payments. This compensation covers all losses that arise directly as a result of the debtor's refusal. Compensation may include interest or interest that has been agreed upon in the contract or is customary in practice, as well as costs that may arise as a result of the breach.
- c. Conditions for Defiance: Defiance must not be caused by unavoidable obstacles by the debtor, creditor error, other people, or force majeure (an unavoidable event).
- d. Interest: Debtors who default must pay the interest that has been stipulated in the contract or is customary in practice.
- e. Late Penalty: In some cases, the debtor may also have to pay a certain amount as a fine or penalty for each late payment.

#### 4. Conclusion

In conclusion, the responsibility of a personal guarantee towards debtors who default on banking credit is that the guarantor must pay credit obligations if the main debtor fails to fulfill them in accordance with the personal guarantee agreement. This is one way for banks or financial institutions to reduce their credit risk. Therefore, persons being considered as guarantors should fully understand the legal and financial implications of this role before signing a personal guarantee agreement.

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<sup>19</sup>Ketut Oka Setiawan, 2021, *Contract Law*, Bumi Aksara, Jakarta, p. 15.



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