

# Nature of Collateral Characteristics as a Special Warranty In Banking Environment

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**Nature of Collateral Characteristics as a Special Warranty  
In Banking Environment**

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**ABSTRACT:** Special guarantees in the context of banking can be divided into two parts, namely general guarantees and special guarantees: General guarantees are the fulfillment of the law regulated in Article 1131 BurgerlijkWetboek, then written BW, which states that: "All the debtor's assets, both movable and the immovable, the existing and the newly created, belong to all his private actions." And special guarantees are regulated in article 1132 BW, which reads: "An object is a guarantee for all those who owe it; income from the sale of these goods will be after the balance, d Special guarantees arise from material guarantee agreements, namely: Mortgage, Mortgage, Mortgage and Escrow which affect Lien, Mortgage, Mortgage and Escrow. With respect to the types of securities, among others: the first is the Absolute. Material rights are absolute, meaning that rights can be enforced against anyone, secondly, they are droit de suite, meaning that material rights follow the object in their hands. Third, there is the principle of priority, according to which substantive rights that have been previously arranged have priority over subsequent substantive rights. The fourth is preferential, meaning that substantive rights are given to creditors to get payment priority over other creditors.

**KEYWORDS:** Excellent character; special warranty; banking

### I. INTRODUCTION

In doing and growing a business, you have to compete in a healthy way. The traders have limited funds, a solution is needed to overcome the lack of funds that disrupts operations. Entrepreneurs apply for credit/loans as additional capital for financial institutions. Business people choose financial institutions that can offer loans/credit with a fast process and very low interest. Businessmen prefer banks as honest financial institutions. For entrepreneurs, loans/credit securities are assets to maintain business stability, on the bank's side, because customers pay their debts, on the customer's side additional capital for their business. In fundraising, banks are required to prioritize and pay attention to prudential banking principles based on democratic principles based on Article 2 of Law Number 10 of 1998 of the Republic of Indonesia amending the Banking Law Number 7 of 1992, hereinafter referred to as the Banking Law. The principles of sound banking are known as the 5 Cs, namely: Type, capacity, capital, financial position and collateral. In providing loans, banks always follow the principle of "collateral, which is strictly defined, is an asset that guarantees the fulfillment of an obligation, in this case payment".

In providing loans from banks, the precautionary principle must be observed, the purpose of which is to anticipate future risks, i.e. arrears of payment, as soon as possible. The most important factor that must be owned by the borrower is the ability and ability to repay the borrowed funds, this is an element of security or safety in the form of an asset that is used as collateral for the customer. The parties use the law as a contractual right as the container. Contract law alone is not enough, another legal instrument is needed, namely guarantees. The Guarantee Act acts as a legal framework to prevent customer defaults and strengthen the position of banks as lenders. Banks usually use integrated guarantees in their transactions, in contrast to other financial institutions that use individual guarantees. The legal history of material guarantee institutions in Indonesia has experienced significant developments, including: mortgages, mortgages, mortgages and trustees. Guarantee institutions play an important role as guarantors of debt repayment.

The legal relationship between the bank and the customer results in a loan agreement. The debt agreement made has many advantages for the parties, because the debt agreement raises the rights and obligations of both parties and the status of both parties. Banks that act as distributors of funds or offer loans are called creditors. Customers, both individuals and business entities, who receive credit funds are called debtors. The creditor and debtor enter into a debt agreement or loan agreement, which is the main contract. The loan agreement is a binding inheritance agreement which is classified as a personal right or individual right. In fact, the authority provides general guarantees, as predicted in article 1131 BW, "belonging to the debtor, both movable and immovable, and present and new, existing in the future,

Banks as parallel lenders, if they only rely on general guarantees, are a fortress made by the authorities, but actually prove that the authorities cannot offer a safe and comfortable position to the lender. The creditor must return his claims on the debtor's assets without going through a trial which takes time, costs are relatively high, and requires a lot of thought and effort. The Law on Guarantees offers success by providing other instruments that are intended so that creditors do not lose, namely in the form of special guarantees. Contract-specific guarantee, the contract must be made with the parties themselves based on the contract. Legal protection created by the parties themselves with a substantive guarantee agreement, which provides a more secure and stable creditor position. Whereas,

Banks as financial intermediaries or financial intermediaries that distribute credit funds do not only depend on their relatively strong position, but also must consider the interests of trust fund depositors. Banks must act quickly and act as quickly as possible to take advantage of the existence of a property protection scheme with property protection arrangements based on contracts that require certain items belonging to the debtor as specifically binding guarantees.

Substantive guarantee arrangements resulting from specific contracts consisting of (1) specific assets such as mortgages, mortgages, mortgages, and trust bonds, (2) to specific persons such as personal/company guarantees, bank guarantees. This substantive guarantee agreement acts as an addendum or attachment to the loan agreement, which is the main agreement that can make the bank the main lender of the house. The Material Guarantee Agreement is an addendum or accessory. Banks without additional agreements or additional agreements can endanger their health, have a systemic impact on the national banking system. If a bank only relies on general guarantees, then the bank will only become a collateral debtor, causing the bank to experience large losses.

Of course certain items belonging to the debtor will be analyzed first. After the bank, after careful analysis, has determined the debtor's specific goods as valid, the bank and the debtor enter into a debt contract and guarantee agreement to bind the goods. Substantive guarantee agreements made and signed by the parties are included in the general register, creating substantive rights that have higher characteristics than personal rights arising from credit contracts. The characteristics mentioned above are that substantive rights are absolute, are third parties, have a priority principle and most importantly a priority principle that allows a bank to become a preferred creditor.

If the debtor is negligent or does not pay and is unable to pay his debts, then the creditor does not need to file a lawsuit in court. In the loan agreement and guarantee agreement agreed upon and signed by the parties, the bank can easily and simply enforce the debtor's guarantee, namely for example in the form of a power of attorney or guarantee letter, the mortgage deed has irah-irah. MahaEsa, which means that the material guarantee can be enforced, namely H. It is the same as the results of court decisions that have permanent legal force. violence, even if it is not a judicial proceeding.

In relation to the binding power of the contract according to article 1338 paragraph 1 BW freedom of contract. The agreement is made at the will of the parties themselves based on an agreement and cannot be canceled for any reason other than mutual agreement and also in good faith. Good faith aims to relate to the values that develop in society and reflects standards of justice or decency. The exception of the parties does not result in loss of legal relationship. According to article 8 paragraph (1) BW, banks must provide loans to customers based on a thorough analysis, namely. ability, willingness and sincerity of every debtor to pay all his debts. Both creditors and debtors who are bound by debt contracts or credit agreements certainly need protection and legal certainty.

Based on the description of the statement in the previous paragraph, there are problems, namely: What are the main characteristics of guarantees as special guarantees in the banking environment?

## II. LECTURE SECURITY CHARACTERISTICS AS SPECIAL SECURITY IN THE BANKING ENVIRONMENT

### 1. Basics of Real Guarantees that Charge Collateral as Special Guarantees from The Bank as A Creditor

Bank is an agency that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other means to improve the standard of living of ordinary people as referred to in Article 1 paragraph (2) of Law no. Banking Law. Every member of society cannot be separated from the

role of banks, the role of banks is becoming increasingly central in the daily lives of most people. "A successful banking system is not only essential to the operation of any business, but is also a central part of most people's daily routine. Bank as a financial intermediary or financial intermediary institution whose mission is to collect funds from the public in the form of deposits in the form of:

Savings, current accounts, deposits and time deposits, banks can also channel funds from public deposits in the form of loans/credit to individuals or companies.

When cash is tight, businesses take a smart move, using the role of a bank with a working capital loan instead of having to sell its assets. Entrepreneurs apply for loans by entering several conditions determined by the bank.

After the application and requirements are received by the bank, the bank distributes them to the evaluation section to be analyzed and verified by Bank Indonesia. The goal is for the bank to know the black and white records of prospective customers before investigating the goods used as collateral. If the client does not have black files, the bank provides estimates and analysis to the surveyor to survey the object pledged as collateral, combining photocopies of documents, taxable land and building declarations, sustainable annual tax (SPPT PBB) and building permit (IMB) owned by the client. Transfer of experts and reports to the appraisal department for further analysis.

The credit manager decides on the eligibility of the customer. Customers who are declared eligible for the value written by the credit manager will be called to the credit department after showing the original certificate, original SKB, land and building tax payable (SPPT PBB) for the current year, original receipt of PBB payment and original building permit (IMB), as well as a signature detailing the costs to be paid, including:

Insurance premiums, administration fees, exam fees, withdrawals, certificate verification, life insurance fees and initial payments. The bank submits all documents to the notary and PPAT for signing the credit agreement in the form of a loan agreement and guarantee agreement.

The bank as the lender, known as the creditor and the customer as the debtor signs the loan agreement. The legal relationship between the creditor and the debtor is regulated in a loan agreement or credit agreement which is often referred to as a framework agreement. The main contract contains a general guarantee article 1131 BW. General guarantee means that the guarantee is intended for all assets of the debtor and for all creditors. General guarantees are generated from law. The debtor is obliged to pay the debt to the creditor in such a way that the creditor does not suffer a loss. Fulfillment of debtor obligations in the form of debt repayment, creditor rights can be realized in the form of profits.

If the debtor does not fulfill his obligations and pay his debts, then what happens is the opposite, namely the creditor suffers a loss. The losses suffered by the creditors of course stop their business, when in fact the goal and desire of the creditors is to turn the loan money into profit. The law does not want losses for creditors, so legal aid can also recover losses. According to the law, losses suffered by creditors can be recovered, so the creditor must file a lawsuit with the district court to demand the confiscation of the debtor's assets until the court decision has permanent legal force. Court decisions are convincing (condemnatoir), meaning that the losing party is punished with a decision in such a way that the party concerned realizes his actions by paying all of his debts. Based on a court decision that has permanent legal force, the debtor seems to continue to ignore this matter, so that the attachment of certain items that are collateral for the debtor becomes a conflict of enforceability until the debtor can pay all debts.

If a bank only relies on general guarantees, the bank will have a parallel creditor position, which is very risky and detrimental. Anticipating the bank's business from an early age, the bank requires certain things from the debtor to be attached separately as a special guarantee, which is a guarantee or additional guarantee. Collateral is a guarantee right owned by the debtor which must have economic value and property rights that can be easily transferred to anyone. The guarantee of material rights has the following characteristics according to the properties of the material: 1. is directly related to or regarding certain objects belonging to the debtor, 2. unconditional can be defended or addressed to anyone, 3. is *droit de suites*,

A natural guarantee is a right granted to a creditor to receive priority payment over other creditors for the sale of certain items that are specifically pawned. Therefore, material security rights have priority and a special character. The priority of the creditor, because the creditor is guaranteed his essential rights with absolute characteristics that can be defended against anyone, is directly related to certain objects belonging to the debtor, and receivables made previously have a higher priority. This is stated in the last sentence of the provisions of Article 1132 BW which reads: "... unless there is a valid reason for the priority of the debtors".

This clause indicates that there are exceptions or the creditor's property can be expressly attached as special collateral. It can also be interpreted as a reduction in the equity of debtor creditors based on priority, which is referred to as preferred creditor. The exception referred to in the last sentence of Article 1132 BW is a special guarantee, namely the right given to a creditor whose position is better/higher than other creditors in paying the debtor's bills. Better/higher creditor status with special mortgage rights is not the same, depending on the creditor's special mortgage rights. People in better/higher standing have obtained special security rights because the law stipulates that article 1133 BW takes care of "priority matters of creditor privileges, mortgages



and affairs" and because of article 1134 BW priority exists solely on the basis of nature. debt, creditors have legal rights that are above the levels of other creditors. Prior liens and mortgages are privileges, unless otherwise provided by law, over other creditors solely because of the nature of the claim. Liens and mortgages are higher than privileges, unless the law provides otherwise." regarding liens and mortgages" and according to article 1134 BW "Priority is a right granted by law to a creditor in such a way that the amount is higher than other rights. creditors. , solely based on the nature of the claim Liens and mortgages are higher than privileges unless the law stipulates otherwise. The creation of a special guarantee because it has been agreed beforehand, eg. Articles 1150-1160 BW regarding mortgages, 1162 BW concerning mortgages, Law No. 4 of 1996 concerning mortgages and Law No. 42 of 1999 concerning fiduciary guarantees. According to Gustav Radbruch, the existence of an additional agreement in the form of a material guarantee agreement between the parties can at least create legal certainty "Legal certainty is a certain thing (statement), terms or conditions. certain and fair Definitely as a guideline of behavior and justice, because a code of ethics must support what is considered a rational order, only because it is fair and definitely upheld, the law can fulfill its function.

## 2. Consistency of the Main Agreement with the Additional Agreement

Debt contracts entered into by the parties are classified as debt contracts. Debt contracts receive a guarantee from the legislature, which is regulated in article 1131 BW as a general guarantee. Although this guarantee is given by the authorities due to its general nature, namely, H. whereas the guarantee is intended for all creditors for all the debtor's assets, it turns out that it has not been able to provide a comfortable and safe position for creditors. . The risks faced by creditors because they only rely on general guarantees continue to create uncertainty for debtors in paying all their debts. article 1131 BW proves himself and cannot guarantee all debtors' debts, because in an auction the debtor's assets must be divided proportionally to pay the bills of all creditors. This condition worries creditors because there is no guarantee that the money paid by creditors will be returned in full as expected. Creditors must anticipate and avoid various possible risks. From the start, creditors must be able to take advantage of the provisions of the Guarantee Law, namely receiving special guarantees by including clauses in the object guarantee agreement. A debt contract used as the main contract must be attached at the conclusion of a supplementary contract, i.e. in the form of a property guarantee contract, if the general guarantee has to deviate from according to article 1131 BW. namely receiving special guarantees by including clauses in the object guarantee agreement. A debt contract used as the main contract must be attached at the conclusion of a supplementary contract, i.e. in the form of a property guarantee contract, if the general guarantee has to deviate from according to article 1131 BW. namely receiving special guarantees by including clauses in the object guarantee agreement. A debt contract used as the main contract must be attached at the conclusion of a supplementary contract, i.e. in the form of a property guarantee contract, if the general guarantee has to deviate from according to article 1131 BW.

Banks provide credit to debtors by entering into principal contracts and property guarantee contracts, which are addendum or collateral contracts. The nature of the guarantee contract is that the guarantee contract cannot exist without the main contract, which is the preliminary contract. The material guarantee agreement is an additional or additional agreement, so that the existence of a guarantee agreement is largely determined by whether or not there is a preliminary or main agreement. In general, the main agreement is a credit agreement or loan agreement or other agreement that creates a legal relationship between the creditor and the debtor. Legal consequences that may arise from this type of addition or addition.

## 3. Material Guarantee Agreement as Additional Agreement (Accessory)

Collateral interests over assets are rights that can give creditors a higher position because creditors have priority over debtor receivables arising from the sale of some of the debtor's assets. Certain objects belonging to the debtor that are voluntarily handed over to the creditor and which are bound by the creditor with a property guarantee agreement, for example.

movable or immovable property that serves as collateral. The creditor accepts the loan request submitted by the debtor, the creditor asks the debtor to hand over the immovable property which is the guarantee for the binding of the pledge agreement, which gives rise to the creditor's lien. This lien guarantees a certain amount of debt owed to the debtor. By referring to an additional agreement or binding in the form of a pledge, it is clear that the creditor gets a special guarantee for the loan funds transferred to the debtor. In principle, a mortgage serves to guarantee a number of responsibilities of the debtor. The main creditor is the ultimate weapon or the superior weapon that the creditor has to pay the debtor's bills. The guarantee of material rights has the following characteristics in accordance with the properties of the material: 1. directly related to or regarding certain items of the debtor, 2. unconditional, that is, they can be defended or addressed to anyone, 3. Its nature is *droit de suite*, meaning that the law follows the object that is in the hands of whoever that object is. 4. A substantive legal guarantee is a right given to a creditor to get payment priority over other creditors from the sale of certain goods that are specifically bound. Therefore, material security rights have priority and a special character. According to statutory provisions, the form of a guarantee agreement must be in written form

and with a valid deed, if the implementation deviates from these conditions, the agreement made is null and void. Its nature is *droit de suite*, meaning that the law follows the object that is in the hands of whoever that object is. 4. A substantive legal guarantee is a right given to a creditor to get payment priority over other creditors from the sale of certain goods that are specifically bound. Therefore, material security rights have priority and a special character. According to statutory provisions, the form of a guarantee agreement must be in written form and with a valid deed, if the implementation deviates from these conditions, the agreement made is null and void. Its nature is *droit de suite*, meaning that the law follows the object that is in the hands of whoever that object is. 4. A substantive legal guarantee is a right given to a creditor to get payment priority over other creditors from the sale of certain goods that are specifically bound. Therefore, material security rights have priority and a special character. According to statutory provisions, the form of a guarantee agreement must be in written form and with a valid deed, if the implementation deviates from these conditions, the agreement made is null and void. Substantive legal guarantees are rights given to creditors to get payment priority over other creditors from the sale of certain goods that are specifically bound. Therefore, material security rights have priority and a special character. According to statutory provisions, the form of a guarantee agreement must be in written form and with a valid deed, if the implementation deviates from these conditions, the agreement made is null and void. Substantive legal guarantees are rights given to creditors to get payment priority over other creditors from the sale of certain goods that are specifically bound. Therefore, material security rights have priority and a special character. According to statutory provisions, the form of a guarantee agreement must be in written form and with a valid deed, if the implementation deviates from these conditions, the agreement made is null and void.

Types of guarantee contracts that require the use of original documents are: 1. Ship mortgage deed used by lenders and debtors to transfer the mortgage guarantee contract for ships, airplanes and helicopters, drawn up by the Ship Administration and Registration Bureau, 2. Power of Attorney for Mortgage Credit which issued by a Public Notary (SKMH), 3. Deed of Granting Mortgage Rights (APHT) made to the Deed of Assets Maker (PPAT), 4. Power of Attorney for Granting Mortgage rights made to Notary or PPAT (SKMHT), 5. 6. Other provisions that require the authenticity of the guarantee contract are regulated in the provisions of Article 19 Government Decree No. 10 of 1961 concerning Real Estate Registration: "Any agreement aimed at transferring land rights, giving new land rights,

This regulation has been updated with Government Regulation Number 18 of 2021 dated 2 February 2021 concerning Administrative Rights, Land Rights, Housing Deeds and Real Estate Registration.

Based on the foregoing, the main mission of the PPAT is to assist the Minister of Agriculture in certain legal actions related to land rights, namely:

Deed of transfer of basic rights, deed of granting new rights to immovable property, deed of promise of basic rights, granting of basic rights as a debtor, guarantee agreements can be made in addition to the guarantee agreement above, also in writing by hand, for example

Attachment. An essential guarantee contract cannot exist without a master contract, which is a preliminary contract. The Material Guarantee Agreement is an additional or additional agreement. Additional contract or additional contract, the existence of a guarantee contract is determined and depends on whether or not there is a preliminary contract or main contract. The main contract is usually in the form of a debt agreement or other agreement that creates a legal relationship between the debtor. The legal consequences of additional agreements or additions include: 1. the existence of a guarantee contract depending on the main contract and is determined, 2. at the end of the main contract, the extension contract is also cancelled, 3. If the creditor and debtor only make and sign the main contract, the creditor only act as a secondary creditor. Concurrent creditors are very detrimental to the bank.

### III. CONCLUSION

Book II BW and Book III BW are always in synergy and cannot be separated. The uniqueness of Book II BW and Book III BW is that the existence of Article 1131 BW in the laws and regulations is correct, even though it is stated in Book II BW, the parties still can deviate from the agreement, namely with an indication of a special guarantee, i. H. additional guarantees or additional guarantees with a substantive guarantee agreement which is a synergy between Book II BW and Book III BW. The synergy between Book II BW Contracts and Book III BW is regulated in Article 1132 BW so that it takes into account the main characteristics of the collateral, including: a) absolutely. Substantive rights are absolute, meaning that rights can be enforced against anyone. b) *Suite* rights. Property rights follow the goods in the hands of whoever owns the goods. c. priority principle. Substantive rights that arise earlier have priority over substantive rights that arise later. namely Priority. Substantive rights are rights granted to creditors to receive payments that take precedence over other creditors.

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