

## Credit Guarantee Institutions As Alternative Guarantee In Obtaining Capital For Small Industry

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**ABSTRACT:** The existence of credit in the business activities is very vital for enterprises including small industries and consumers. Business actors in the procurement of capital to start a business or business development often require funding from external parties. Credit becomes an alternative choice that is very helpful in the procurement of capital. Credit is the provision of money made by banks by charging interest to customers by paying in installments. Payments made not in cash carry a high degree of risk to the provider of funds. Therefore, collateral for credit is needed. The presence of the Credit Guarantee Institutions is a way for the banks to extend credit to business actors. However, in the implementation there are various obstacles. the purpose of this study is to find evidence about the Credit Guarantee Institutions as an alternative guarantee in obtaining capital for small industries. This study uses the legal pluralism method. The results of the study show that in practice there are not many small industries that can take advantage of the existence of the credit guarantee company due to various obstacles, one of which is the difference of views regarding the guarantee company does not have special rights such as the guarantor in the personal guarantee (*borgtocht*). When in fact it can be said that the Guarantee is a guarantee made by the company (corporate guarantee).

**Keywords:** Credit Guarantor, legal protection, risk, installment payments

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### I. INTRODUCTION

The economy globalization era leads to several legal problems in which there are legal constraints or impacts. One of them is the problem of financing in Indonesia as a result of increasingly competitive business competition.[1] Funding is an important factor for business development.[2] Funding can be obtained from internal or external (other parties). It also exists in various countries in the world such as Germany[3], America[4], France[5] and various other countries including Indonesia. In granting financing through credit, banks pay close attention to the bank's prudential principle. This is in line with the meaning of credit is trust. Trust is a determining factor in business activities, including in the provision of credit facilities.[6] In addition, bank activities as a collector and distributor of public funds have a wide influence on national and global financial stability.[7] In general, banks will conduct a rigorous analysis of prospective customers using the 5C and 7P principles. "Principle 5C includes: 1) analysis of the Character to obtain a prediction picture of good faith prospective debtors to pay or carry out performance; 2) Capacity analysis to predict the ability of prospective debtors in managing their business; 3) Capital analysis to predict the business ability of prospective borrowers to support financing with their own capital. So the greater ability of capital means the greater portion of financing supported by own capital or vice versa; 4) Collateral analysis, namely collateral. In collateral there are certain goods which are the object of collateral. These objects when viewed from an economic aspect are of greater value than the financing that will be provided through credit. Judging from the legal aspects of the collateral object, it must really be the property of the debtor, not in dispute, having valid proof of ownership and collateral in a free condition (not under the control of another party); 5) analysis of economic Conditions to directly assess the prospects of the debtor's business conditions. The second is the 7P principle which covers Personality, Party, Purpose, Prospect, Payment, Profitability, and Protection." If all conditions are met then the next step is the procedure for granting credit until the disbursement of credit facilities. Analysis of 5C and 7P is very important to find out the feasibility or improper credit given to prospective debtors, so that the possibility of bad loans is relatively small.

Although credit has been done using the prudential principle as described above, but often in practice the debtor is in default, resulting in problem loans and even bad loans. On the other hand, credit is really needed by enterprises in business activities, including small industries.

"Industry is all forms of economic activity that processes raw materials and / or utilizes industrial resources so as to produce goods that have added value or higher benefits, including industrial services" (Article 1 Number 2 of Act Number 3 of 2014 concerning Industry). "Small industry is an industry that employs a maximum of 19 workers and has an investment value of less than 1,000,000,000 (one billion rupiah)", excluding land and buildings where businesses are located. Small industry has an important role for the Indonesian national economy, but often has difficulty in accessing formal financing such as banks because of bank concerns about the sustainability of these small industries and the lack of material guarantees. As a result, often small industries have difficulty obtaining capital for business development. Even though there are many small industries that have great potential to develop themselves.

To anticipate the risk of non-performing loans, the Credit Guarantee Agency is a very profitable alternative for business actors. "Guarantee is the activity of providing guarantees by Guarantor for the fulfillment of Guaranteed financial obligations to the Beneficiary of Guarantee" (Article 1 number 1 of the Act of the Republic of Indonesia Number 1 of 2016 concerning Guarantees / Guarantee Law). "The Guarantee Institution is a Guarantee Company, Sharia Guarantee Company, Re-Guarantee Company, and Sharia Re-Guarantee Company that carries out guarantee activities" (Article 1 point 6 of the Guarantee Act).

"A Guarantee Company is a legal entity engaged in finance with the main business activity of conducting Guarantees" (Article 1 Number 7 of the Guarantee Act).

"In conducting the guarantee business, the Guarantee Company guarantees the performance of the debtor's performance if the debtor defaults".[8] Thus there is a similarity between the Guarantee Institution and the personal guarantee (borgtocht) as regulated in Article 1820 of the Civil Code. Although there are similarities between the counters (borgtocht), there are also differences. In a personal guarantee, an guarantor has the privilege to demand the sale of debtor's property in advance to the debtor's debt payer. In the implementation of Guarantee by the Guarantee Company, there are still differences of opinion from academics, practitioners, government and business actors. This results in the lack of use of the services of the Guarantee Company, especially in the guarantee for the provision of capital in the development of small industries. Although the existence of Guarantee Institution has existed for a long time in Indonesia, there are still many people who do not understand clearly, including small industries and formal financial institutions. As a result there are still many small industries that have not used the Credit Guarantee Agency. Previous research on credit guarantees has been carried out by several researchers, among others, conducted by Mardiana,[9] but the research has not yet discussed the comparison of credit guarantees carried out by the Guarantee Company with the guarantor. Other research was also conducted by Minabari,[10] but in that study it was stated that the Guarantee Company was different from the personal guarantee, especially in the absence of special rights for the Guarantee Company as a guarantor. Therefore research on the Credit Guarantee Institution as an Alternative Guarantee in Obtaining Capital for the Development of Small Industries is urgent to do. This study aims to find evidence about the Credit Guarantee Institution as an alternative guarantee in obtaining capital for the development of small industries in people's lives.

## **II. RESEARCH METHOD**

This study uses a legal pluralism method that integrates philosophical research by examining legal principles, juridical studies of legislation, and socio legal that examines the values that develop in people's lives regarding the implementation of the Guarantee Institution as an alternative to credit guarantees in obtaining capital for the development of small industries.

## **III. DISCUSSION**

### **3.1. Capital Procurement in the Development of Small Industries**

Porter said that "the superiority of a country's competitiveness is determined by four main factors, namely the conditions of factors of production, demand conditions, supporting industries and related industries, as well as strategy, structure, and competition between regions. Besides these four main factors, there are still two supporting factors that also influence the competitive advantage of an area, namely the opportunity (chance) and the role of government".[11]

The increasingly competitive business atmosphere, demands competition between business people. Competition is not only done through price, quality and promotion, but there is one other way, namely by providing credit. This credit is given to customers and new buyers. This situation creates problems in funding for further business development. Until now, many business sectors, especially small industries, face various problems in their business activities. These problems are principally related to the ability and limited sources of capital, weak marketing capabilities, weaknesses in the field of credit management that cause more and more bad loans. This causes business continuity to be threatened, which in turn makes it difficult for companies to obtain additional funding through financial institutions.[12]

Capital as one of the determining factors for business success can be obtained from oneself or from other parties (external factors). In the case of obtaining external financing, it is generally done with credit through banks. Banks are financial institutions that have an effort to raise public funds and channel them back to the society. Therefore the bank in its business operations is based on the principle of prudence. The prudential principle is a principle stating that banks in carrying out their business functions and activities are required to apply the prudential principle in order to protect public funds entrusted to them. This is stated in Article 2 of Law No. 10 of 1998 concerning Banking which reads: "Indonesian banks in conducting their business are based on economic democracy by using the prudential principle." With the application of the principle of prudence, it is expected that public confidence in banks will remain high, so that people are willing and not hesitant to save their funds in banks.

Channeling funds from banks to the public one of which is by credit. "Credit is the provision of money or bills that can be equated with that, based on a loan agreement between the bank and another party that requires the borrower to repay the debt after a certain period of time with interest" (Act Number 10 of 1998 Concerning Changes Law Number 7 of 1992 concerning Banking. This credit is basically an agreement.

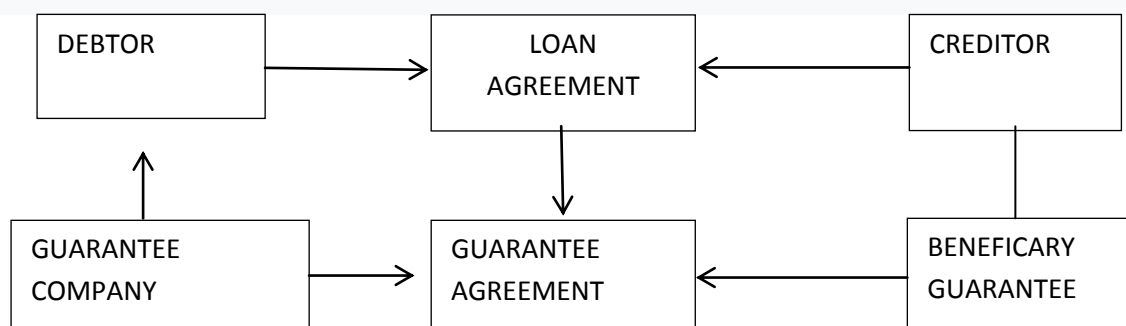
### **3.2. The Guarantee Institution as an Alternative Guarantee in Obtaining Capital for the Development of Small Industries**

The credit agreement creates a legal relationship between the lender (bank) and the customer. Banks as channeling funds carry the risk of not being receivable. Therefore collateral becomes a very crucial thing in lending. However, the lack of collateral often becomes an obstacle for those who do not have certain material that is sufficient to provide collateral in obtaining capital. Therefore the presence of the Guarantee Institution is an alternative for the parties to provide capital. For creditors, they get benefits because the existence of the Guarantee Institution will guarantee the implementation of customer achievements. Thus it can gain confidence in the return of receivables. Customers will find it easier to access funds for capital procurement in developing their business.

Guarantee Institution is a Guarantee Company whose main function is to guarantee the performance of debtors who obtain credit from banks. Article 1 number 7 of the Guarantor Law states that "Guarantee Companies are legal entities engaged in finance with the main business activities of conducting Guarantees." Article 1 Number 11 of the Guarantee Law states that "Guarantor is the party conducting guarantees". Credit guarantees by the Guarantee Institution are based on agreements. This guarantee agreement creates a legal relationship for the parties, namely the guarantee party and the recipient of the guarantee. Article 1 Number 12 states that the Guarantee Recipient is a financial institution or outside a financial institution that has provided Credit, Financing, Financing Based on Sharia Principles or service contracts to Guaranteed.

The Parties of guaranteed or guaranteed under Article 1 number 13 Guarantee Act are the parties that have obtained Credit, Financing, Financing Based on Sharia Principles, or service contracts from financial institutions or outside financial institutions guaranteed by the Guarantee Company or Sharia Guarantee Company. In the case that the guarantee is a credit agreement, the guaranteed party is the debtor who is a bank customer.

**Picture 1: Loan Guarantee**



Source: Research Results Elaboration

The loan guarantee process starts from the existence of a principal agreement in the form of a credit agreement. The credit agreement occurs with an agreement between the debtor (customer) and the creditor (bank). The guarantee agreement is made after the main agreement. This is a consequence that the guarantee agreement is an additional agreement or *accessoir*. This guarantee agreement is made between the Bank (creditor) and the guarantor, the Guarantee Company. The existence of this Guarantee agreement creates a legal relationship between the two parties, namely the Creditor and the guarantor. Thus the agreement is binding on

both parties. This is in accordance with the binding of agreement principle (*pactasuntservanda*) as stated in Article 1338 of the Civil Code which states that "all treaties made legally apply as an act for those who make them".

After the guarantee process is completed, a guarantee certificate is issued. "The Guarantee Certificate is proof of the approval of the Guarantee from the Guarantee Company to the Receiver of the Guarantee for guaranteed financial obligations" (Article 1 Number 18 of the Guarantee Act).

The occurrence of a guarantee as regulated in the Guarantee Act is similar to the Personal Guarantee (*borgtocht*) as regulated in the Civil Code. Personal guarantee (*borgtocht*) based on Article 1820 of the Civil Code, "which is an agreement with which a third party for the benefit of creditors, commit themselves to meet the debtor's performance if the debtor does not perform achievements (default)".

In the credit guarantee carried out by the Guarantee Company there are elements:

1) Guarantor, which is the party that guarantees the performance of the debtor's performance if the debtor does not pay his debt in a credit agreement. The guarantor in this case is the Guarantee Company. Because the guarantee is a company, it can be categorized as a corporate guarantee.

2) A guarantee agreement made between a creditor is a bank that distributes credit with a guarantor (Guarantee Company)

3) Guaranteed Parties, namely the debtor party that is the party that obtains credit facilities from the bank.

The elements contained in the equation with the elements of personal guarantee (*borgtocht*) as stipulated in the Civil Code. Therefore this Guarantee Institution is an individual guarantee (personal guarantee). This personal guarantee is further divided into a personal guarantee and a corporate guarantee. This type of corporate guarantee is the case where the guarantor is the company. A Guarantee Company is a company that has a business in conducting guarantees. Therefore Guarantee Companies can be categorized as a corporate guarantee. In practice based on previous studies most of the opinion that there is a difference between guarantees conducted by the Guarantee Company with Guarantor. A very striking difference is that in the personal guarantee, the guarantor has special rights, one of which is the right to claim the debtor's property first to pay off the debtor's debt, then use the guarantor's assets. This right is not owned by the Guarantee Company, because it is not regulated in the Guarantee Act. This often creates concern for the Guarantee Company in providing guarantees for the development of small industries.

Based on the concept of legal discovery proposed by Mertokusumo and Pitlo,[13] as well as Badriyah[14] researchers in this case are of the opinion that in the event that something is not regulated in the legislation does not mean it should not be done. This can be done if it is not contrary to the act, decency and public order.

If you see the similarity of the elements contained in the personal guarantee regulated in the Civil Code and credit guarantees as stipulated in the Guarantee Act, it can be said that the credit guarantee is one of the personal guarantees or *borgtocht* specifically carried out by the Guarantee Company. The two kinds of legal relations are basically agreements. Based on Article 1319 of the Civil Code, all agreements named (*nominaat*) or not named (*innominaat*) apply to the general provisions contained in the Civil Code. Therefore, special guarantees conducted by the Guarantee Company also apply the Civil Code. Thus the special rights possessed by the guarantor regulated in the Civil Code are also owned by the Guarantee Company.

Guarantees by Companies Guarantees are very potential in industrial development, especially small industries that have great potential for growth but are constrained from accessing capital in formal financial institutions which in this case are banks. The guarantee can be an alternative link between the small industry with the bank especially with the guarantee, the bank has more confidence in channeling funds. The principle of trust is very important in the legal relationship between the parties. Thus the legal relationship between the bank and the customer and the bank and the Guarantee Company will be realized in a balanced manner. Thus the principle of legal certainty, benefits and justice coveted in law as stated by Gustav Radbruch in the concept of the Basic Legal Idea (*Ide des Recht*) is expected to be realized.

#### IV. CONCLUSION

Credit guarantees are very useful for the society in developing businesses, especially small industries which generally have difficulty in accessing and obtaining capital from formal financial institutions such as banks. On the other hand, banks also have greater confidence in channeling funds to small industries because of a guarantor that guarantees the performance of the debtor's performance. Guarantee Companies also benefit from getting fees by providing guarantee services. Thus the guarantee carried out by the Credit Guarantee Company can be a potential alternative guarantee for obtaining capital in the development of small industries. In practice, not many small industries can take advantage of the existence of the credit guarantee company due to various constraints, one of which is the difference in views regarding the guarantee company that does not have special privileges like the guarantor in the insurance agreement. When in fact it can be said that the Guarantee is a guarantee made by the company (corporate guarantee).

## V. RECOMMENDATION

Massive supervision and socialization are integrated between the government, business actors, academics and legal practitioners as well as the public about the Guarantee Institution so that there is a correct understanding of the Guarantee Institution as an alternative to guarantees in obtaining funds for business development in various sectors including small industries.

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