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Debtor's Guarantee in Providing the Convenience of Credit Agreement

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Abstract: *Everyone always takes the opportunity to make payments on credit. Both parties can agree with this payment through a notary or bank. When a person wants to buy something and cannot pay for the item in cash, the buyer can make payments on credit or in stages. In the purchase of movable or immovable property on credit, several requirements must be met by the buyer. One of them is a guarantee. Giving this guarantee can be done by providing securities or goods. The provision of guarantees aims to provide security and comfort for both parties. With guarantees, at least no party will be directly harmed. If a debtor is unable to fulfill his obligations, then the guarantee given by the debtor will be used to pay off or pay off the debt. Although sometimes the sale value of a guarantee does not match the amount of debt to be paid, at least the debt can be partially covered. By providing guarantees to creditors, the two parties that have a purchase agreement get excellent comfort and security.*

Key Words: *guarantee, debt, credit, debtor*

1. INTRODUCTION:

The need for purchases of movable and immovable property is very high [1]. To deal with this need, humans generally hope always to want to be able to buy these items. However, sometimes a person's ability cannot fulfill this need. Many must be fulfilled in meeting the needs. These needs are diverse, some of which are the main priority and some that are not the primary needs. In meeting these needs, some can be met, and those that cannot be met directly. Facing these needs, humans have their own way because they want to meet the needs of all. This is because humans want to live appropriately and adequately. Meeting these needs, a person can buy goods in cash or credit. Someone will be faced with a method of payment on credit. It s is why companies have a way or technique to provide payment methods on credit to consumers. In the process of funding, credit providers can provide loans to consumers by guaranteeing goods or assets owned by consumers or prospective borrowers as proof that they can pay and repay loans or loans.

A guarantee is an object given to a creditor to provide confidence to the debtor who will fulfill obligations that can be calculated in money as a result of an engagement [2]. It has also been regulated in state law. There are still many people who carry out debts with collateral for creditors who do not enter into agreements with debtors. Creditors and debtors will be bound in an agreement that is made freely in the form of oral or written depending on the parties to the debit and credit agreement. Every creditor hopes that in agreeing with the debtor, he always expects the collateral promised by the debtor to be of the same sale value as the debt owed by the creditor. However, over time the value of the coverage provided decreases so that the loan agreement is not by the sale value of the guarantee. The parties continue to agree according to what was agreed upon by the parties to the agreement.

The debt agreements should be made in writing and witnessed by a legal entity [3]. It is useful to be used as evidence if, in the future, there are things that are not desirable. In civil law, written evidence is the primary evidence that can be used in a trial. With the written agreement being written, each party will get legal certainty regarding the agreement he made. If in the debtor's relationship, the debtor does not fulfill the voluntary achievement, the creditor has the right to demand the fulfillment of his receivables if the debt is collectible, ie, to the debtor's assets used as collateral. In fact, in the community, there are still many problems found in accounts receivable and verbal debts and collateral that is not by the sale value agreed between the creditor and the debtor. Things have a broad understanding, that is, everything that people can abuse. The provision of collateral provides comfort and security to the two credit agreement actors. Credit recipients will provide guarantees to guarantee that they can repay the debt in the future. Collateral can be in the form of goods or securities. Goods have a concrete meaning that can be seen and held, for example, cars, motorbikes, and homes. Rights refer to the notion of intangible objects such as accounts receivable on behalf, intellectual property rights such as copyrights, trademark rights, and patents. For example, a loan agreement for a creditor and a debtor with a guaranteed plot of land owned by the debtor, which in the agreement between the creditor and the debtor agrees if the debt cannot be paid, then the plot of land will be held or sold to pay the debt. With the guarantee, the creditor will not be harmed in granting credit to the debtor.

2. THEORIES :

2.1 Credit

In Latin, credit is called "credere," which means to believe [4]. The lender believes in the recipient of the loan that the loan will be returned according to the agreement. As for the recipient of the credit means receiving trust, so it must repay the loan by the period. In finance company law number 10 of 1998, the definition of credit is the provision of money or bills that can be likened to it, based on the loan agreement between the finance company and another party that requires the borrower to pay off the debt after a certain period with interest. Credit contains elements that are glued together. So if we talk about credit, it includes discussing the elements contained in it [5].

Credit is the granting of the use of money or goods to another person at a certain time with a guarantee or not with a guarantee, with the provision of services or interest, or without interest. Credit is the provision of money/bills that can be equaled, based on loan/loan agreements between banks and other parties that require the borrower to pay off the debt after a certain period with interest.

2.2 Definition of Customer

The definition of customer or consumer is every person who uses goods and or services available in the community, both for the benefit of themselves, family, other people, and other living things and not for trading [6]. Understanding the definition of a customer or consumer is every person who uses goods and or services available in the community, both for the benefit of themselves, their families, other people, and other living things and not to be traded. Furthermore, in economics, there are two types of consumers, i.e., intermediate and final consumers. Among consumers are distributors, agents, and retailers. They buy goods not to be used, but to be traded while the user of the goods is the final consumer. What is meant in the law as a consumer is a final consumer? Because the end consumer obtains goods and or services, not for resale, but for use, both for the benefit of himself, his family, others, and other living things. While in economics, there are two ways to obtain goods, such as buying. For people who obtain goods by way of buying, of course, he is involved with an agreement with business actors, and consumers get legal protection through the agreement [7]. For this second method, the consumer is not involved in a contractual relationship with the business actor. So consumers do not get legal protection from an agreement. This requires protection from the state in the form of regulations that protect the existence of consumers.

2.3 Guarantee

Guarantees or dependents are dependents on all one's commitments, as stated in the Civil Code article (general guarantees) as well as dependents on specific commitments from someone regulated in article 1139. Guarantee law is a set of legal rules governing the relationship between the guarantor and the guarantee recipient related to the imposition of collateral to obtain a credit facility. The function of a legal guarantee is the legal certainty of paying off debt in a debt and credit agreement. Whereas collateral in financing has a function, namely to repay debts in the event of default, namely by cashing or selling the collateral. As a result of the first indicator, namely the determination of the amount of debt financing or loans to be given to the debtor. Moreover, convincing banks or creditors that the debtor can pay off debts given to him as promised [8].

3. METHODOLOGY:

This research conducts a directed and structured discussion by the expected goals, the formulation of the problem, among others:

- Debt and Debt Agreements entered into between the creditor and the debtor has fulfilled the terms of the agreement.
- Legal consequences if the debtor does not carry out the contents of the agreement by the agreement of the parties.

The purpose of the research is an act to find out things that are not yet known to people and explore more things that were previously unknown. Then the objectives of this study are as follows:

- To know how far the debt and credit agreements entered into by the creditor and the debtor have fulfilled the terms of the agreement.
- To know the legal consequences if the debtor does not carry out the contents of the agreement in accordance with the agreement of the parties.
- Knowing the function of providing collateral in terms of credit agreements.

The benefits of this research are the results of this study are expected to provide good thinking and renewal of knowledge in general in the field of civil law, especially regarding collateral in debt and credit agreements.

Providing guarantees can make a credit agreement better and more consistent. The results of this study can be used as additional information about collateral in the loan agreement. The framework begins with debts between creditors and debtors can be done verbally or in writing, but creditors usually trust the debtor with written and guarantees that are by the value of the debt receivable as agreed in the agreement between the parties carried out in the legal sector. This agreement requires a guarantee to avoid problems later on. The need for more and more debtors will provide a higher level of debt to creditors than before. It requires the debtor to provide guarantees to the creditor by the value of the debt owed. Giving guarantees will fulfill the conditions of the agreement according to the law. If, in the implementation of collateral in a debt agreement, one of the parties, both the creditor and the debtor, does not carry out by the agreement, the creditor and the debtor will be presented to the court in resolving the case they are facing.

4. ANALYSIS AND DISCUSSION:

Increasing national economic development directly raises the need for debt lending. It is called funding. It can be from bank loans, local or foreign financial institutions. The process itself cannot be separated from the existence of collateral as a condition that must be fulfilled by the debtors. Its function is to guarantee repayment of loans already obtained by the debtor. Regulatory signs for guarantee protection are further regulated in guarantee law. The guarantee law covers all regulations governing the relationship between the giver and the recipient of the guarantee, as well as the imposition of collateral in a credit facility.

The guarantee consists of two categories, general guarantee and exclusive guarantee. The general guarantee is a guarantee that is formed because it has been determined by law, whereas special collateral is collateral that will be created due to the creation of a credit or debt agreement. This agreement arises because of an agreement between the lender or the creditor and the debtor. Guarantees are also divided into individual material guarantees. An individual guarantee is a guarantee in the form of a statement of ability given by a third party to guarantee the fulfillment of debtor obligations to the creditor.

Material collateral is collateral in the form of assets by separating part of the debtor's assets, in order to ensure the debtor can pay all his debts to the creditor. In the provisions of the law, the material is divided into two, namely movable objects and immovable objects, which are in the category of movable objects, pawn, and fiduciary. Inanimate objects are mortgages and mortgages. The following explains the guarantee of movable and immovable objects.

- Pawn
  A pawn is a right obtained by a creditor of movable property. It is given by the debtor or another person in his name to guarantee a debt and which gives the creditor the authority to repay the goods in advance of other creditors. Objects that can be used as collateral in a pawn are tangible and intangible movable objects.

- Fiduciary
  A fiduciary is an institution that can be used to bind objects of collateral in the form of movable and immovable property and immovable property, especially buildings that cannot be encumbered with mortgages. The object of fiduciary security remains in possession of the owner.

- Mortgage
  A mortgage is a material right over immovable property to take the compensation thereof for the settlement of an engagement. Mortgage objects are immovable objects that can be moved along with all the equipment.

- Mortgage right
  Mortgage rights are used to bind the object of debt security in the form of land or objects related to the land concerned.

6. CONCLUSION:

Guarantees significantly affect the security and comfort of the creditor and debt recipient. With guarantees, credit providers do not need to worry about debt that will not be paid. If the debt cannot be paid, then the guarantee will become the full right of the creditor. Sometimes the value of collateral decreases over time. However, this happens if the collateral is a movable object for immovable objects such as houses that are used as mortgage rights. The guarantee will increase in price over time. By applying a guarantee system to the debt agreement, the agreement activities will be safer and smoother.

REFERENCES:

1. A. Khalafi, “ACQUISITION OF IMMOVABLE PROPERTIES BY FOREIGNERS IN IRAN,” *TURKISH ONLINE J. Des. ART Commun.*, vol. 6, no. AGSE, pp. 1950–1955, Aug. 2016.
2. C. Henkel, “Personal Guarantees and Sureties between Commercial Law and Consumers in the United States,” *Am. J. Comp. Law*, vol. 62, no. 1, pp. 333–359, Jul. 2014.
3. E. G. Press and J. B. Weintrop, “Accounting-based constraints in public and private debt agreements,” *J. Account. Econ.*, vol. 12, no. 1–3, pp. 65–95, Jan. 1990.

4. S. Pang, "Farmer's Credit Decision Model based on Risk Guarantee Fund," in *2012 Fifth International Conference on Business Intelligence and Financial Engineering*, 2012, pp. 242–246.
5. A. Edwards, "The Deferred Tax Asset Valuation Allowance and Firm Creditworthiness," *J. Am. Tax. Assoc.*, vol. 40, no. 1, pp. 57–80, Mar. 2018.
6. P. A. Davis, "QFD-a structured approach to understanding the voice of the customer," in *Proceedings of 1995 IEEE Applied Power Electronics Conference and Exposition - APEC'95*, 1995, pp. 245–251.
7. S. Daryanti, "Understanding Muslim Customer Satisfaction with Halal Destinations: The Effects of Traditional and Islamic Values," in *International Conference on Business and Economics*, 2016.
8. R. Mortensen, "Professional Legal Ethic in Australia," in *Proceedings of the 1st International Conference on Indonesian Legal Studies (ICILS 2018)*, 2018.