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Legal Protection for Creditors in Providing Business Credit with Object of Inventory Warranties Based on Justice Values

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Abstract: The bank is a financial intermediary institution which functions to channel capital to the public through credit agreements with collateral assets that can be moved and cannot be transferred. Nationally, the loss of Bank Mandiri was caused by bad loans amounted to 3.5 trillion and in the Central Java Region, bad loans were at 430 billion. The purpose of this research is to examine and to analyze the legal protection for creditors in granting of business loans with objects of collateral based on the value of justice. The method used in this study was juridical empirical by using primary and secondary data. The data analysis method used qualitative descriptive. The findings in this study were legal protection for creditors in the provision of business loans with inventory objects assurance burdened by fiduciary were not based on the value of justice because many debtors were default. By basing on the credit agreement between creditors and debtors, if the debtor defaults, the guarantee inventory object of the debtor will be auctioned to pay off the debt. The reality is that the collateral object is corrupted. Nationally, Bank Mandiri's losses amounted to 1.5 trillion while in Central Java, the amount was 150 billion due to the default debtors. Legal protections in preventive and repressive manners for creditors are needed. Preventively, the additional guarantees and preventive arrangements need to be made for strict criminal sanctions for debtors who do not replace objects for collateral inventory in accordance with their values and quality and risk transfer to the third parties.

Key words: Creditors protection inventory guarantee, justice, legal protection, qualitative descriptive, Central Java, strict criminal

INTRODUCTION

The impact of globalization is very complex including liberalization in the world trade system increased labor mobility and capital, the establishment of trade blocs and the dissemination of technology and communication (Mashdurohatun, 2011).

The bank is a financial intermediary institution established with the authority to accept deposits of money, lend money and issue promissory notes or banknotes (Mashdurohatun). The provisions of Article 1 Sub-Article 2 of Law No. 10 Year 1998 concerning banking: "Business entities that collect funds from the public in the form of savings and channel them to the community in order to improve the standard of living of the people (Mashdurohatun *et al.*, 2017a, b). Distributing funds to the community by granting credit is one bank functions. Article 1a, b 11 of Law No. 10 Year 1998 states that: "Credit is the provision of money or equivalent claims, based on a loan agreement or agreement between the bank and another party, requiring the borrower to repay his debt after a period of time certain by giving flowers".

The credit agreement between the bank as creditor and debtor has several functions, they are (Naja, 2005):

- Serves as the principal agreement if it is associated with a guarantee binding agreement
- Serves as evidence, so that, it can be known the rights and obligations of each party and
- Serves as a tool to monitor the use of credit by debtors

In the credit application, the bank needs to review the loan application by examining Sutedi (2006): character (personality), capacity (ability), capital (capital), collateral (collateral), economic condition (condition of economy) (Mashdurohatun *et al.*, 2017a, b). Sri Soedewi Masjchoen stated that (Masjchoen, 2003). "For the sake of the creditors of the holding, the law provides a guarantee against all creditors and about all the debtor's property. The existence of a guarantee for the debtor is for the security of capital and legal certainty for the giver of

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capital, this is where the importance of the guarantee institution". Fiduciary is one of the guarantee institutions by providing trust between debitor and creditors as regulated in Law No. 42 Year 1999 regarding fiduciary guarantee. Trust is in the form of transfer of property rights objects that are used as debt guarantees by debtors. According to Hartono Hadisaputro, fiducia (Fiduciaire Eigendoms Overdracht/FEO) is the transfer of ownership on the basis of trust that is the transfer of ownership rights to the debtor goods that are used as collateral to the creditor on the basis of trust only while physically the goods concerned still remain on the debtors (Hadisaputro, 1985). The creditor gives full confidence to the debtor to hold the goods that are used as debt guarantee because the goods are still very needed by the debtor to run its business. The results of independent bank statements show that nationally independent bank losses caused by bad loans amounted to 3.5 trillion while due to inventory of 1.5 trillion and regionally jawa central bad credit of 430 billion while for inventory 150 Miiyar. It is therefore, interesting to examine in depth what is the legal protection for creditors in granting business loans with the object of inventory based inventory of justice value.

MATERIALS AND METHODS

The paradigm in this research is constructivism, further, according to the viewpoint of legal philosophy of legal constructivism is law as relative and contextual consensus. Since, law is an agreement it is understandable that the law is mental construction as well as law as experiential realities (Indarti, 2010). This research used sociological juridical approach. Based on the sociological jurisprudence point of view. This study is based on normative legal science (law) which not only examines the norms system in the rule of law but also observes the reactions and interactions that occur when the norm system works in society (Fajar and Achmad, 2010). Data types used are primary and secondary data.

This research is descriptive analysis because the researcher wishes to describe or expose the subject and object of research which then analyzed to be drawn conclusion (Soehartono, 2004). The sampling to obtain primary data in field study, conducted by purposive sampling method (Silalahi, 2006).

The analysis used in this research was qualitative data analysis which was a research procedure that produces analytical descriptive data it was obtained from library research or stated by the speaker in written or oral and also the real behavior which is researched and studied as something intact (Soerjono, 1986).

RESULTS AND DISCUSSION

Legal protection is identical with law enforcement which is closely related to the adherence of the user and the implementer of legislation in this case both the public and the state organizer that is law enforcement. With the signal that the law is obeyed by his community, this is a sign of the goal of creating the rule achieved (Subagyo, 2002). Law enforcement that contains compliance, the emergence is not abrupt but through a process that is formed and aware every human being to implement and not implement the rules (Soehartono, 2004). As a law enforcement effort in law enforcement dignity of man (Prasetyo and Handayani, 2017).

In the history of legal thought it is known that law is always present in human life. It can not be forgotten, how man's life is lawless. Without law order in society is unimaginable form. It can even be said that order and society are 2 possible but distinguishable notions. Celsius, the Roman philosopher once said "yam societas, ibi ius" (where there is society, there is law) (Latif and Ali, 2010).

Law has a strategic and dominant position in the life of society, nation and state. Law is the whole rather than the norms that bind the relationship between people in society. The law deals with and obligations (Effendy, 2010). According to, Jhering that the law was deliberately made by humans to achieve certain desired results. According to Sudarto there are 3 views about the law, namely (Sudarto, 1986a, b).

Legalistic, the law is seen as a logically closed structure, not contradictory to each other, law as a set of rules expected to be obeyed by community members. This view rests on legal certainty (predictability or rechtsiekerheid).

Functionally, the law is seen as an instrument for the regulation of societies that require the measurement of norms, doctrines and legal institutions to the extent that these 3 can be up to the objectives to be achieved. This view rests on the usefulness and usefulness of law or doelmatigheid. Critical, namely the law as part of society by studying the law with the measures used by the law itself. This view rests on justice (justice or gerechtigheid).

According to Satjipto Rahardjo, the law can be primarily seen through the formulated rules explicitly. In the rules or rules of law is contained action that must be implemented which is nothing other than law enforcement (Rahardjo, 1993). Starting from the above explanation, here are some notions of law enforcement, namely:

Satjipto Rahardjo (Sudarto, 1986a, b): Law enforcement is a process for realizing the desires of the law, i.e., the minds of the legislatures formulated in the rule of law become reality.

Sudarto (1986a, b): Law enforcement is the concern and cultivation of unlawful acts committed (on recht in actu) as well as unlawful acts that may occur (on recht in potentie).

Soerjono Soekanto (1993): Conceptually, the core and meaning of law enforcement lies in the activities of harmonizing the relationships of values that lie within the steadfast principles and manifesting from the attitude of action as a series of the final stages of the values of creation, to create, maintain and maintain peace of life.

Report of the Fourth National Seminar on Law (1979) (Arief, 1998): Law enforcement is the overall activity of law enforcers in the direction of law, justice and protection of human dignity order, tranquility and legal certainty in accordance with the 1945 constitution.

Not every nation, state and society has the same needs in terms of their legal life. In communities that are still relatively simple it will be seen how simple also, the needs of the community regarding the implementation of the law. Therefore, the approach used is not normative without ignoring the social environment factors where the law enforcement is implemented (Rahardjo, 2009). The role of the rule of law is considerable in relation to the enforcement of legislation by law enforcement. In a tone that may be somewhat extreme can be said that the success or failure of law enforcers in carrying out their duties actually started, since, the rule of law was made. For example, the legislature makes the rules difficult for the community to do and has since then become the architect for the failure of law enforcement in applying the regulation. This can happen because the law commands something that is not supported by sufficient means. As a result, the rule failed to run. It can also happen that the legislator issued a law that obliged the people to do something.

Key issues in law enforcement and awareness due to the lack of a harmonious relationship between inadequate legislation, law enforcement behavior that does not understand its functions, duties and responsibilities, limited law enforcement facilities and symptoms of anxiety and public unrest caused by lack of guarantee of legal protection (Arief, 2008).

According to Abdul Hakim, law enforcement is implemented in 2 ways (Hakim, 2003), namely: 1st, preventive action is made if possible and still there is public awareness to obey the law. Secondly, repressive action is the action taken if preventive action is not effective, so that, the people carry out the law though with compulsion. Failure in one component will impact on other factors. In addition, law enforcement requires legal institutions such as judges, prosecutors, advocates and police. The legal institution is a classical element in realizing the objectives of the law. Each of these legal institutions develops its own values in addition to factors outside the law that also play a role. Therefore, law enforcement does not work in a vacuum and impermeable influence but always interacts with a larger social sphere. Law enforcement essentially contains supremacy of substantial value that is justice (Rahardjo, 2009).

According Soerjono Soekanto that the main problem of law enforcement actually lies in the factors that may affect it, namely (Soekanto, 1993): factor law (law), law enforcement factors, supporting facilities or facilities, community factors and cultural factors. Police, prosecutors or judges have the power to enforce laws based on law but they are also charged with the responsibility to exercise their authority properly and responsibly. By law, the public may hold law enforcement accountable if they commit irregularities in law enforcement and arbitrary (willkeur) processes that violate the human rights of citizens (Syamsuddin, 2008).

The criminal law consists of norms containing the necessities and the prohibitions which (by lawmakers) have been linked to a sanction of punishment that is a special suffering. Thus, it can be said that the criminal law is a system of norms which determines which actions (things do or do not do something where there is a necessity to do something) and in what circumstances the law can be imposed as well as the punishment that how that can be imposed for such actions (Lamintang, 1983). This criminal law is closely related to the punishment or criminal sanction imposed by the state on the offender or perpetrator and this criminal sanction is forcing. The criminal law is part of the overall law applicable in a country (Moeljatno, 1993): determine which actions should not be done, prohibited, accompanied by threats or sanctions in the form of a specific penalty for whoever violates the prohibition. Determine when and in what matters to those who have violated such restrictions may be imposed or criminalized as has been threatened. Determine in what manner the imposition of a criminal may be exercised if any person is suspected of violating the prohibition.

To protect the community, there are several parties involved in law enforcement, namely police, prosecutors, courts and correctional institutions. The criminal justice system is expected to play a role in the setting up of justice and as a means of social control. In many cases,

however, the criminal justice system can lead to "depression" to dominant political power and leads to a tendency to maintain social order and to legitimize patterns of social subordination (Kusumah, 2001).

Law enforcement must be essentially based on 3 main points, namely (Yulia, 2013) the foundation of religious teachings/ideals the foundation of the teachings of culture (customs) and the basis of clear positive law rules.

So far, in our society, the basis of religion and culture (customs) is too far abandoned it creates increasingly sharp disagreements and conflicts. According to, Mastra Liba that there are 14 factors that influence the performance of law enforcement namely (Liba, 2002) state system which puts the attorney general parallel to the minister, the system is not adequate yet human resource factor the interest factor attached to the executing officer: corspsgeist in institutions, strong pressure on law enforcement officers, cultural factors, religious factors, the legislature as a "legislative body" needs to encourage and model good practice in law enforcement, political will of government, leadership factor, strong network of crime partners (organize crime) strong influence of collusion in the soul of retired law enforcement officers, utilization of weaknesses of legislation. The criminal law is part of public law which contains the provisions on (Chazawi, 2010): general rules of the penal law and (related to) the prohibition of certain (active/positive or passive/negative) acts accompanied by the threat of sanctions in the form of criminal (straf) for violating the prohibition.

Certain conditions (when) that must be fulfilled/must exist for the offender to be able to impose a penal sanction that is threatened on the prohibition of the deeds he violates.

Measures and endeavors which the state may or may exercise through its means of equipment (e.g, police, prosecutors, judges), against alleged perpetrators and indicted as criminal offenders in the framework of the state's efforts to determine, impose and impose criminal sanctions against them and the efforts that may be and should be perpetrated by the defendant/offender in order to protect and defend their rights from state action in the state's effort to enforce the criminal law.

A person's awareness of financial problems not only prepares for the future economic difficulties but also supports the rapid development of the country. This will create awareness of financial literacy to help make the use of limited resources more affective. Recently, in this case financial economic literacy has become an important topic (Yildisim *et al*., 2017).

In general, criminal law is used as a tool or attempt to overcome crime with penalty sanctions. The criminal law determines sanctions against any violation of the law. The sanction is in principle a deliberate addition of suffering. This deliberate addition of suffering is also the most important distinction between the criminal law and any other law (Van Bemmelen, 1987). Under the Fiduciary Guarantee Act No. 44 of 1999 (UUJF), there are 2 criminal provisions, namely Article 35 and 36. In Article 35 UUJF focuses more on the process of the birth of the agreement, meaning that the crime occurred at the time before the fiduciary agreement or at least became the cause of the birth of a fiduciary agreement. Whereas in Article 36 UUJF contains several elements as follows:

- The element of the fiduciary giver
- Elements diverts, pawns or leases
- The element of object being the object of fiduciary guarantee as referred to in Article 23 paragraph (2)
- Elements are performed without prior written approval from fiduciary recipients

In practice, many debtors replace fiduciary security goods when the fiduciary guarantee has not been registered, then the debitor is criminalized under the provisions of Article 372 of the Criminal Code on embezzlement. Based on Article 36 UUJF the debtor who transfers the fiduciary object is only threatened with a criminal punishment of 2 years in prison while the criminal provisions under Article 372 are more severe, i.e., 4 years in prison. The principle of the transfer of ownership (fiduciary objects) from the debtor to the creditor is not followed by the actual delivery of the goods (the principle of constitutum possessorium), so that, the material aspect of the fiduciary agreement is determined by the registration of the guarantee at the fiduciary registration office. The fiduciary guarantee deed must be made by a notary in Bahasa Indonesia containing inter alia: the identity of the fiduciary giver or seller data of principal agreement, description of objects of fiduciary objects, underwriting value, the value of the object that becomes the object of fiduciary guarantee.

In the implementation of credit with the object of collateral inventory conducted by independent banks as creditors have not gained justice. Data in 2016 has suffered a lot of losses due to debtor wansprestasi or broken promise or debtors can not pay off the debt for a cause or indeed because the bad faith is not good debtor. As for the loss of independent banks that nationally independent bank losses caused by bad loans amounted to 3.5 trillion while due to inventory of 1.5 trillion and regionally Jawa central bad credit of 430 billion while for

inventory 150 Miiyar. The deed of fiduciary guarantee further strengthens the position of the bank as a preferred creditor. In addition, the fiduciary receivable creditors will be assured of the debtor's repayment. The juridical function will also reduce the risk level of the bank in conducting its business as referred to in the banking act. But in reality with respect to the object of creditor's inventory assurance difficulties in executing because the object of the guarantee does not exist or disappear. Here's a comparison of legal protection for creditors in other countries:

United States of America (Sitedi, 2006): The law on guaranteed transactions in the United States is governed in Article 9 of the Uniform Commercial Code. This provision not only regulates procedures for creating and administering debt guarantee administration but also regulates the holder of the debt guarantee rights against unsecured credentials, unless federal bankruptcy laws apply to the debtor. Article 9 UCC deals with the guarantees of both movable and immovable property. Thus, the arrangement of material security in the United States, does not distinguish which is a moving and immovable object. The fiduciary guarantee process in this country includes:

- The imposition of debt guarantee (attachment)
- Perfection registration (Article 9-302)
- Registration by means of archiving
- Special registration rules for certain types of guarantees
- Perfection in transactions between states

Indarti (2010): Charge is one of the guarantees used in Singapore. This guarantee is divided into 2 types, namely guarantees made on movable objects and chattel and guarantees made by the company. Both types of charge are subject to different laws and regulations. Charges imposed on movable and/or chattel objects are set out in the bill of sales act and for charges made by the company are governed by the Companies Act, Chapter 50.

Legal protection is a guarantee provided by law for a legal subject whose rights are violated by another legal subject to obtain his legal right. There are 2 kinds of legal protection for the people, namely preventive and repressive law protection:

Preventive legal protection: Preventive legal protection aims to prevent the occurrence of disputes. With preventive legal protection it will be encouraged to be cautious in making decisions.

Repressive law protection: In other words, the protection of the law was initially directed to repressive activities or actions. Repressive legal protection aims to resolve disputes. The provisions in Surah Al-Baqarah Verse 282 and283 explain that: Al-Baqarah 282 it means: "O ye who believe, if ye have not mu'am'ah in cash for a prescribed time, you should write it down. And let a writer among you write it correctly. And let the writer not reluctant to write it as Allah taught it wise should he write and let the person who owes it mocks (what will be written) and he should be cautious of Allah his Lord and he shall not reduce any of his debt. If the debtor is a weak or weak person (the circumstances) or he can not absorb it himself, then let his guardian be honest. And witness with two witnesses of the men (among you). If there are not 2 men, then (may) be a man and 2 women of the witnesses whom you are pleased with, so that, if anyone forgets then one reminds him. Let not the witnesses be reluctant when they are called and do not be weary to write the debt, whether small or large, until the deadline of payment. That is it is fairer in the sight of God and more confirming the testimony and closer to your no (induce) your doubts. (Write down your mu'amalah), unless that mu'amalah is the cash trade that you run among you, then there is no sin for you, (if) you do not write it. And witness, if you are buying and selling and do not be difficult for writers and witnesses to disturb each other. If ye do, so, then surely it is a wickedness in you. And fear Allah, Allah taught you and Allah is All-Knowing all things.

> Surat Al-Baqarah Ayat 283 it means: "If you are on a journey (and bermu'alah not in cash) are you not get a writer, then there should be a held goods liability (by the debtor). But if some of you believe in some other, then let the trustworthy fulfill his mandate and be cautious to Allah his Lord and do not (witnesses) hide the testimony. And whosoever hides him, he is indeed a sinner and Allah is well acquainted with what you do.

The above verse explains that the provisions in muamallah should be based on justice and the willingness of each party. In the transaction of debts made by 2 parties, required written evidence and witnesses, so that, in case of dispute can be resolved.

Objects that may be encumbered with fiduciary assurances are movable objects, both tangible and intangible and in particular buildings which can not be burdened with dependent rights (as referred to in Law No. 4 of 1996 on mortgage rights) which remain in control the fiduciary giver as collateral for certain debt repayments which gives the fiduciary address to the other creditor. This concept is also based on the value of justice, justice

Table 1: Legal protection for creditors in granting business loans with justice value-based inventory assurance objects

Preventive	Represive
Crediting by creditors should be based on prudential principles by conducting analysis and consideration by using the principles of 7P, 5C, 3R and 6A	Credit rescue measures by creditors through rescheduling, restructuring, reconditioning, combination or execution
Pengecekan melalui BI checking	Through the court or other departments
Legal Lending Limit (BMPK)	Criminal sanctions if the debtor diverts the collateral object without an agreement with the creditor
Fiduciary charges and registration	Transfer risk to the third parties

and procedural in realizing public order and welfare (Trisnawati *et al*., 2016). Additional guarantees that are moving objects are cars, merchandise stocks, trucks, semi-finished goods, vessels of no more than 20 cubic meters. The form of the guarantee agreement is a fiduciary guarantee. Some banking and notary public say that fiduciary guarantee is only a complementary guarantee of mortgage security. Some argue that fiduciary assurances are not a complement to mortgages but without mortgages, the bank will provide credits with fiduciary assurances. From the results of this study it seems there is still the assumption that fiduciary guarantee is not a primary thing but a secondary guarantee as a complement of mortgage rights. This view is less precise because when viewed from the legal system of material security, fiduciary security and mortgage rights have the same juridical power, differ only in terms of object. Fiduciary guarantees are always smaller in the value of the loan when compared to the mortgage loan given through the bonding rights. However, according to banks and notaries, juridical fiduciary and fiduciary rights have the same security function in the credit agreement as a guaranteed material that is recognized in positive law (Table 1).

Giving credit with fiduciary guarantee is not easy because the fiduciary object in this case inventory goods is still used (in control) the debtor. As a preventive effort for the bank not to suffer losses, the bank will request additional guarantee to the debtor such as land certificate while for repressive efforts with the provision of strict penal sanctions for debtors who have harmed the creditor that is for debtors who do not replace inventory goods used with goods the same value and quality as repressive efforts. The following table presents the efforts of preventive and repressive banking as a form of legal protection for banks as creditors in granting business loans with inventory guarantee objects.

CONCLUSION

Legal protection for creditors in the provision of business loans with objects of inventory guarantees burdened by fiduciary was not based on the value of justice because many debtors were default to pay the debt. By basing on the credit agreement between creditors and debtors, if the debtor defaults, the guarantee object of the inventor debtor will be auctioned to pay off the debt. The reality is that the collateral object is corrupted. This condition resulted in huge losses to creditors who have provided business capital to the debtors. This can be seen from the national impact of Bank Mandiri's losses of 1.5 trillion while in Central Java the amount was 150 billion due to debtor defaults. Legal protection for creditors in granting of business loans with objects of collateral inventory based on the value of justice can be done by balancing justice between the creditors and debtors. Furthermore, it is needed to take preventive and repressive legal protection. As a preventive measure it is deemed necessary to create regulation that regulates the additional collateral charged to the debtor. On the other hand, the repressive means can be done by providing strict criminal sanctions and transfer of risk to the third parties (i.e., insurance institutions). This applies to debtors who have been detrimental to the creditor where the debtor does not replace the inventory object that has been used with the same value and quality of the inventory object used as a credit guarantee.

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