

***ANALYSIS GUARANTEE LAW ON STATE CIVIL APPARATUS DECREE
AS A BASIS OF GUARANTEE FOR BANKING CREDIT APPLICATION***

Ayang Fristia Maulana¹ Mohamad Ali², Andre Subandrio³, Hera

Damayanti⁴, Salsabila Rahma Alia⁵

Legal Studies Program, University Bina Bangsa.

Korespondensi Penulis :

fristia.maulana@gmail.com, Aldienmohamad09@gmail.com,
andresubandrio1@gmail.com, heradamayanti2@gmail.com, ssalsarhmalia@gmail.com

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ABSTRACT

That the current economic conditions and development in Indonesia cannot be separated from the role and function of existing banking, because banking is a "financial medium." Therefore, banking functions as a distributor and collector of budgets for the community and plays a supporting role in the implementation of development at the regional and national levels in order to foster equitable development and its impact on society, national stability and economic development as well as aspects of improving the quality of life of many people. Among all banking activities, one of them is providing credit to people who apply for credit, including the Nagara Civil Apparatus (ASN). This writing aims to find out and understand the classification of ASN SKs that are used to apply for credit guarantees from banks and how they are viewed from a legal guarantee perspective. This writing uses normative methods juridical method using secondary data sources such as loan agreements, guarantee laws related to banking credit, laws and regulations related to civil law, literature, journals and previous research results and is supported by primary data at the Serang City Government Office. in this case the Walantaka District Office.

Kata Kunci: *Guarantee Law, Loan Agreement, Role and Function of Banking*

A. Introduction

Banking institutions play very important and instrumental increasing economic development in Indonesia. As with Art 4 of The previous banking law, In Law Number seven of 1992, ever been changed to Law Number ten of 1998 concerning Banking which explains that Indonesian Banking as with Art 1 paragraph (2) of Law Number 10 1998 namely something in that business entity combines funds or provides capital from the community and returns to people in the form of savings and which will be distributed to the community on multipurpose and other types of credit to improve the level of many people's lives.

¹ In its capacity as a legal entity that carries out business functions, a bank cannot be separated from its main objective, namely seeking maximum profits. Therefore, the Government needs to be given the authority to supervise and regulate banking throughout Indonesia. Banking institutions also act as intermediaries to the party with a budget surplus and also to the party with a budget deficit.

Banking laws that exist throughout the world have different specificities, likewise, banking laws that exist in Indonesia have fundamental differences with banking laws that exist in other countries. This can be seen from banks in Indonesia in conducting their business that adhere to the principles of economic democracy and the base kinship as contained in the 1945 Article 3 of the The 1945 Constitution states "This is in the national economy has been implemented in the basis of democracy in the economy through the principle of a collective system, fair ability, continuity, situation insight, freedom, and pay attention to harmonization and unity and progress in the national economy."

One of the services provided by banks to customers is credit applications, this is stated in against regulation Number 10 of 1998 changes legal regulations are contained article 1 paragraph (11) Number 7 of 1992 regarding banking which states that " Credit is a gift of money or money or claims that can be equivalent to it, in a loan agreement between a bank and another party or creditor and requires the borrower to pay off the debt after a certain period of time with interest.

¹ *Pasal 1 Ayat 11 Undang-Undang Nomor 10 Tahun 1998.*

The role of banking in disbursing credit services to debtors does not always run safely and smoothly, however, it carries against the risk of congestion or failure in repayment resulting from the debtor's behavior so this can affect the health of the bank or the personal data of the debtor will become unfavorable to the Bank. Indonesia, therefore before the bank decides whatever a credit Requests can be rejected or accepted, it must first carry out an analysis of the application submitted by the debtor. There are five studies used to assess the feasibility of credit applications submitted by debtors, namely; Capacity is a consideration made to perspective debtor about their ability to pay off all obligations in their business activities for which they will later be given a loan by the bank; Capital (Savings/Capital) is the capital that prospective debtors must have. In the implementation of banking, banks very rarely provide credit to finance the entire budget required or proposed by the debtor. The debtor must have his own capital, while the shortfall can only be financed by bank credit; character, which is a belief that the nature, character or personality of the person being given credit can definitely be trusted. This can be seen in the customer's background, such as lifestyle and work background, family situation, hobbies and social status. These are all the basis of a person's ability to pay their loans; conditions of Economy (conditions of the economy) When measuring a credit, the current and future economic and political conditions should also be assessed according to the respective sector, as well as the value of the business prospects of the sector run by the prospective debtor; collateral is a guarantee provided by a prospective debtor, whether in the form of tangible or intangible goods. The collateral provided usually has a value that exceeds the value of the loan being applied for.

A credit has 4 elements which can be described as follows, namely; trust, namely the confidence/certainty of the credit provider that the achievements that will be given to the debtor, What will be received back can be money, goods or services within a certain period at a later date, namely the determination a certain period between credit distribution and payment, a period has taken effect previously consensus upon around the bank and borrowing consumereb; risk, namely the risk that may occur during the period distance assistance and repayment the installments, so that for secure the granting of credit and cover the

possibility of default by the customer borrowing funds, collateral is required; credit Object, is an existing or newly existing object as the object of agreement.

Government employees is also the goal of banking activities, especially in the credit aspect. The State Civil Apparatus (ASN) also has its own privileges for banks when applying for a credit agreement. As is known, the implementation of credit provision is usually associated with various requirements that must be met by the debtor, including the maximum credit amount, credit term, credit interest rate, credit withdrawal system, credit repayment schedule, and credit guarantees provided. These conditions are usually accepted as credit agreement clauses that have been provided by the bank, where the borrower can only and has the option to accept or reject the substance of the credit agreement.

When providing bank credit, it always comes with certain guarantees. The existence of credit guarantees is one of them of the rules for minimizing bank risks in distributing credit. Based on Civil Code Article 1131 "All over objects or assets of a person become collateral for all his debts". Then ask that a certain object be used as a dependent. If the person who owes the debt does not fulfill his obligations, the person who owes the debt can definitely and easy enforce the debtor's rights to the system having a higher position when compared to debt collectors in general. Credit distribution activities generally require debt collateral or what is called credit guarantee (collateral).²

Collateral that is used as part of the agreement in granting credit is collateral in the form of objects which according to law are classified as immovable property such as land or buildings. Objects which according to the law are classified as movable property, such as motorized vehicles equipped with a Vehicle Registration Proof of Motor Vehicle Ownership (BPKB) and Certificate (STNK), collateral in the form of securities or valuable documents to which the right of claim is attached, such as; shares, stock exchange, Civil Servant Appointment Decree (PNS SK) or in the form of Civil Servant Retirement Decree, and so forth.³

² Satrio, *Hukum terhadap Jaminan, Hukum Jaminan pada Kebendaan, Hukum Jaminan pada Hak Tanggungan*, Bandung, PT.Aditya Bakti, 2007.

³ Gunawan Yani Ahmad Widjaja, *Seri Buku In Fiduciary Business*, RajaGrafindo Persada, Jakarta, 2000.

Even though a PNS SK is not a transferable object (which has exchange value), developments in banking practices that look at the economic side of the letter have made it acceptable for some banks to be accepted as credit collateral. However, whether the relevant PNS Decree which is backed as a guarantee for the Bank installments can minimize the risky losses that will be experienced by the bank considering that the Decree cannot be transferred so it will cause difficulties for the bank to carry out execution if bad credit occurs during the repayment period for the credit in question.

From current banking practices, we often see sales (disbursement) of credit collateral objects which are carried out to pay off the borrower's bad credit. This needs to be done by the bank to recover the repayment of the funds lent because the borrower did insufficient to fulfill its obligations the bank in accordance with the credit agreement. Get marketing credit guarantees can support as repayment off the borrower's debt to the bank, thereby minimizing bank losses. So, you could say, credit guarantees function as security for the return of bank funds that it distributes to borrowers.

Apart from that, credit guarantees also have a function related to the borrower's seriousness in fulfilling their what has been agreed must be in accordance with its obligations so that it will be able to prevent disbursement of credit guarantees which may not be desired by the borrower because the value (price) of credit guarantees is generally higher when compared to the borrower's debt to the bank.⁴ civil servants (ASN) that is also an element to the ruler which is generally considered to have a consistent income, making it very easy to apply for credit. So, a person who will become a State Civil Apparatus (ASN) / Candidate for State Civil Apparatus (CASN) receives a decision letter (SK) from a civil service development official in this area, the Regional Civil Service Agency/BKD, after which the CPNS will become an ASN and then take an oath/promise as follows. mentioned in the article 66 in paragraph (1) ASN Law. The CPNS SK can be called a decision (beschikking) because the decree was issued by the regional civil service development official.

⁴ M. Bahsan, *Hukum pada Jaminan Serta Hukum Jaminan Perbankan Indonesia*, Penerbit PT.Raja Grafindo Persada, Jakarta, 2007.

Mohamad Ali

Analysis Guarantee Law On State Civil Apparatus Decree As A Basis Of Guarantee For Banking Credit Application

In general banking practice, credit agreements are carried out according to standards or basic how to register, and in the form of blanks or forms. In contents of the credit agreement which have been determined in advance in a standardized form we will refer to the fact that credit agreements in banking applications are basic agreements. In mutual agreement, Pitlo argued that the standard contract is a forced contract (dwang contract) because the freedom of the parties guaranteed by regulatory certainty 1338 The Civil Code exists violated, while the weak party is forced to accept it because they are unable to do anything else, whereas according to Mariam Darus Badrul Zaman, An agreement that must be implemented is called a standard agreement stated the a build. He concluded that an agreement that has standards was differ on the basis of responsible contractual freedom. Moreover, judging from national basis law, for benefit of society the most important. In standard agreements, in the positions for consumers and business implementers are equal. A position of excellence by effort actors Abuse of office is an opportunity and will become widespread. The main businessman only regulates within his rights, not their obligations. According to him, this standard agreement cannot be allowed to grow wildly and therefore needs to be regulated.

Application on a credit provisions must paid based terms agreed with the ASN Decree as collateral so that the bank immediately deducts the salary of the ASN debtor/customer every month. In this case, the bank acts as a creditor in providing credit with the guarantee of an ASN Decree in lending, because the ASN Decree is issued by the government agency where the civil servant (customer) works, of course its legality and integrity cannot be doubted as a government institution. The credit agreement requires a guarantee to be submitted to the bank. The function of this guarantee is to convince the bank that the debtor is able to pay off his credit debt within the agreed time.

With the explanation above, the Decree of the Government employees allows it to be categorized as a valuable document, because without this Decree an ASN cannot work and cannot obtain his rights as an ASN. In practice, almost all or at least approximately 90% of State Civil Apparatus guarantee their Decree but do not know what will happen if the employees break their promises or default. Many people still question whether the Decree can be executed if a guarantor is

unable to fulfill his obligations. In Indonesia, ASN decrees are not included in material guarantees or individual guarantees, but are included as privileges (prevelege) which can be in the form of a decision letter or diploma, pension letters and so on.

The problem formulation of this research is: What is the actual mechanism for an ASN Decree to be used as the basis for a collateral instrument in applying for banking credit?, What is the legal analysis if the Government employees who has guaranteed in Decree (SK) the bank experiences obstruction or default occurs with the guarantee in the form of the Decree?, 3. How is the classification of Decree owned by ASN if you look at it from in perspective of Guarantee Law?

This research is a normative juridical research, juridical approach Normative is an approach taken based on the main legal material with how to examine rules, books, statutes and other legal regulations regulations relating in this article. This approach can also be called the library The approach is to study a book, statutory regulations and other documents related in this article.⁵

Feel this description, interested researchers in studying this problem through research in the form of a journal related to banking credit guarantees with the title "Analysis Guarantee Law On State Civil Apparatus Decree As Basis Of Guarantee For Banking Credit Application."

B. ANALYSIS AND RESULTS

1. What is the actual mechanism of the ASN Decree which can be used as the basis for a collateral instrument in applying for banking credit

Before explaining the ASN SK mechanism which can be used as collateral in applying for banking credit, this needs to be noticed provisions in Article 63 in paragraph (2) of Law Number 5 of 2014.⁶ Concerning the State Civil Apparatus (ASN Law), which reads: "The appointment of Civil Servant Candidate as intended against paragraph (1) as determined by the Decision of Civil Service Supervisory Officer. So, someone who will become a State Civil Apparatus ASN

⁵ Muchti Fadjar dan Yulianto Achmad, *Dualisme Penelitian Hukum Perdata Serta Empiris* Jakarta Pelajar, Jakarta, 2015.

⁶ *Pasal 63 Ayat (2) Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara (ASN).*

Mohamad Ali

Analysis Guarantee Law On State Civil Apparatus Decree As A Basis Of Guarantee For Banking Credit Application

candidate can receive a decision letter (SK) from the civil service development official, after which CPNS will become civil servants when taking the oath/promise as arranged by Article 66 paragraph (1) of the ASN Law.⁷ The CPNS SK can be called a decision (beschikking) because the decree was issued by the State Civil Service/BKN development official. Whereas in the decision (beschikking) of the Decree, according in paragraph 9 of article 1 year statutory regulations Law of 2009 Number 51 regarding the second change above statutory regulations Law Number 5 of 1986 concerning Justice in State Administration, as follows: "in State Administration Decision written determination issued by a state administrative agency or official containing state based the applicable laws and regulations, it is concrete, individual and final, having of legal consequences for individuals and other civil legal entities."⁸

Then it is also in the article of the Civil Law Code 1132 (Civil Code) which explains that all objects owed, is it moveable objects or immovable objects, whether existing or new in it future, are covered on the all on individual obligations, and this can be referred to as a general guarantee. The Decree (SK) on Appointment as a State Civil Apparatus (ASN) is often used as the basis for a collateral instrument in applying for banking credit in Indonesia. This mechanism is possible because ASN, especially Civil Servants (PNS), are considered to have a stable income and a very low risk of default. The following is a detailed explanation of how the ASN SK mechanism is used as the basis for credit guarantee instruments in banking; characteristics of government employees Decrees can be used as collateral. That in ASN Decree is not a physical guarantee, such as a land certificate, vehicle BPKB, but is based on a guarantee on the stability of the ASN's income. And the income from ASN is fixed and guaranteed, has a fixed salary and additional allowances from the income earned every month. So the bank can deduct directly every month from the ASN's salary and most importantly, ASN generally tends to be stable and rarely gets laid off, so the risk of defaulting each month is very small. The mechanism for using the ASN SK in

⁷ Pasal 66 Ayat (1) Undang-Undang Nomor 20 Tahun 2023.

⁸ Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara sebagaimana telah diubah dengan Undang-Undang Nomor 9 Tahun 2004 tentang Perubahan Atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara.

applying for bank credit, usually requires several stages to obtain bank credit by the ASN, including; a. Collect the documents required when applying for credit at the bank, apart from the ASN SK, you also need the final rank SK, CPNS SK, periodic salary increases, pay slips, Taspen, authorization letter for salary deductions, etc.

Then the bank will check the validity of the documents submitted by the ASN⁹; a. Types of credit submitted by ASN to banks: unsecured credit, home ownership credit (KPR/BTN), 2-wheeled or 4-wheeled vehicle credit, multipurpose credit for low and flexible tenors and ceilings¹⁰; b. Profit analysis by banks is carried out to calculate the monthly salary of ASNs by calculating deductions for credit submitted monthly. The monthly salary deduction allocation for ASNs is usually 30% to 40% of the monthly salary allowed for installments. Then the bank looks at the period of employment of the ASN, and also looks at the bank's history through the OJK Financial Information Services System System (SLIK); c. The process of disbursing the budget by the bank after the analysis and verification process for filing has been completed. (SLIK)¹¹; d. The process of disbursing the budget by the bank after the analysis and verification process for filing has been completed.¹²

Before explaining the ASN SK mechanism which can be used as collateral in applying for banking credit, it's necessary to pay attention to the provisions in Article 63 paragraph (2) of Law Number 5 of 2014 which contains the State Civil Apparatus, which reads: "Appointment of State Civil Apparatus as definition in the paragraph one is determined the Decree of the Personnel Management Officer." So, someone who will become a State Civil Apparatus (ASN) / ASN candidate can receive a decision letter (SK) from the civil service development official, after which the CPNS will become a civil servant when taking the oath/promise as arranged by Article 66 in paragraph one of the Law ASN Law.

⁹ Widayati R. dan Putri D. E., *Pelaksanaan Kredit pada Bank Perkreditan Rakyat*, LPN Pasar Baru Durian Sawalunto, Jakarta, 2019.

¹⁰ *Pasal 1 Butir 11 Undang-Undang Nomor 10 Tahun 1998 tentang Perbankan.*

¹¹ *Peraturan Presiden Nomor 16 Tahun 2019 tentang Penyesuaian Gaji Pokok PNS Menurut Peraturan Pemerintah Nomor 30 Tahun 2015 ke dalam Gaji Pokok PNS menurut Peraturan Pemerintah Nomor 15 Tahun 2019.*

¹² *Peraturan Badan Kepegawaian Negara Nomor 5 Tahun 2023 Tentang Tata Cara Pembayaran dan Penghentian Pembayaran Tunjangan Jabatan Fungsional.*

Mohamad Ali

Analysis Guarantee Law On State Civil Apparatus Decree As A Basis Of Guarantee For Banking Credit Application

The CPNS SK can be called a decision (beschikking) because the decree was issued by the State Civil Service/BKN development official. Whereas in the decision (beschikking) of the Decree, according to Article 1 number 9 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, as follows: "A State Administrative Decision is a written determination issued by state administrative bodies or officials containing state Based on applicable laws and regulations, which are concrete, individual and final, which give rise to legal consequences for a person or legal entity civil."

With the mechanism for providing credit by banks using the ASN Decree, it has become a mainstay for banks in providing credit and reducing bad credit by ASN. However, with the convenience provided to ASN in terms of taking banking credit, it is also important for ASN to always consider their financial condition before taking bank credit.

2. What is the legal analysis if the Government employees (ASN) who has guaranteed the Decree (SK) to the bank experiences obstruction or default occurs with the guarantee in the form of the Decree

The legal basis for a credit agreement is contained in Article 1131 as well in Article 1132 the Civil Code. The contents of Civil Code Article 1131, namely "All of that can be moved or immovable property belonging to the debtor, whether existing or future, on guarantees of obligations to individual debtors."¹³ As well as Article 1132 in the Civil Code which reads: "On object can be used as joint collateral for all creditors to whom the proceeds from the sale of the item are divided according to their receivables, unless there is valid evidence of priority among the creditors."¹⁴

Debt guarantees related to applications for credit by banks can hereinafter be referred to as credit guarantees or collateral. Credit guarantees generally require conditions for granting credit, unless there are other applicable guarantee legal regulations. For example, this can be found on rules of in Article 1131 in the

¹³ Pasal 1131 Pada Kitab Undang-Undang Hukum Perdata (KUHPerdata).

¹⁴ Pasal 1132 Pada Kitab Undang-Undang Hukum Perdata (KUHPerdata).

Civil Code regarding the position on the debtor's assets as collateral for his debt. Banks may approve the granting of credit to debtors without requiring the provision of collateral as long as they meet the appropriateness of the various aspects they assess.

Banks in providing credit are usually based on the Bank's prudential principle as in Article two of the Banking Law, namely "banking in Indonesia at conducting its business is based on economic democracy with the use of the precautionary principle."¹⁵

There is also Article 29 paragraph (2) which states, "Banks have obligations when carrying out business activities in accordance with the principle of prudence".

In default of a proposed ASN credit agreement occurs as a result, in this case the debtor/ASN fails to fulfill its obligations as agreed during the implementation of the credit agreement, such as being late in paying installments or not paying at all or the debtor dies. As explained the Article 1883 There are several civil law codes reasons why a debtor defaults, namely; The debtor does not carry out what he promised to do; The debtor does what he has promised, but does not carry out what he promised (carries out but makes a mistake); The debtor carries out what he has promised, but is late; The debtor does something that according to the agreement he is not allowed to do.¹⁶

Defaults committed by debtors, in this case ASN, can give rise to legal consequences/legal sanctions/legal liability which must be accepted by ASN. There are 4 defaults due to legal consequences that will be imposed by the debtor/ASN, namely; The debtor is required to pay the losses suffered by the creditor or what is called paying compensation; Cancellation of the agreement or also called breaking the agreement; Risk transfer; The debtor has an obligation to pay the costs of a case is brought before the court, and the debtor is proven to have defaulted.

¹⁵ Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan sebagaimana telah diubah dengan Undang-Undang Nomor 10 Tahun 1998.

¹⁶ Pasal 1883 Kitab Undang-Undang Hukum Perdata (KUHPerdata).

There is Article 1243 of the Civil Code, civil compensation places more emphasis on compensation for non-fulfillment of an obligation, namely the obligation of the debtor to compensate the creditor for losses due to the negligence of the debtor who has defaulted.¹⁷ then in Article 1338 paragraph one of the Civil Code explains that "all agreements that are legally made are valid as law for those who make them or are usually referred to as *Pacta Sunt Servanda*".¹⁸

This article can be concluded that there is principle on freedom of contract, but this freedom that is limited by coercive laws, so that the party making the agreement must obey and cannot withdraw the agreement unless based on the agreement of the parties.

Apart from compensation for Civil Law sanctions from the bank, ASNs who are in default can also face administrative sanctions from the relevant agency where the ASN serves or has an office, based on Government Regulations no. 94 of 2021 concerning Discipline for Civil Servants or ASN who do not maintain the good name of the agency, including defaulting on financial agreement commitments and may be subject to disciplinary sanctions.¹⁹

3. How is the classification of Decree owned by ASN if you look at it from in perspective of Guarantee Law?

From the perspective of Guarantee Law, Decree Letters (SK) owned by State Civil Apparatus (ASN) can be classified based on their legal value and benefits as a form of guarantee. Guarantee law itself regulates various forms of guarantee that can be used as a tool to provide certainty regarding the implementation of an obligation. In the context of ASN, SK has special characteristics that can be viewed as an asset or source of legal certainty.

Decrees issued by the State or Regional Civil Service Agency to ASN generally consist of several types which can be categorized based on their function. The following are several classifications of ASN SKs when viewed from a guarantee law perspective; a). ASN Appointment Decree, the Guarantee Law aspect of this ASN Decree stipulates job security, which can be used as a basis for

¹⁷ *Pasal 1243 Kitab Undang-Undang Hukum Perdata (KUHPerdata).*

¹⁸ *Pasal 1243 Kitab Undang-Undang Hukum Perdata (KUHPerdata).*

¹⁹ *Peraturan Pemerintah Nomor 94 Tahun 2021 tentang Disiplin Pegawai Negeri Sipil.*

obtaining the opportunity to obtain a loan from a bank or other financial institution. In this case, the ASN appointment decree is often also used as collateral in the form of a personal guarantee, because it shows the sustainability of the ASN's income. b). ASN Promotion Decree, this aspect of the Guarantee Law is often used as additional collateral by banks or financial institutions when the ASN applies for a loan. Promotion determines the stability and improvement of ASN's economic status.²⁰ c). ASN Pension Decree, This aspect of the Guarantee Law is that banks or financial institutions sometimes provide loans based on guaranteed fixed income generated from ASN pension funds.²¹ d). ASN Transfer and Promotion Decree, Legal Aspects This Guarantee ASN Decree can be used as a valid indication that the ASN continues to have a valid job position even if there is a change of location or change of assignment and change of service.

The classification of ASN SKs when viewed from the perspective of collateral law proves that even though ASN SKs are not tangible like other physical assets, they have economic value and strong legal force in providing certainty to third parties (for example banks) regarding the ASN's employment status and income. Therefore, the ASN Decree can be a unique form of collateral, especially in the context of financing and loans or credit.

C. Conclusion

Overall, the ASN Decree can be considered as a special guarantee instrument from a guarantee law perspective, especially in the context of applying for banking credit. Even though it does not include material collateral such as fiduciary or mortgage, the ASN Decree has quite significant legal and economic value. This is because the ASN Decree reflects the income stability and employment status of the ASN, which can provide certainty to banks or financial institutions regarding the ability to repay credit by ASN debtors. Thus, the use of ASN Decrees as a basis for credit applications is more likely to become a

²⁰ *Peraturan Pemerintah Nomor 17 Tahun 2020 tentang Perubahan Atas Peraturan Pemerintah Serta Nomor 11 Tahun 2017 tentang Manajemen Pegawai Negeri Sipil.*

²¹ *Perka BKN Nomor 2 Tahun 2018 tentang Pedoman Pemberian Pertimbangan Teknis Pensiun PNS dan Pensiun Janda/Duda PNS.*

Mohamad Ali

Analysis Guarantee Law On State Civil Apparatus Decree As A Basis Of Guarantee For Banking Credit Application

common practice that is recognized as a valid administrative guarantee, especially in granting consumer credit.

In an effort to settle credit from an agreement with a guarantee, the ASN Decree is valid because it has fulfilled an agreement is regulated as regulated the Article 1320 of the Civil Code. However, this agreement does not provide certainty in the law in the implementation of collateral assets because the ASN Decree cannot fulfill one of the requirements for collateral assets, namely that they can be valued in money and can be easily sold to pay off loan debts.

The following are suggestions that can be considered to increase effectiveness and security from a collateral law and civil law perspective; Make clearer and more detailed regulations to avoid legal risks that may arise for ASN and financial institutions; Inform ASN about the risks and benefits of using SK as collateral for bank loans or other financial institutions. For financial institutions or governments to implement stricter credit rating systems; development of other alternative guarantee mechanism systems; Creating cooperation between government agencies and banks.

REFERENCES

Buku

- Bahsan, M.. 2007. *Hukum Jaminan Serta Hukum Jaminan Perbankan Indonesia*. Jakarta: Pt.Raja Grafindo Persada.
- Fajar, Muchti dan Yulianto Achmad. 2015. *Dualisme Penelitian Hukum Perdata dan Empiris*. Jakarta: Pustaka Pelajar.
- R., Widayati dan Putri D. E.. 2019. *Pelaksanaan Kredit pada Bank Perkreditan Rakyat*. Jakarta: Penerbit LPN Pasar Baru Durian Sawalunto.
- Satrio. 2007. *Hukum Jaminan, Hukum Jaminan pada Kebendaan, Hukum Jaminan pada Hak Tanggungan*. Penerbit: PT.Aditya Bakti Bandung.
- Widjaja, Gunawan, Yani Ahmad. 2000. *Seri Buku Bisnis Jaminan pada Fidusia*. Jakarta: Penerbit PT.Raja Grafindo Persada.

Sumber Hukum

- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Kitab Undang-Undang Hukum Perdata (KUHPerdata).
- Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara.
- Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan.
- Undang-Undang Nomor 10 Tahun 1998 tentang Perbankan.
- Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia.
- Undang-Undang Nomor 9 Tahun 2004 tentang Perubahan Atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara.
- Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara (ASN).
- Undang-Undang Nomor 20 Tahun 2023 tentang Aparatur Sipil Negara (ASN).
- Peraturan Presiden Nomor 16 Tahun 2019 tentang Penyesuaian Gaji Pokok PNS Menurut Peraturan Pemerintah Nomor 30 Tahun 2015 ke dalam Gaji Pokok PNS Menurut Peraturan Pemerintah Nomor 15 Tahun 2019.
- Peraturan Pemerintah Nomor 17 Tahun 2020 tentang Perubahan Atas Peraturan Pemerintah Nomor 11 Tahun 2017 tentang Manajemen Pegawai Negeri Sipil.
- Peraturan Pemerintah Nomor 94 Tahun 2021 tentang Disiplin Pegawai Negeri Sipil.
- Peraturan Badan Kepegawaian Negara Nomor 5 Tahun 2019 tentang Tata Cara Pelaksanaan Mutasi.
- Peraturan Badan Kepegawaian Negara Nomor 5 Tahun 2023 tentang Tata Cara Pembayaran dan Penghentian Pembayaran Tunjangan Jabatan Fungsional.
- Peraturan Kepala Badan Kepegawaian Negara Nomor 2 Tahun 2018 tentang Pedoman Pemberian Pertimbangan Teknis Pensiun PNS dan Pensiun Janda/Duda PNS.