

Perjanjian penanggungan utang (borgtocht): Studi kasus di PT. Bank Negara Indonesia (Persero), Tbk. = Borgtocht agreement: Case study at PT. Bank Negara Indonesia (Persero), Tbk.

Djoko Triwibowo, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=111119&lokasi=lokal>

Abstrak

Bank Umum dalam memberikan kredit wajib memegang teguh prinsip kehati-hatian antara lain adanya keyakinan atas kemampuan dan kesanggupan debitor untuk melunasi hutangnya sebagaimana ketentuan Pasal 8 UU No. 10 Tahun 1998. Dalam pelaksanaanya, bank umum sering mensyaratkan adanya agunan kredit berupa borgtoch dalam bentuk personal guarantee atau company guarantee sebagai tambahan jaminan kebendaan dalam pengikatan kredit. PT. Bank Negara Indonesia (Persero) Tbk. mensyaratkan terpenuhinya kriteria penanggung utang selain persyaratan umum yang berlaku.

Permasalahan yang diidentifikasi adalah alasan mengapa jaminan berupa penanggungan utang (borgtoch) masih diperlukan sebagai pengikatan jaminan dalam pemberian kredit dan bagaimana pelaksanaan kewajiban Borg apabila debitor yang ditanggungnya wanprestasi kepada PT. Bank Negara Indonesia (Persero), Tbk serta bagaimana peranan dan keterlibatan Notaris dalam proses pembuatan perjanjiannya. Penelitian menggunakan metode penelitian kepustakaan yang bersifat yuridis normatif, dengan mempergunakan data sekunder balk yang berasal dari literatur maupun peraturan perundang-undangan melalui tipe penelitian explanatoris. Data skunder berupa bahan hukum primer dan skunder dikumpulkan melalui studi dokumen dan wawancara. Analisis dilakukan secara explanatoris evaluatif.

Hasilnya diperoleh kesimpulan pertama; dengan adanya kriteria Borg antara lain Personal Guarantor memiliki kepentingan langsung atas usaha debitor dan Company Guarantor harus perusahaan yang memiliki kepentingan langsung terhadap debitor, menjadikan borgtoch menjadi sangat penting bagi PT. Bank Negara Indonesia (Persero) Tbk. Kedua, dalam pelaksanaannya Borg harus melepaskan hak-hak istimewanya dan bagi Borg yang wanpresasati tersedia perangkat hukum antara lain sita lelang kekayaan borg melalui Pengadilan, diserahkan kepada BPULN, pemblokiran dan penyitaan harta kekayaan melalui PUPN/BUPLN, pencegahan ke luar negeri dan paksa badan. Ketiga, Notaris dapat berperan untuk mendukung prinsip kehati-hatian perbankan melalui kecermatan proses pembuatan, penyimpanan dan penyerahan akta sesuai dengan UU No. 30 Tahun 2004 dan peraturan pelaksanaannya.

<hr>

General bank in order to provide a loan must firmly hold the principle of carefulness, such as conviction to the debtor capacity and performance to settle the debt, as mentioned in article 8, enactment no. 10 year 1998. In fact general bank often requires collateral such as borgtocht in term of personal guarantee or company guarantee as additional collateral for a loan. Bank Negara Indonesia (BNI) Public Ltd. Requires guarantor criteria other than general requirement needed.

Problem that is identified is the reason why collateral such loan guarantee (borgtocht) as a collateral binding in a loan agreement and how to implement the guarantor obligation if the debtor he guaranteed collide with

BNI Public Ltd. and how is the notaries play a role and take part making the agreement process. This research is using literature research methods that has normative juridical characteristic, by using secondary date either from literature or from enactment by explanatory research type. Secondary data such primary and secondary law material, collected by documentary research and interview. Analysis is done by evaluative explanatory.

As the result we get the first conclusion that with the criteria of borg such as personal guarantor has direct interest in debtor deed and company guarantor must be a company that has direct interest to the debtor, it makes borgtocht become very important to BNI Public Ltd. The second conclusion, in the implementation, borg (guarantor) must discharge its special rights and for the violating borg is provided rule of law such as guarantor auction confiscation by court, handed over to BUPLN, obstruction and confiscation of their properties by PUPN/BUPLN, prohibition to leave the country and personal compulsion. Third conclusion, notaries play important role to support the principle of carefulness by accuracy in making process, filing and official document transfer, according to the enactment No. 30 year 2004 and its implementing rule.