

Perlindungan hukum terhadap Prinsipal (Kontraktor) yang telah melaksanakan prestasi pada kontrak proyek pembangunan dalam hal terjadinya pencairan bank garansi yang berdasar pada kontrak tersebut =
Legal protection for Principal (Contractor) having implemented performance on the construction project under the contract as regards the disbursement of bank guarantee pursuant to the contract

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Abstrak

[ABSTRAK

Bank Garansi ini merupakan salah satu produk pemerintah dalam menumbuhkan iklim sehat pada dunia perbankan. Produk ini mendukung dalam meningkatkan penyaluran dana kepada masyarakat. Resiko Bank Garansi muncul jika nasabah melakukan perbuatan wanprestasi atau tidak memenuhi segala kewajiban kepada penerima jaminan. Hingga kini masih terdapat pencairan Bank Garansi tidak tepat sasaran sesuai dengan resiko yang terkandung didalamnya. Pencairan Bank Garansi dilakukan saat terpenuhinya unsur wanprestasi. Oleh karena itu, tesis ini akan membahas mengenai dua hal, yaitu kelayakan pencairan Bank Garansi dalam hal telah dilaksanakannya prestasi oleh Prinsipal dan Akibat hukum yang terjadi ada Prinsipal yang telah melakukan prestasi dengan adanya pencairan Bank Garansi tersebut dengan contoh pada kasus Proyek Pembangunan 12 Unit Rumah Bank Indonesia di Jalan Panglima Polim I dan VI, Kebayoran Baru - Jakarta Selatan. Dalam kasus ini terdapat empat pihak yaitu PT Bank DKI sebagai penerbit Bank Garansi atau jaminan, Bank Indonesia selaku Obligee atau Pemilik Proyek, PT Elti Prima Raya selaku Kontraktor atau Prinsipal yang bertugas dalam pelaksanaan proyek dan PT Wisma Kosgoro selaku subkontraktor. Penelitian ini menggunakan metode penelitian yuridis normatif. Hasil dari penelitian atas kasus Proyek Pembangunan 12 Unit Rumah Bank Indonesia ini menyatakan bahwa Bank Garansi layak dicairkan dalam hal telah dilaksanakannya prestasi oleh Prinsipal, hal ini terbukti Pada saat Bank Garansi berpegang pada prinsip Unconditional atau First Demand. Dengan prinsip ini berarti bank akan segera mencairkan jaminan jika diminta oleh Obligee (tanpa harus membuktikan kegagalan/wanprestasi/default Principal dan/atau kerugian yang diderita Obligee). Akibat Hukum yang terjadi pada Prinsipal yang telah melakukan prestasi dengan adanya Pencairan Bank Garansi tersebut adalah Kontraktor dinyatakan Lalai, Kontraktor akan menderita kerugian sebesar nilai pencairan Bank Garansi, Kontraktor menderita kerugian sebesar yang telah dilakukan prestasi, Kontraktor menderita kerugian berupa keuntungan yang seharusnya didapat dari pelaksanaan prestasi, Kontraktor masuk dalam daftar hitam perusahaan dan tidak dapat mengikuti proyek pengadaan barang/jasa sesuai PerPres No. 54 Tahun 2010

tentang Pengadaan Barang/Jasa Pemerintahan, Kontraktor menderita kerugian berupa ongkos, kerugian, bunga dan biaya perkara pengadilan.

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ABSTRACT

Bank Guarantee is one of the products of government in fostering a healthy climate in the banking world. This product is in support of the improvements in the distribution of funds to the public. Risks of Bank Guarantee arise should a customer defaults or does not meet all the obligations to the insured. There is, as yet, an ineffective disbursement of Bank Guarantee in accordance with the risk entailed therein. Disbursement of Bank Guarantee is made should there be elements of default. Therefore, this thesis will discuss about two things, namely the feasibility of disbursement of Bank Guarantee in terms of performance having been implemented by the Principal and the legal consequences arising after Principals having discharged performance with the disbursement of Bank Guarantee One of the cases that will be highlighted is the case of 12 housing units of Bank Indonesia on Jalan Panglima Polim I and VI, Kebayoran Baru ? Jakarta Selatan. In this case, there were four parties, namely PT Bank DKI as the issuer of Bank Guarantee or warranty, Bank Indonesia as the obligee or the Project Owner, PT Elti Prima Karya as the Contractor or the Principal in charge of the implementation of the project and PT Wisma Kosgoro as the subcontractor.

Normative juridical research was in use in this research. The result of the research on the Construction Project of 12 Housing Units of Bank Indonesia shows that the bank guarantee is worth disbursing in terms of the performance having been implemented by the Principal. It is obvious that Bank Guarantee adheres to the principle of unconditional or first demand. With this principle, it means that the bank will immediately disburse the guarantee if requested by the obligee (without having to prove the failure / default / default Principal and / or the loss suffered by the obligee). The legal consequences that occur on the Principal having implemented performance with the disbursement of Bank Guarantee are that the Contractor is declared to be negligent, the Contractor suffers a loss of as much as the value of the disbursement of Bank Guarantee, the Contractor suffers a loss in terms of the profits that should have been obtained from the implementation of the performance, the Contractor's company is blacklisted and incapable of participating in the project procurement of goods / services in accordance with the Presidential Decree No. 54 of 2010 on Procurement of Goods / Services for Government, the Contractor suffers a loss in the form of fees, interest and litigation costs.;

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