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# Protection Law Personal Guarantee in the Credit Agreement

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**Abstract**
Legal protection for individual guarantees (borgtocht) is an essential issue in the world of credit or financing, both conventionally and digitally. Therefore, legal protection for individual guarantees is crucial, considering there are no specific regulations regarding standard contracts and forms of protection for guarantors (norm gap). This study aims to analyze and understand the regulation of individual guarantees and their legal protection based on positive law in Indonesia using the theory of responsibility and the theory of legal protection. This study uses a normative-empirical research method with a Legislation, conceptual, and case approach. The results in This research explain that provisions regarding individual guarantees set up in the Book Constitution Law Civil in Articles 1820 to 1850, with an execution system through issuing a warning to sue through the district court if the guarantor does not do so. a performance like Which has agreed. Protection law for individual guarantees can be found in Article 1831 of the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, which guarantees the right to information and justice for consumers, and Law Number 27 of 2022 concerning Personal Data Protection, which is important in the context of data misuse in digital transactions. In addition, the Financial Services Authority (OJK) Regulation Number 77/POJK.01/2016.

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## Introduction

One of the efforts to achieve prosperity for the community, the government is carrying out development in the economic sector, development in the economic sector is part of national development to create a just and prosperous society based on Pancasila and the 1945 Constitution in order to achieve national development goals, so it is necessary to carry out and pay attention to it. equalization in the field economy and finance. This matter as effort improvement level life public so that it can reduce poverty rates. One effort that can be made is to strengthen the community's economic sector, namely by providing credit.

Based on Article 1 number 11 of Law Number 10 of 1998 concerning Banking: [1]

"Credit is the provision of money or bills that can be equated with it, based on an agreement or contract. borrowing and lending between bank with party others that require the borrower to pay off his debt after a certain period of time with the provision of interest "One of the most important credit principles is Guarantee/collateral. In credit activities that occur in society, it can be noted that it is generally often required existence handover guarantee debt by party Debtor to the Creditor. Credit guarantee will have several functions and one of them is to secure the repayment of credit if the Debtor experiences a breach of promise (default).

[1] Indonesia, Constitution about Banking, Act Number 10 Year 1998, LNRI Number 182, TLN Number 3790, Article 1 Number 11.

Based on Article 1 Number 23 of Law Number 10 of 1998 concerning Banking:

"Collateral is guarantee addition which was submitted Debtor Customers to the bank in order to provide credit facilities or financing based on Sharia Principles" [2]

Guarantee can differentiated become 2 (two) type, that is:

1. Guarantee Material (material), that is guarantee material;
2. Immaterial guarantee (individual), namely individual guarantee. [3]

The guarantee interpreted as an object can provide more optimal protection and support confidence in the increasing credit-granting mechanism. The guarantee provided can result in financial obligations from the guarantor to fulfill the performance if the guaranteed party (debtor) fails to honor the promise (defaults). Legal protection for individual guarantees is an essential issue in global finance, whether conventional or digital. In general credit practice, a personal guarantee or burden takes the form of an engagement where a third party voluntarily binds themselves to guarantee the payment of the debtor's debt to creditors if the debtor fails to fulfill their obligations. This guarantee is accessory, meaning that its existence depends on the main agreement between the debtor and creditors.

Provisions regarding individual guarantees are regulated in the Civil Code. The Civil Code spans from Chapter 1820 to Article 1850. In practice, personal guarantees are often used in trust-based financing, including in the MSME sector, cooperatives, or unsecured loans. However, guarantors are often in a vulnerable position due to a lack of understanding of the law, a weak bargaining position, or even a lack of awareness that they are acting as guarantors because of insufficient transparency from creditors.

Development technology adds new dimensions to this issue, primarily through the presence of technology-based financial services or financial technology (fintech), especially the platform peer-to-peer lending (P2P lending). In credit in a way online, although a guarantee is not always required, some organizers still implement an individual guarantee system in the form of a digital statement or agreement from a third party. The challenges in this context include the lack of understanding of the law by the candidate guarantor, identity theft, and verification, which are weak, and the domination clause in digital contracts that often harm the guarantor. This situation worsens the legal position of the guarantor who actually only intends to help; however, the end bears burden law is the big one.

Therefore, legal protection for individual guarantees becomes very crucial. Guarantors need to get the right to correct information, clarity of legal responsibility, and legal mechanisms to cancel guarantees in cases of misuse or forgery. Relevant laws and regulations that can be used as a basis for legal protection include the Civil Code (KUHPerdata), which regulates the relationship between agreements and the guarantor's responsibilities, Law Number 8 of 1999 concerning Consumer Protection which guarantees the right to information and justice for consumers, and Law Number 27 of 2022 concerning Consumer Protection Data Personal Which important in context data misuse in digital transactions. In addition, the Financial Services Authority (OJK) Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services has also become essential in arranging order management and protection for user service fintech. Conversely, the Criminal Code is still relevant in criminally prosecuting perpetrators of misuse or falsification of guarantor data.

Even though the Civil Code regulates personal guarantees, no explicit provisions exist. agreement standard guarantees individual (emptiness norms), including protection clauses, if the agreement gives rise to injustice for the guarantor. In practice, many guarantee agreements are made in standard form with one-sided clauses, for example, clauses exempting creditors from liability, prohibition guarantors from pulling out of the guarantee, or immediate execution without warning.

In addition, there is still a gap between written legal norms and implementation practices in the field, especially when financial institutions write the guarantee agreement in a standard form without fair negotiation. Therefore, the discussion on legal protection for individual guarantees in the research This will focused on How norms is applied in the practice of agreements, to the extent to which the law provides room for guarantor For to obtain justice, and how strengthening the legal protection aspect can be done so that the guarantor's position is not always the most vulnerable party when there is a default from the main debtor. Seeing the existing complexity, there needs to be strengthening of regulations, education law to society, and supervision strict on financial institutions and fintech providers to ensure fairness and adequate protection for individual guarantors. This is important so that the spirit of financial inclusion does not cause losses or legal injustice for parties who have good intentions and are willing to provide collateral, both in the real world and in online lending systems.

Based on the background back that has been described, there is many main the problems being studied in study is b how settings about Guarantee Individuals under Indonesian positive law? And how? protection law for Guarantee Individuals in the agreement?

**Research Methods**

This research uses a normative-empirical legal research approach. This approach combines theoretical studies on norm law with empirical analysis of norm law's implementation in practice. Through this approach, an expected more comprehensive understanding of the effectiveness and relevance of law in the context of social dynamics can be obtained [4]. Studying empirical law is research that examines applying laws and regulations based on legal concepts and theories to observe reality in the field directly [5].

The approach used in study This is the First, Approach to Legislation (Statute Approach); the legal approach is carried out by examining all laws and regulations related to the legal issue being handled. Second, Approach Conceptual Conceptual Approach), the conceptual approach starts from the views and doctrines that have developed in legal science. Third, Approach Case (Case Approach), the case approach is

[2]Indonesia, Constitution about Banking, Act Number 10 Year 1998, LNRI Number 182, TLN Number 3790, Article 1 Number 23.

[3] Rachmadi Usman, Law Guarantee Civil, Ray Graphics, Jakarta, 2009, p. 2.

[4]Muhaimin, Method Writing Law, 1st printing, Mataram University Mataram Press – NTB, 2020, p. 29

[5]Amiruddin And Zainal Cool, Deliveryman Method Study Law, Print. 1, Ed. 8, PT. Raja Grafindo Persada, Jakarta, 2020, p. 165

carried out by examining cases related to the issue being faced, and has become a decision that has permanent legal force [6].

There are two types of normative-empirical legal research: primary data and secondary data. Therefore, data collection techniques in normative-empirical law studies can be used separately or together. The data collection techniques include secondary data collection (literature and written documents) and primary data collection (data on the research object) through interviews with Respondents and informants, questionnaires, or lists of questions regarding the research location to be conducted [7].

One of the most important stages in research is analyzing the data that has been obtained. In this research, the author uses qualitative analysis. Qualitative analysis techniques are data analyses that do not use numbers but rather provide descriptions in words of the findings, and therefore, he prioritizes the quality of the data, not the quantity. [8]After the data have been analyzed, the Exposure results will be presented descriptively, namely by telling and describing what exists in accordance with the problem studied. Then, conclusions can be drawn from the results, which are the answers to the problems raised in this research.

## Discussion

### 1. Arrangement related guarantee individual based on positive law of Indonesia

Subjects in an agreement consist of the creditor and the debtor. The creditor has the right to fulfill the performance, while the debtor is obliged to satisfy the creditor's performance demands. Thus, the creditor wants the agreement to be fulfilled perfectly and voluntarily by the contents of the agreement intended by the parties. However, the creditor wishes No can walk where it should be as desired by each creditor because they may fail to fulfill these obligations. Therefore, the negligence of the debtor who does not meet his obligations to achieve is error debtor. To condition This is the situation where a debtor cannot fulfill his obligations to creditors because of an error caused by the debtor calling by default [9].

According to the Indonesian Civil Code, 3 (three) elements must fulfilled for those compelling circumstances:

- No fulfil performance;
- There is because Which located outside error debtor;
- The causal factors were not anticipated in advance and cannot be accounted for by the debtor.

However, it is essential to note that default does not exist by itself but is first declared negligent. In Article 1243 of the Civil Code which states that: "Reimbursement of costs, losses and interest due to failure to fulfill an obligation, is only then required to be made if debtor after being stated negligent fulfil his engagement, still neglect it, or If something Which must given or made by him, only can be given or made within the time limit that has passed". So, the meaning of "Being in a state of neglect" is a warning or statement from the creditor about the latest time debtor must fulfil performance. If moment This is exceeded, then the debtor denies the promise (default). As for obligations to pay off receivables after a specific period with interest, which is set as an obligation main recipient credit, it is determined again in detail in the credit agreement models.

In providing credit loans to the community, the creditor does not offer this for free. Giving credit to the community, as in Article 8 paragraph (1) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking in conjunction with Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector ("Banking Law"), it is emphasized that in providing credit or financing based on sharia principles, creditors must have belief based on analysis in-depth understanding of the debtor's intentions, ability and capability to pay off his debt or return the financing in question under Which promised. Moreover, the existence of Bank Indonesia Regulation Number 11/25/PBI/2009 concerning Amendments to Bank Indonesia Regulation Number 5/8/PBI/2003 concerning the Implementation of Risk Management for Commercial Banks, where banks must implement Risk Management effectively and efficiently both for banks individually and in general [10].

Fact in in practice agreement credit consequence from the desired state, the debtor must accept as a situation. Therefore, if the debtor does not fulfill the obligation as stated in the credit agreement, there is no place for the debtor to state reasons regarding his objections to the terms and conditions. Agreement credit, which has been approved. This can happen because with the act of signing the credit agreement form, the party, the debtor, has already tacitly agreed to the instruction and regulation bank. If the debtor is negligent in fulfilling his obligations to repay credit under the agreement or does not fulfill the responsibility, the debtor is declared in default [11]. With the debtor's default, the creditor is faced with possible difficulties. will suffer losses. Logically, there are basic provisions in Article 24 of the Basic Banking Law, which prohibits the granting of credit without collateral. For a debtor to default, no means not having wealth or not being capable of paying. Also, there is the possibility that because of bad faith, the debtor does not want to perform. As for in say when he billed, contains meaning that guarantee agreement is a guarantee agreement is an agreement accessories. So, in the matter of debtor default, creditors do not have to demand a guarantor. To fulfill the debtor, creditors will sell goods debtor guarantee. If the proceeds from the sale are sufficient to pay off debts debtor, not quite enough answer guarantor deleted. Meanwhile, if the proceeds from the sale of collateral are insufficient, then the creditor will sue the guarantor for the remaining debt of the debtor. The agreement liability is that the creditor binds a guarantor (surety) to pay a certain amount [12].

Credit agreements have an element of freedom in each party. Every party makes the substance contract. This freedom begins with the form and structure of the substance, with the

[6] Amiruddin & Zainal Cool, Introduction Method Knowledge Law -Ed. Revision, 9th edition, Rajawali Press, Jakarta, 2016, p. 165.
[7] Muhaimin, Op. Cit, p. 144
[8] Salim HS And Erlies Septiana Nurbaini, 2022, Implementation Theory Law In Research Thesis And Dissertation, Ed-1 6th edition, Eagle Press, Depok. p. 19.
[9] Badrulzaman, M. D., Compilation Law The agreement, Image Aditya Devotion, Bandung, 2001, p. 51
[10] Frederick Septian Tuwan & Ariawan Gunadi, Execution of Personal Guarantee Guarantee on Credit Congested in Indonesia", Journal Knowledge Law Humanities And Political, Vol. 5, no. 1, 2024, p. 737.
[11] I Lord The Great Good Denny Hariwijaya, *et al*, "Agreement Credit Bank With Guarantee Borghtocht (individual), Journal Construction Law, Vol. 1, No. 2, 2020, p. 323.
[12] Sofwan, Law Civil: Right Guarantee On Land, Yogyakarta Liberty, Yogyakarta, 1981, p. 21.

provision that it does not contradict the law and other norms. Freedom is, as a principle, the formation of an agreement. Although freedom is given authority to each party, freedom still has rights and obligations that are used to fulfill each desired agreement.

"Debtor required for deliver performance to creditors whose performance is in the form of giving, doing, or not doing something (Chapter 1234 Civil Code)". On the other hand side debtor own binding obligations towards creditors, where if the debtor cannot fulfill them then there is an obligation to hand over his rights to the creditor as a form of responsibility for the interests of the creditor. Which has agreed upon. Matter the as which occurs in the implementation of a credit agreement, where after an agreement has been made in the agreement, then this has been become binder connection between for party. For known agreement the is agreement main Which tie as a gift credit. Whereas as a guarantee, which will accepted by the creditor, the debtor must provide collateral. The provision of credit is based on trust in the debtor to be able to pay on time according to the agreement. The trust given by the creditor begins with a direct assessment of the character possessed by the debtor [13].

A personal guarantee or personal guarantee is a guarantee given by a third party. (guarantor) to another person (the creditor) stating that a third party guarantees the repayment of a loan if only the owe (the debtor) is not capable of fulfilling financial obligation to creditors (bank). Guarantee individual or personal guarantee is a guarantee given by a party third (guarantee) to a person other (creditor) Which states that a third party guarantees the repayment of a loan if the debtor is unable to fulfill his financial obligations to the creditor (bank). Another definition of personal guarantee is guaranteeing a third party, which ensures that the debtor's obligations are fulfilled [14].

In an agreement, the parties have their respective rights and obligations that must be fulfilled. An agreement is an incident where two or more parties promise each other to do something, or it can be said that an agreement is made by two or more parties, each agreeing to obey what is stated in the agreement. Based on this event, a legal relationship arises between the parties entering into the agreement. A legal relationship which is a engagement That become base for Wrong One party For demanding a performance from another party who is obliged to fulfill the demands of the other party or vice versa [15].

So a guarantor must fulfil terms and conditions listed in chapter 1827 of the Civil Code, which reads: "The debtor is obliged to provide a guarantor, must advance a person who has capacity to bind himself, who is sufficiently capable of fulfilling his obligations, and who resides in the territory of Indonesia."

Guarantee individual in credit or, also known as surety (borgtocht), is a form of legal obligation set up in a way explicit in the Book Constitution Civil Law (KUH Perdata), especially in Articles 1820 to Article 1830 1850. From the perspective of the Civil Code Civil, a guarantee the individual is a binding obligation accessory, meaning its existence depends on the existence of a principal obligation between the creditor and the debtor.

A guarantee is a promise from a third party (guarantor) to fulfill the obligation of the debtor to creditors if the debtor is negligent or unable to carry out his obligations. Thus, a personal guarantee is not a form of material guarantee such as a mortgage or pawn, but rather a personal guarantee that originates from a legal relationship between individuals bound by an agreement. Legally, the guarantee is an accessory agreement, meaning that its existence depends on a contract between creditors and debtors. Article 1820 of the Civil Code defines guarantees as follows:

"Guarantee is an agreement by which a third party, for the benefit of a creditor, binds himself to fulfill the debtor's obligation, if this person himself does not fulfill it."

From this definition, it can be concluded that personal guarantees involving three party, that is debtor (party Which debtor), creditor (party providing the loan), and guarantor (third party willing to bear the debtor's obligations in the event of default). This form of obligation arises as an addition to the principal obligation and is only valid as long as the principal obligation still exists. From the perspective of the Civil Code, there are a number of fundamental principles Which arrange connection law between creditors, debtors, and guarantors. One of them is the principle of subsidiarity or the principle of discussion, as stated in Article 1831 of the Civil Code:

"Guarantor not required pay to creditors, before the creditor has first sued the debtor, and the goods have been seized"

In practice, the Civil Code provides protection for guarantors through a number of important legal principles. One of them is subsidiarity principle or also known as the principle of discussion as regulated in Article 1831, which states that guarantor No can forced to pay debt before all efforts billing to debtor done moreover formerly. This means that the guarantor's responsibility is secondary, not primary. The guarantor only can sued If debtor has real-real negligent And not fulfilling its obligations. However, provisions regarding the discussion principle can be waived if the guarantor expressly waives this right in the agreement (afstand van de except with discussion), as allowed by Chapter 1834 Civil Code. In the 1834 Civil Code, it is stated that the release of the right to discussion must not be assumed and must be stated expressly in the guarantee agreement."

Besides That, the Code of Law Civil Also arranges the right of recourse and subrogation for guarantors. The right of regress is the right of the guarantor to claim back from the debtor the amount that has been paid to the creditor. Meanwhile, subrogation gives the guarantor legal status as a creditor who replaces the rights of the original creditor after he has paid off the debtor's debt. These provisions are regulated in Article 1839 up to Article 1842 Civil Code. This give balance in position law guarantor, that even though he only acts as a third party who guarantees, after paying the debtor's debt, he has the right to demand compensation from the debtor.

The Civil Code also regulates the form and scope of guarantees. Article 1822 states:

“A liability can held No just for amount main debt, but Also For flower, cost billing, And even loss Which suffered by creditors Because No fulfilled engagement by the owe”

13 Olga Octavia, "Implementation Right And Obligation Debtor In Agreement Ownership Credit House Subsidized On PT Bank Savings Country (Limited) TBK (Studies in the Nuansa Beringin Residence Housing Complex, Payung Sekaki District, Pekan Baru City”, 2020, p. 67.
14 Hermansyah, Law Banking National Indonesia, Golden, Jakarta, 2005, p. 70.
15 Atik Indriyani, Aspect Law Personal Guarantee, Journal Proris's Law, Vol.1 No.1, 2006, p. 26.

Thus, the guarantor's responsibilities can be extensive, including additional bear costs, except if in a way expressly limited in the agreement. The guarantor can also be made for future debts, as regulated in Article 1823, as long as the debt can be determined later. In general, the Civil Code regulates that the guarantee ends if the debt is paid off, there is a release debt by creditors, existence innovation, compensation, or if the debtor becomes the heir of the guarantor (Articles 1847–1850). In this case, the guarantee individual nature temporary and will wipe If object or the reason for the principal obligation no longer exists.

On basically personal terms guarantee (borgtocht) It has been regulated in statutory regulations, but in practice, banks are less interested in borgtocht than material guarantees because there are the following fundamental differences:

1. In material collateral, the creditor has the right to take precedence (creditor preventative) fulfillment of his receivables regarding the distribution of execution proceeds from certain debtor's objects. Creditors holding the property rights also have the right to fulfill other objects from the debtor together with creditors other as creditors concurrent. This possibility occurs if the fulfillment of the creditor's receivables from the results of the execution of certain objects is still not sufficient [16]. Guarantee material have characteristic features "material" in the sense of giving preemptive rights over certain objects and having the characteristic of being attached to and following the object in question.
2. Guarantee Individuals do not give priority rights (separate creditors) to creditors in fulfilling their debts, but are only guaranteed by a person's assets through a person who guarantees the fulfillment of the obligation in question. However, creditors who hold individual rights have the right to sue fulfillment his receivables besides to debtor main also to other debtors (guarantor) [17]

In this case that makes less interested the burden by the creditor, because as a separatist creditor or does not have special rights against the guarantor (borg) as well as the guarantor (borg) still controls the guaranteed assets, as if nothing had happened, and he can still freely sell, transfer and encumber his assets with the guarantee institution. Which other, with words other, precisely by Because guarantor permitted by law free do those things, then the creditor is not perfectly guaranteed [18].

## 2. Legal protection guarantee individual in default credit agreement

Legal protection for guarantors in individual guarantee agreements is one of the crucial aspects that must receive serious attention in the Indonesian civil law system, especially considering the position of the guarantor who is basically only a second party who bears the debt of the main party (debtor) to the creditor. Although the role of the guarantor is an accessory to the main agreement between debtor and creditors, there is not quite enough answer to the law attached. It remains significant and can have serious legal consequences if the debtor defaults.

Therefore, the legal system must provide a balanced guarantee of protection for the guarantor's rights so they do not fall into disproportionate or even arbitrary legal risks. In practice, guarantors often sign liability agreements without a comprehensive understanding of the legal consequences that arise, whether due to a lack of legal knowledge or social, economic, or emotional pressure. Situations like this demonstrate the importance of the precautionary principle and the principle of consensualism in contracts, where an agreement is considered legitimate only if both parties consent freely and with awareness. Additionally, the protection laws for guarantors are closely related to the clarity of the agreement's clauses, the principle of good faith, and the mechanisms of proof in the dispute process in court. In this context, Indonesian positive law, as articulated in the Civil Code, specifically Chapters 1820 to 1850, outlines the basic principles regarding the rights and obligations of guarantors, including the right to request that the debtor's assets be pursued first for confiscation (excursion benefit), as well as the right to be informed of any changes to the principal agreement without the guarantor's knowledge.

One form of legal protection provided to guarantors in an agreement guarantees that an individual has the right to request that the debtor's assets be executed first before the guarantor is asked to pay the debt, as regulated in Article 1831 of the Civil Code Civil. Right, this is known by the term benefit excursionist or priority right to execute against the debtor. Thus, a guarantor cannot be directly held accountable before it is first proven that the debtor's assets are insufficient to fulfill his debt obligations. This Privilege is a form of primary protection that shows that the guarantor is only a complement to the actual debt-receivable relationship between the debtor and the creditor. However, the privilege that is released becomes a problem because the creditor is likely to have a bigger risk of loss compared to the debtor and the guarantor [19].

In addition, legal protection is also reflected in Article 1832 of the Civil Code, which states that if the guarantor refuses to pay the debt, then the burden of proof regarding the debtor's inability to pay the debt lies with the creditor. Thus, the legal system explicitly regulates that the guarantor is not necessarily burdened, with enough answer if There is concrete proof of the debtor's default. Another important protection is the provision of Article 1847 of the Civil Code, where the guarantor can be released from his responsibility if there is a substantial change in the principal agreement between the debtor and the creditor without the knowledge or consent of the guarantor. This reflects the principle that the guarantor is only responsible for answering What In a way firm agreed upon, and any burdensome changes cannot be imposed unilaterally.

Furthermore, in some jurisprudence, the courts have also protected guarantors who do not have adequate legal understanding when signing the agreement by assessing in a way careful whether abuse condition (misfire van standing tall) or the existence form pressure to abolish voluntary elements in the agreement. Legal protection is also developing in practice, for example, through supervision by

[16] Msg. Eddy Son The' Safe, Credit Banking A Review Juridical, Yogyakarta Liberty, Yogyakarta, 1989, p. 44.
[17] Ibid.
[18] M. Language, Law of Guarantee And Credit Guarantee Banking Indonesia, King Grafindo Persada, Surabaya, 2005, p. 8.
[19] Siti Annisa, Protection Interest Creditors And Debtor in Bankruptcy Law in Indonesia, Total Media, Yogyakarta, 2008, p. 42.

the Financial Services Authority (OJK) of standard clauses in credit contracts, which often include the guarantor's responsibilities in solid air, without any explanation law Which adequate to the candidate guarantor. Therefore, legal protection for guarantors is not only normative through laws but also preventive and corrective, through the formation of fair contracts, judicial processes that guarantee the right to defense, and regulatory intervention to prevent contractual practices detrimental to legally weak parties.

In principle, the guarantor is given the legal rights referred to in for prevent abuse position law by creditors and ensure that the guarantor's liability does not exceed the scope agreed in the guarantee agreement. Protection the No only covers aspect procedural, like the right to information and involvement in changes to the principal agreement, but also includes substantial elements, namely the extent to which the guarantor can be released from legal responsibility due to a defect in will, unilateral changes to the principal agreement, or violations of the principle of prudence by the creditor.

One of the vital jurisprudence that describes the protection law to the guarantor is the Decision Court Great Republic of Indonesia Number 1241 K/Pdt/2007. In this case, the Court Great rejected the argument of the guarantor, who confess No understanding the consequences of a signed guarantee agreement. However, at the same time, the Court also emphasized that the guarantee agreement must be based on a voluntary agreement, which is legitimate. All form loading responsibility to the guarantor must be proven objectively by the creditor. This means the court confesses existence limit is not quite enough to answer the guarantor and the importance of clarity and transparency in the contract. Decision This, at the same time, strengthens the rule that the guarantor cannot be held directly responsible if it is not proven that the principal debtor truly has default and no own ability to pay off his debt.

In addition, protection for guarantors has also been raised in Supreme Court Decision Number 421 K/Pdt/2014, in which the Court rejected the creditor's attempt to execute the guarantor's assets in full. Direct: There is not yet a maximum effort law for collection from the principal debtor. In its considerations, the Court emphasized the importance of principle benefit excursionists as set up in Article 1831 of the Civil Code. In this case, the guarantor has the right to request that the creditor first formerly confiscate and sell the treasure debtor before the guarantor requests to fulfill the debt. Decision This is to clarify that the court acknowledges the rights of the fundamental guarantor and does not justify the actions of creditors who skip legal procedures for the sake of efficiency alone.

Jurisprudence shows that courts have begun to give greater weight to the principles of contractual fairness and protection to parties that have a weaker position in agreement. This is in line with the development of civil law, which emphasizes equity or principle balance as a compliment to the principle pact to your servant (that agreement must be obeyed).

Thus, it can be concluded that legal protection for guarantors in personal guarantees is not only normative but also reflected in judicial practices that continue to develop. This protection is important to ensure that personal guarantees remain legal instruments that are valid and effective but not misused to burden third parties who legally should not bear excessive risks from other parties' debts.

Apart from that, one of the legal bases which is quite essential in this case is Law Number 8 of 1999 concerning Consumer Protection (UU Consumer Protection). Although Act This in a way general intended for protect consumer in connection sell buy goods and services, but its scope also includes protection for individuals (including guarantors) who are in a legally or economically inferior position in contractual relationships, including in credit agreements with financial institutions. Article 18 paragraph (1) of the Consumer Protection Law states that business actors are prohibited from including clause standard, which states that the consumer authorizes business actors to take any unilateral action, including pledging, transferring, or burdening consumer assets without written consent. This provision can be indirectly interpreted that the guarantor, as a third party in the credit agreement, has the right to reject any clause that burdens him/her personally. Unilateral, especially If poured out in the form of contract standards without negotiation. Suppose the guarantee agreement is made unilaterally by the creditor (for example a bank) and the guarantor is not allowed to understand and discuss the contents of the contract. In that case, the burdensome clause can be declared null and void by law.

Furthermore, Law Number 10 of 1998 concerning Banking which is an amendment to Law No. 7 of 1992, also provides a basis for indirect protection for guarantors, especially in prudential principle banking principle) mandatory applied by banks to distribute credit. In Chapter 8, paragraph (1), Act Banking confirmed that the banks in giving credit must have a belief based on analysis Which deep that the debtor can and can pay off his debt by the agreement. Obligations This Also covers caution in requesting the existence of a personal guarantee from a third party. If the bank provides credit carelessly without analysis of risk, which is adequate, and then imposes all these risks on the guarantor, then this can be considered a form violation of principle caution and potentially open up space for civil lawsuits from guarantors.

In addition, the practice of banks in requesting individual guarantees is also supervised by the Financial Services Authority (OJK) based on Constitution Number 21 Year 2011 about Financial Services Authority, where OJK has the authority to protect consumers of financial services, including guarantors who are considered users service finance in a way No direct. In context, OJK plays a role in supervising financial institutions so that they do not make exploitative agreements towards the guarantor and ensures transparency and fair treatment in every banking transaction.

Legal protection for guarantors in Personal guarantees is not only limited to classical civil law but has also developed through modern regulations in the financial services sector, especially through the Financial Services Authority Regulation (POJK) Number 1/POJK.07/2013 about Protection Consumer Sector Service Finance.

This regulation is issued as a form of implementation of the duties of the Financial Services Authority. Finance (OJK) as set up in Constitution Number 21 of 2011 concerning OJK, which gives the OJK a mandate to regulate and supervise the protection of consumer service finances as a whole, including those who act as guarantors in a financing relationship. This POJK does not explicitly mention the term "guarantor" or "guarantee individual." However because the guarantor is included in the party directly affected by the financial transaction between the consumer and the financial service provider, then its position can be classified as a party entitled to protection as referred to in this regulation. Article 2 of POJK 1/POJK.07/2013 emphasizes that "Financial Services

Business Actors are required to implement protection Consumer in every activity his efforts fairly, honestly and professionally." This provision is a basic principle that every financial services institution, such as banks and financing institutions, may not take actions that are detrimental to consumers, including guarantors, through abuse of contractual power, non-transparent information, or exploitative agreement practices.

Furthermore, in Article 3 of the Financial Services Authority Regulation regulates a number of consumer protection principles that must be implemented by financial services business actors, namely: (a) transparency, (b) treatment Which fair; (c) reliability; (d) confidentiality and security of Consumer data/information; and (e) resolution of Consumer disputes in a simple, fast and affordable manner. From these principles, it can be seen that protection against guarantor No only in form prevention to potential loss, but also provides a legal basis for the guarantor to demand clear information regarding the agreement to be signed. The principle transparency is crucial in the context of guarantee individual, Because often time guarantor signing a contract without adequate understanding of the legal risks and responsibilities that they will bear. Therefore, service business actors finance must give an explanation in a way comprehensive regarding the contents of the agreement, including the rights and obligations of the guarantor, the legal consequences of the principal debtor's default, and the procedure for executing the guarantee. If the information is not given in an open way, institutional finance may be deemed to have violated the principles of transparency and administrative responsibility.

This Financial Services Authority Regulation also provides consumers (including guarantors) with the right to obtain complete agreement documents. And easily understood, as set up in Chapter 17, paragraph (1), which states that: "Financial Services Business Actors are required to provide correct, clear and non-misleading information regarding financial services products. and/or service Service Finance to Consumers." Obligation This No may be ignored, especially in the case of agreement credit, with a guaranteed individual. Often, contracts are arranged in the form of complicated standards and do not provide room for negotiation to the guarantor. The guarantor as a party does not always understand the technical aspects of the law, and finance must still give protection law through clarity of information; no precisely positioned as a party That must bear the risk without equivalent protection. In this case, if the financial services business actor is proven to have not provided sufficient information and is actually misleading, then based on Article 29 POJK, Perpetrators may be subject to administrative sanctions in the form of written warnings, fines, restrictions on business activities, or even revocation of business licenses.

Besides That, Chapter 21 from Financial Services Authority Regulation No. 1/POJK.07/2013 Also gives consumers rights to submit a complaint if they feel disadvantaged in a financial services transaction. The complaint can be forwarded to the financial services business actor first, and if it is not resolved, the consumer has the right to bring the problem to the Institution Alternative Completion Dispute Sector Service Finance (SJK LAPS) formed by OJK. This is a form of procedural legal protection for guarantors so they have a fair settlement path and do not have to go through a long and expensive court process. Mechanism This Also shows that OJK put the position of guarantor as subject law, which protected him from the fact that he is not the principal party to the credit agreement.

Thus, POJK 1/POJK.07/2013 explicitly provides framework legal protection for all parties involved in relationships with financial services institutions, including individual guarantors. Although it does not expressly regulate individual guarantees, in principle, this POJK provides a strong legal basis to protect guarantors from detrimental agreement practices that are Not transparent or arranged unilaterally. Protection This is important in the context of modern law, where the relationship between creditors and guarantors is more complex, and the guarantor's position is often weaker compared to financial institutions. Therefore, the existence of this POJK is an essential complement to the legal system of protection guarantors in Indonesia, which bridges emptiness or limitations that have not been fully regulated in the Civil Code and opens up space for a more responsive approach to the principle of justice in modern financing practices.

It is important to understand that the approach of protection towards guarantors is also rooted in the spirit of financial sector regulatory reform in general, which relies on the principle of transparency, accountability, and fairness in the relationship between financial service providers and consumers. In practice, lots of institutions finance, like a bank and finance companies, use standard agreements or standard clauses in credit contracts, which at first glance appear legitimate but have the potential to create an imbalance in legal position between creditors and guarantors. In this case, the OJK also issued a Circular Letter of the Authority Service Finance (SEOJK) Number 13/SEOJK.07/2014 about Financial Education and Literacy for Consumers and/or the Community, which aims to ensure that consumers of financial services, including guarantors, have adequate understanding of products and services. Which offered, as well as consequences, the law. Education This is important considering the many cases in the field where the guarantor signs the deed guarantee without understanding the implications not quite enough the answer as a third party, which participates in the risk of default debtor. Ignorance Creditors often exploit this by including unilateral clauses containing provisions for execution of the guarantor's assets without proper notification.

In addition, OJK also carries out preventive and repressive supervisory functions against violations of consumer rights, including through consumer complaint channels facilitated by the OJK Consumer Protection Task Force. If the guarantor feels disadvantaged due to an unbalanced guarantee agreement, they can file an administrative complaint which will then be followed up by OJK. In Lots case, reporting This can become base evaluation regarding the compliance of financial services institutions with POJK regulations, and can result in the issuance of written warnings, recommendations for cancellation agreement, or even restrictions activity business for business actors service proven financial violate the principle consumer protection. In here it is role OJK become the more important as protector of the legal interests of the community, including those indirectly involved in contractual relations, such as guarantors. This provision is also in line with the principle of equality before the law, which demands that every citizen, regardless of their position in legal relations, receive fair legal treatment and protection.

Thus, the role of regulation of OJK ensures legal protection for the guarantor in guaranteeing individuals are not only limited by the norms written like in POJK And SEOJK but

Also encompasses institutional dimensions and active supervision. This is crucial considering the still low level of legal and financial literacy of the Indonesian people in general, which makes the position of guarantors often vulnerable to manipulation or exploitation by parties with economic advantages or access to legal resources. Therefore, a complete understanding of the legal protection of guarantors from the OJK's perspective will strengthen the foundation of contractual justice in financing practices and narrow the space the occurrence of abuse of authority by financial institutions against third parties who provide personal guarantees.

The application of the principle of legal protection for guarantors in financing practices is also reflected in several court decisions which show that not all forms of personal guarantees can be executed without considering aspects of justice, transparency, and will free from party guarantor. Wrong One An example of critical jurisprudence that can be used as a reference is the Supreme Court Decision. Republic of Indonesia Number 2544 K/Pdt/2008**,** which in essence, rejects the effort of creditors to execute the treasure guarantor because it was proven that the guarantee agreement was signed without full understanding and without proper explanation regarding the contents of the agreement. In the decision, the Supreme Court considered that the imbalance in position between the bank as a creditor and the guarantor as a third party who is not familiar with the law, made the personal guarantee agreement not enforceable absolutely. The judge emphasized that the principle of free will in a contract is not sufficient to be seen only from the existence of a signature, but must also be assessed from the process of conveying information, the existence of good faith, and the absence of elements of misdirection. This decision also emphasized that even though the guarantor, in a way, formally signed the document agreement, if there is no understanding of the Contents And consequences of the document, the contract can be canceled by law or declared invalid.

This research aims to elaborate and analyze more deeply the protection law for individual guarantors in digital financing, especially in practices that occur in information technology-based financial institutions. After previously explaining the applicable legal basis, both from the perspective Civil Code (KUHPerdata), Financial Services Authority Regulation (POJK), Consumer Protection Law, to special fintech regulations such as POJK No. 77/POJK.01/2016, then in this section the author will examine its application in real practice through field data.

Wrong One important aspects of study This is to examine the extent to which digital financing institutions have implemented legal provisions regarding individual guarantees correctly and fairly, as well as what form of protection is provided to guarantors if the debtor experiences default. Remember guarantee individual is form of accountability law Which attached on party third (in matter This is usually a couple or member of a Micro, Small and Medium Enterprises group), so it is important to identify whether principle caution (prudential principle), principle of transparency, And right on information has run in a way substantial and not just a mere administrative formality.

To answer this, the author conducted in-depth interviews with two main parties involved in the financing agreement: the financial institution financing as the organizer and the debtor as the recipient of the facility. This interview aims to explore the parties' understanding of the agreement's contents, roles, and legal positions, including the guarantor's role and the mechanism execution and protection law that is applied in the event of default.

Results interviews done with party institution digital financing and debtors provide a practical overview of the application of personal guarantees in financing for Micro, Small, and Medium Enterprises (MSMEs). In the interview, several aspects led to an understanding of how this technology-based financial institution carries out guarantee procedures and the challenges faced when default occurs. On the other hand, interviews with debtors also revealed the relationship dynamics between debtors, guarantors, and financing institutions in terms of understanding and fulfilling payment obligations.

The author conducted this interview with one of the credit officers from a digital financing institution (identity disguised at the author's request). Informant), use to obtain information direct related terms and conditions mechanism guarantee individual in practice financing to perpetrator Micro, Small and Medium Enterprises (MSMEs), specifically for debtor Woman Which has married and have a group of UMKM. In the explanation, party Institution finance state that his party has special provisions for prospective debtors, especially women who are married and are members of the fostered UMKM group. He says, "To obtain financing, debtors must meet formal requirements such as status married and have a business in a group. But most importantly, we also require a personal guarantor, namely the husband of the prospective debtor, as well as support from the UMKM group as a joint guarantor." The guarantee is considered important as a form of joint responsibility for the risk of default [20]. Regarding the requirements to become a guarantor, the financial institution explained that it only accepts legally competent guarantors and ideally have permanent jobs. "But employment status alone is not enough. We also conduct field surveys on couples, in this case husbands, to see whether they really have a steady income and are eligible to be guarantors." The survey includes checking domicile, employment status, and clarity of the relationship between the guarantor and the debtor [21].

When discussing the steps taken in the event of a default, party Institution finance convey that the institution will send an official notification letter. "We will not execute immediately. We will send a letter of inquiry to the debtor with a deadline maximum One month. In term time That, they requested to pay at least 30 percent of the total arrears as a form of commitment." If No There is response, so institution will take administrative execution action [22].

Regarding the execution system, the informant stated that because the institution based on digital, so form execution Which used is the closure of access to financing through the financial system. "We will report data debtor and guarantor to BI Checking or SLIK OJK. This means that their names will be blacklisted and they will no longer be able to access

[20] Results Interview With Manager Branch Lombok East PT. Amartha Finance, Interview Done In Office PT. Amartha Finance branch Lombok East, Date January 11, 2025 at 09.00 WITA.

[21] Ibid

[22] Ibid

financing from institution other. This Enough effective as forms of legal and moral pressure," he explained.

From the prevention side, the institution also applies the precautionary principle. "We apply the 5C principle: character, capacity, capital, condition, and collateral. All candidate debtor and guarantor we mark from five aspects, including BI Checking from the start." However, he also acknowledged that still there is obstacle in process execution. "Often, moment debtor experience problem, they No cooperative. Even No A little Which each other hide self between debtor And guarantor. The husband claims not to know anything, the wife does not want to tell, or both avoid it. This is our biggest challenge," he said. In addition, on a different occasion, a structured interview was conducted with one of the debtors or customers (UMKM members) from the relevant financial institution. The debtor shared his experience regarding the financing application process, the requirements that must be met, and the dynamics faced when experiencing payment constraints.

In his narrative, debtor explain that process the financing application was initially quite simple because it was facilitated by the head of the UMKM group. "We were asked to complete personal data, data business, and include collateral. Since I am married, my husband is automatically asked to be a personal guarantor or personal guarantor, as well as groups MSMEs I Which take responsibility answer," he said. According to him, the institution also requested that the husband as guarantor have a permanent job and be willing to be surveyed by the financing party to ensure their ability if needed at any time [23].

When asked whether He And husband understand consequence from become guarantor, informant answer, “In a way general we understand that If I can't pay, my husband will be held responsible. But when That we Certain Because business Still fluent and instalment at first " But over time, his business experienced a decline in income due to the dry season. quiet buyer and disturbance health, so that He start experienced late payments. Furthermore, the debtor explained that when there was a delay, the financing institution sent a notification letter. "They gave me one month and asked me to pay at least 30% of the arrears as a condition for not being included in the BI Checking system," he said. However, because his financial condition was still unstable, he was only able to pay a small portion. "Finally I And husband enter to BI Checking And No Can apply for loans everywhere," he added [24].

Then regarding the attitude of the UMKM group towards the condition, the informant admitted that he had experienced pressure. "My group friends were also reprimanded because we guaranteed each other. But actually they also didn't know that I was in arrears, because I was embarrassed to story," he explained. He Also convey that condition kind of This becomes complicated because “between the debtor and the guarantor, sometimes there is no transparency with each other.” Her husband even feel object moment start asked for not quite enough answer by party institution, whereas previously No too involved in the loan application process. This experience made the informant realize the importance of legal understanding and open communication before making a decision. finance. He hope institution financing can provide clearer and more detailed assistance, especially for individual guarantor candidates. "It would be better if before signing, there was direct explanation or some kind of briefing. So that we don't just agree, but also understand the risks," [25].

Based on the results of interviews with digital financial institutions previously stated, it can be concluded that these institutions generally have implemented guarantee provisions and procedures. Execution in line with the principles of civil law and authoritative provisions as stipulated in the Civil Code (KUHPerdata) and the Financial Services Authority Regulation (POJK). Although the institution operates in a digital system, the implementation principle guarantees individuals are still referring to formal legal principles. However, in some aspects, there is still room for improvement, especially regarding education and the active involvement of the guarantor. Some aspects need to be analyzed through Kelsen's theoretical lens of accountability law, specifically in terms of guaranteeing individuals. In this matter, a guarantor guarantees the debtor's obligations, which are bound by legal norms governing agreements, responsibilities to answer obligations of debtors, and legal consequences if a default occurs.

In addition, if we examine again the protection from the consumer protection aspect in digital financing, The principle of consumer protection, which is an integral part of the theory of legal protection, requires financial institutions to protect consumers from potential losses caused by unfairness in transactions. Based on POJK No. 77/POJK.01/2016, financial institutions' finances must give adequate protection for consumers (including guarantors) to fulfill their rights to clear information and fair handling regarding default. However, interviews with debtors and financial institutions found that guarantors are not always given enough protection that Enough, especially in matters of settlement before execution is carried out. In addition, the guarantor is not fully informed regarding their rights in filing objections or alternative settlements. This indicates a lack of legal protection for individual guarantors, which could potentially harm them, especially if they do not fully understand the risks and legal consequences. from their role as guarantors.

From the interview results with party institution finance and debtors, it can be concluded that although digital financing institutions have followed most of the existing legal procedures, there are still some gaps in the application of legal protection principles. Guarantor Individuals, as parties at risk of bearing the debtor's obligations, have not received adequate protection, especially in terms of information transparency, balance of rights and obligations, and legal certainty. related to the execution process. Therefore, to ensuring protection, Which is more Good for the guarantor, financial institutions must pay more attention to the principles of transparency, fairness, And protection of consumer in accordance with the rule of law Which is applicable, as well as gives information clear regarding the legal consequences borne by the guarantor.

[23] Results Interview With Member Group MSMEs Lombok East, Interviews were conducted at the residences of MSME Group members, January 15, 2025 at 09.00 WITA.

[24] Results Interview With Member Group MSMEs Lombok East, Interviews were conducted at the residences of MSME Group members, January 15, 2025 at 09.00 WITA.

[25] Results Interview With Member Group MSMEs Lombok East, Interviews were conducted at the residences of MSME Group members, January 15, 2025 at 09.00 WITA.

**Conclusion**

Settings regarding guarantees for individuals based on positive law in Indonesia conclude that the provisions related to individual guarantees are regulated in the Civil Code. In terms of execution, fundamentally, a guarantee is not a tangible object that can be seized directly; it typically takes the form of a commitment made through an agreement. In the case of execution, the creditor can file a summons. Furthermore, if after issuing the summons the debtor does not comply with the request, creditors can initiate a lawsuit through the district court.

Legal protection for personal guarantees in Indonesia, particularly in the Civil Code, does not explicitly regulate standard agreements for individual guarantees, including the discussion of legal protection clauses. However, Article 1831 (special rights) provides that a guarantor cannot be held accountable until it is first proven that the debtor's assets are insufficient to meet their debt obligations. Additionally, the rules governing protection for individual guarantees are implied in Law Number 8 of 1999 concerning Consumer Protection, which guarantees the right to information and justice for consumers, and in Law Number 27 of 2022 concerning Personal Data Protection, which is crucial in the context of data misuse in digital transactions. Furthermore, the Financial Services Authority (OJK) Regulation Number 77/POJK.01/2016.

**Reference**


1. Amiruddin, Zainal. Metode Penelitian Hukum. 8th ed. Jakarta: PT. Raja Grafindo Persada; 2020.
2. Amiruddin, Zainal. Pengantar Metode Penelitian Hukum. 9th ed. Jakarta: Rajawali Press; 2016.
3. Indriyani A. Aspek Hukum Jaminan Pribadi. Jurnal Progresif Hukum. 2006;1(1).
4. Badrulzaman MD. Kompilasi Hukum Perjanjian. Bandung: Citra Aditya Bakti; 2001.
5. Tuwan FS, Gunadi A. Execution of Personal Guarantee on Credit Congestion in Indonesia. Jurnal Pengetahuan Hukum, Humaniora, dan Politik. 2024;5(1).
6. Hermansyah. Hukum Perbankan Nasional Indonesia. Jakarta: Golden; 2005.
7. Hariwijaya INGD, *et al*. Bank Credit Agreements With Borghtocht Guarantees (Individual). Jurnal Konstruksi Hukum. 2020;1(2).
8. Bahasa M. Hukum Jaminan dan Kredit Perbankan di Indonesia. Surabaya: Raja Grafindo Persada; 2005.
9. Eddy S. Kredit Perbankan: Suatu Tinjauan Yuridis. Yogyakarta: Liberty; 1989.
10. Muhaimin. Metode Penulisan Hukum. 1st printing. Mataram: Universitas Mataram Press; 2020.
11. Octavia O. Implementation of Debtor's Rights and Obligations in Subsidized Home Ownership Loan Agreements at PT Bank Tabungan Negara (Persero) Tbk (Study at Nuansa Beringin Residence, Payung Sekaki District, Pekanbaru City). 2020.
12. Usman R. Hukum Jaminan dalam Perkara Perdata. Jakarta: Raja Grafindo Persada; 2009.
13. Salim HS, Nurbaini ES. Penerapan Teori Hukum dalam Penelitian Tesis dan Disertasi. 6th ed. Depok: Rajawali Pers; 2022.
14. Annisa S. Perlindungan Kepentingan Kreditor dan Debitor dalam Hukum Kepailitan di Indonesia. Yogyakarta: Total Media; 2008.
15. Sofwan. Hukum Perdata: Hak Jaminan atas Tanah. Yogyakarta: Liberty; 1981.