

JURIDIST REVIEW OF PURCHASE ORDER AS COLLATERAL GUARANTEE

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ABSTRACT:

Related to the current economic development, causing renewal of the object supported by receivables. One of them is the use of purchase orders as objects of collateral receivables. In this study, the observant is using the normative juridical method with data collection and management methods that is using a library research techniques or library studies. Purchase orders as collateral for receivables in view of positive Indonesian law are acceptable. If it is reviewed from Indonesian positive law, the purchase order is included in the fiduciary guarantee category as the binding agreement that has been regulated in Article 9 paragraph 1 of Law Number 42 Year 1999 concerning Fiduciary. Purchase orders are movable objects as well as receivables which contain approved commercial documents. Based on the results of appropriate research in the field, it was also found that the form of this Fictitious purchase order is a fake purchase order is an invalid or not available purchase order. Purchase orders made by the buyer or vendor are not genuine or are not genuine. Referring to Article 1320 of the Civil Code the tourism object approved is fictitious in accordance with previously agreed financial agreements that are null and void by law and can be accounted for by suing on the basis of a lawsuit against the PMH (Act Against the Law), in addition to that purchase orders that serve as collateral objects is fictitious then it can also become a criminal domain.

Keywords: *Purchase Order; Guarantee; Debts.*

INTRODUCTION

One factor that can cause the company to continue to grow and survive is to have strong capital. Having good and strong capital can keep any business or business in a safe condition. If there is a problem in the capital of a company, there are several ways to deal with the problem. One way to resolve this is by borrowing from one or more creditors. Securing assets or assets that can be used as objects of collateral in conducting debt receivables in order to get a loan that will later be used for venture capital or the company's business. When there is a loan or debt relationship, there are rights and obligations, when there is a default, this is where thoughts arise about what is called collateral. The guarantee arrangement itself covers all of the legal norms governing the legal relationship between the giver and recipient of the guarantee in relation to the imposition of collateral to obtain a credit facility (Rachmadi Usman, 2009).

There is a renewal in the object that is guaranteed in the accounts receivable debt, payment models, agreements made by each party, both debtors and creditors and so forth. One of them is the use of Purchase orders as objects of collateral receivables. This is something new in the use of Purchase Orders as objects of collateral receivables made by the debtor which is a company in the field of services with creditors which is one of the banks in Indonesia which in fact has done an

appraisal that the debtor gets credit facilities in accordance with what is guaranteed, namely Purchase Order. In these service companies get credit facilities as capital or payment for every existing project. With a purchase order with a tracking model that should be able to enter directly into the creditor in this case is a bank, but it does not run accordingly and the purchase order becomes fictitious or fake.

Problem

1. What is the legal status of the Purchase Order as an object for collateral receivables?
2. What are the legal consequences for the debt and credit agreement if the Purchase order as the collateral object is fictitious?

Research Methode

This type of research is normative juridical research. Normative legal research is doctrinal law research, or library research or document studies (Zainuddin Ali, 2011). This type of research is a normative juridical research or the method of researching library law is research that does not conduct research in the field this is due to what is examined is legal materials so that it can be said as library based, focusing on reading and analysis of primary and secondary materials (Johnny Ibrahim, 2013). This type of research is normative juridical research. In normative research it is also called doctrinal law research (Amiruddin, & Zainal Asikin, 2016).

In this type of legal research, the source of the data is only secondary data, which consists of primary legal material; secondary legal material; or tertiary data. Normative law research is not needed sampling, because secondary data which is the main source has its own weight and quality that cannot be replaced with other types of data. In this normative law research will present its analysis. This research was carried out specifically and is related to civil law in Indonesia concerning the Juridical Review of Purchase Orders as collateral for accounts payable and receivable. The use of normative juridical methods in this study, which is the result of the collection and discovery of data and information through literature studies using secondary data which will be associated with cases in the field.

Discussion

In its development in the economic field, the scope of collateral has also changed. The needs and sophistication of technology and patterns of society also affect changes in the field of guarantee. Complex issues also encourage movement or bring about new innovations in the field of guarantees, especially material security. In general, material security consists of two types or types, namely tangible and intangible objects. As for the changes or renewal of objects that can be guaranteed are diverse and become complex. One object or object of collateral that can provide credit or loans during this time is the use of a Purchase Order or also called a PO as collateral for accounts payable and receivable.

Purchase Order or in the Indonesian language referred to as "Order Letter" is a commercial document in the economic field. The use of purchase orders or can be abbreviated as PO is now also an important thing. This is something new in the use of purchase orders as collateral for debt receivables. Purchase order itself is an order made by the buyer addressed to the seller. This commercial letter or document is a tool or an important component of a company as evidence.

The source of the law and guarantee legal regulation system in terms of Indonesia's positive law are as follows:

1. Book II of the Civil Code (Civil Code).

Civil Code or in Dutch is called *burgerlijk wetboek* as a source of civil law consisting of 4 (four) books. The Civil Code which regulates guarantees is contained in book II, which is about pawning and ship mortgage. The contents are as follows:

a) Fiduciary

The mortgage liability rights are regulated in Book II of the Civil Code, namely in the twentieth chapter of Article 1150 to Article 1160 of the Civil Code. In this case, the creditor is spared from evil intentions (*te kwader trouw*) pawnbrokers. In a pawn, the collateral must absolutely not be in the possession (*inbezitting*) of the pawnbroker. There are general provisions that were originally intended to apply to all types of pledge guarantees, but in practice they face difficulties or difficulties. This is because at the time the legislator created the provisions regarding pawning he sometimes only remembered pawned tangible objects (Mariam Darus Badruzaman, 1997).

b) Mortgage .

Regarding the regulation of mortgage guarantees regulated in the Civil Code, namely in Book II Titel 21 Article 1162 to Article 1232. With the issuance of the UUHT, it can be seen that the LoGA has an institution guaranteeing rights to land and everything related to land, alone and no longer using mortgage guarantee agency, so that the mortgage guarantee agency with all its regulations, for the object of collateral on land is now no longer valid (Mariam Darus Badruzaman, 1997).

2. The Code of Commercial Law (KUHD)

Articles which are closely related to guarantees are articles relating to marine mortgages. The articles governing marine vessel mortgages are Articles 314 to Article 316 KUHD.

3. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA).

Provisions closely related to guarantees are Article 51 and Article 57 UUPA.

4. Law number 4 of 1996 concerning Mortgage Rights and Land Related Items.

This law revokes the enactment of the mortgage as stipulated in Book II of the Civil Code.

5. Law Number 42 of 1999 concerning Fiduciary Guarantees.

In Article 1 paragraph (1) of Law Number 42 Year 1999 concerning Fiduciary Guarantee, the definition of fiduciary itself is a transfer of ownership of an object on the basis of trust provided that the object for which the ownership right is held remains in the control of the owner of the object.

6. Law Number 9 of 2006 concerning the Warehouse Receipt System.

This law was amended in 2011 to become Law Number 9 of 2011 concerning Amendment to Law Number 9 of 2006 concerning the Warehouse Receipt System.

From the description of the legal sources and guarantee legal regulatory system in terms of positive Indonesian law as above shows that the Purchase order is included in the object of collateral that can be used as collateral for this debt because the purchase order is a movable object, in this case the receivables with the collateral is the purchase order. Then the use of purchase orders as objects of collateral receivables can be accepted as regulated in the Currency Act. That everything must not be refused to accept the Rupiah whose delivery is intended as payment or to settle obligations in this case is debt. In addition, it can also refer to Article 1131 of the Civil Code which states that all movable and movable property belonging to the debtor, both existing and future, constitutes a guarantee for the debtor's individual engagements. This is also due to the fact that purchase orders are receivables, which are obtained in the future. Based on the explanation above in distinguishing objects, it can be seen that Purchase orders are classified as moving objects.

Purchase orders are movable objects that are determined by law. Purchase orders are also a form of receivables. In the use of purchase orders as objects of collateral debt, the binding is included in the fiduciary guarantee.

The use of purchase orders as objects of guaranteed position is included in the fiduciary guarantee. In relation to the collateral object is not submitted to the creditor but remains in the power of the debtor. Based on the explanation above, there are debt collateral objects which are still classified as movable property, but the debtor does not surrender the authority over the said goods to the creditor, while the creditor does not have an interest in the said goods if submitted. Then in relation to the purchase order used as collateral for debt the binding is a fiduciary guarantee.

Fiduciary guarantees are regulated as in Article 9 paragraph 1 of Law Number 42 of 1999 concerning Fiduciary Guarantees which reads:

“Fiduciary Collateral can give to one or more units or types of objects, including receivables, both those which existed at the time the guarantee was given or that were obtained later”.

This shows the purchase order is classified as a fiduciary guarantee as the binding. Purchase orders are future receivables that are bound to those who guarantee them. The definition of fiduciary in Indonesian is briefly the surrender of ownership in trust. In terms of Dutch terminology, it is often referred to as the full term, "fiduciare eigendom overdracht", whereas in English it is "fiduciary transfer of ownership". A fiduciary guarantee is a material security (both existing debt and future debt), which in principle provides movable property as collateral (but can also be extended to immovable property) by providing control and enjoyment of collateral objects mentioned to the creditor) then the creditor hands over the mastery and enjoyment of the object to the debtor in a trusty (fiduciary) manner. Based on the explanation above, if the debt guaranteed by fiduciary guarantee has been paid in full, then as agreed, the title of ownership of the object will be returned by the creditor to the debtor. Conversely, if the debt is not paid in full, then the collateral objects are sold to pay off the amount of the debt, if there is excess, it must be returned. Conversely, if the debt is not paid off, the remaining debt must be paid until it is paid (Munir Fuady, 2013).

Unlike the purchase order which turns out at the time of collateral, in this case becomes a credit for creditors and becomes a problem if the guaranteed purchase order turns out not to pay off the obligation as it was due to the purchase order (PO) is guaranteed, then makes the purchase the order (PO) becomes fictitious. Fictitious purchase order here is a commercial document made by the buyer about information in detail regarding the goods / services ordered that are sent or submitted to the seller which in fact fulfills an unreal element or an element of bad faith in it. Fictitious words according to KBBI (Big Indonesian Dictionary) fictitious is fictional; only in fantasy (KBBI, 2020). Then it can be concluded that fictitious is only a delusion or fake because it is not real.

The form of the purchase order can be said to be a false purchase order. The word fake itself according to KBBI (Big Indonesian Dictionary) has a meaning that is not genuine; invalid; lancung (about diplomas, certificates, money, etc.); imitation, fake; cheat; dishonest; discord, etc (KBBI, 2020). Purchase order consists of the word purchase which means purchase, while order is order. Then it can be interpreted that the purchase order is a purchase order. Based on the above explanation, the fake purchase order is a purchase order letter that is not real or invalid. Purchase orders made by the buyer or vendor are not real or authentic. There is an element of deception or just an essay. False here can be done by the party that guarantees the purchase order in this case is the seller as a debtor who guarantees to the creditor that the purchase order is not real, invalid, or

only an imitation made by the debtor which is then guaranteed to the creditor. Invalid or unreal here may be because the goods / services do not exist, or transactions carried out by buyers and sellers related to the goods / services ordered as stated in the purchase order do not exist or are not real in this case is false.

Then it can be concluded that the fictitious purchase order here is a commercial document or purchase order that cannot be used as collateral because there is no value or there is an element of deception or good faith in it. Based on the explanation above, the guaranteed purchase order violates as in Article 1320 of the Civil Code. So if it is connected with the existence of a fictitious purchase order guaranteed by the seller which in this case acts as a debtor, then the purchase order has also violated Article 1320 of the Civil Code that is related to objective conditions, then it can be null and void. Then it can be observed in the part of the terms of the validity of the agreement on the element of a certain thing that is because the purchase order made is fictitious or fake is not real and violates the objective conditions of Article 1320 of the Civil Code, the legal consequence is that the agreement can be null and void if it is made as a guarantee later given to creditors. Based on this explanation it is possible that the element of bad faith is also contained in it.

As for the legal consequences of the Debt Agreement if the purchase order as a collateral object is fictitious is null and void, even if in the case of the object being guaranteed is in the form of an acceptable fictitious purchase order, this can become a criminal domain in the presence of an element of fraud. Based on the binding of this purchase order, it is classified as a fiduciary guarantee which is considered a receivable and the legal consequences of the loan agreement are null and void and can be accounted for first. If the purchase order used as the object of the collateral is fictitious and has been received so as to obtain a credit facility, then it can legal remedies from losses caused. Whereas in this matter it can become a civil domain with the creditor being able to sue the debtor using the PMH (Legal Unlawful) claim, as stated in Article 1365 of the Civil Code. This as intended is the fulfillment of the elements contained in the Act Against the Law as set forth in Article 1365 of the Civil Code, which reads:

“Every act that violates the law, which brings harm to someone else, obliges the person who because of his mistake to issue the loss, compensates for the loss.”

Therefore, the basis for the lawsuit is PMH (Legal Unlawful Action) because there are losses felt by creditors in this case the Bank because it has provided credit facilities from fictitious or fake purchase orders. This problem can also turn to criminal with the proposition of fraud and falsification of documents if it is related to the purchase order that is guaranteed in the debt of this receivable is fictitious with the legal basis of fraud namely Article 378 of the Criminal Code concerning fraud that states:

“Whoever intends to benefit themselves or others illegally by using false names or fake hoedaningheid; by trickery, or a series of lies, moves others to hand over things to him, or to give them debt or write off receivables, threatened, for fraud, with a maximum jail sentence of four years”.

In relation to if it is imposed in the criminal domain, it must first be explored with the following elements:

1. The goal is to benefit yourself or others by breaking the law.
2. You do this by using a fake name or fake dignity, with deception, or a series of lies.
3. Moves someone to hand over something or give money or write off receivables.

Conclusion

Based on the results of the discussion in this, the authors can conclude that:

1. Collateral or better known as collateral is property belonging to the debtor or third party that participates as a means of payment in the event of a default on a third person. Over time there has been a renewal in the use of objects that can be guaranteed, in this case is the purchase order that is used as a collateral object. Purchase orders as objects of collateral receivables in terms of positive Indonesian law are acceptable. From the description of the legal sources and guarantee legal regulatory system in terms of positive Indonesian law as above shows that the Purchase order is included in the object of collateral that can be used as collateral for this debt because the purchase order is a movable object, in this case the receivables with the collateral is the purchase order. When viewed from Indonesian positive law, the purchase order is included in the category of fiduciary guarantee as the binding. Based on the purchase order, it is a movable object such as a receivable, which is a commercial document that is guaranteed. Then it can be concluded that the purchase order can be used as an object of collateral if it is reviewed from Indonesia's positive law including fiduciary guarantees.
2. Based on the results of existing research, it can also be found a form of fictitious purchase order is a fake purchase order, which is a letter of purchase order that is not real or invalid. Purchase orders made by the buyer or vendor are not real or authentic. There is an element of deception or just an essay. The legal consequences of the Debt Agreement if the purchase order as a collateral object is fictitious is null and void, because the object guaranteed is a fictitious purchase order. Based on the binding of this purchase order, it is classified as a fiduciary guarantee which is considered a receivable and the legal consequences of the loan agreement are null and void and can be accounted for first. If the purchase order used as the object of the collateral is fictitious and has been received so as to obtain a credit facility, then it can legal remedies from losses caused. That in this matter can become a civil domain with the creditor can sue the debtor to use the lawsuit against the Law (PMH) by fulfilling the elements contained in Article 1365 of the Civil Code. As for other legal consequences, it is possible to enter the criminal domain by fulfilling the elements in Article 378 of the Criminal Code and also Article 263 of the Criminal Code concerning the falsification of documents.

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