



## LEGAL PROTECTION FOR DEBTORS IN BANK GUARANTEE AGREEMENTS STANDARD CONTRACT

Ajrina Febiani, Mohamad Fajri Mekka Putra  
Magister Ilmu Hukum, Universitas Indonesia, Depok, Jawa Barat  
Email: [ajrinafebi17@gmail.com](mailto:ajrinafebi17@gmail.com)

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### ABSTRACT

The absence of a conceptual definition of a Bank Guarantee has resulted in different interpretations from one bank to another in translating the applicable regulations. Some legal experts questioned the standard contract because it is considered not to provide room for negotiation between contracting parties and tends to create an imbalance of rights and obligations between the bank and the debtor customer. The bank guarantee plays a role when the customer defaults on the bank, that is, the bank has the right to exercise, but if the customer avoids it, the second step is for the bank to issue a warning letter. The author focused on standard contracts/agreements regarding bank guarantees. In writing this paper, the issues raised are regarding the legal protection of the parties in a bank guarantee agreement. The research method used is normative law research using normative law case studies in the form of legal behavior products. The practice of fraud, deception, and forgery is one of the legal problems faced by the parties in the Bank Guarantee and Standby L/C agreements. This act of fraud has been proven to have a detrimental effect on both internal and external banking parties. The higher the intensity of fraud, the higher the level of decline in customer trust in banking institutions.

**Keywords:** bank guarantee; agreement; banking

### 1. INTRODUCTION

Banking as one of the financial institutions has strategic value in the economy of a country. The institution is intended as an intermediary between parties who have excess funds and those who lack funds. Bank financial institutions are engaged in lending activities and various services provided to serve financing needs as well as smoothen the payment system mechanism for all economic factors.<sup>1</sup> Banks are financial institutions whose existence depends absolutely on the trust of customers who entrust funds and other services that they perform through banks in particular and the wider community in general. This causes banks to be very interested in maintaining the level of public trust.<sup>2</sup>

The existence of banks in people's lives today has a quite important role, both Commercial Banks and Rural Banks, which are the soul of a country's financial system. Bank is a financial institution that serves as a forum for business entities, government agencies, the private sector, and individuals as a place to store funds and as a means of carrying out various financial transactions. Through these fund collection institutions, banks can redistribute the collected funds to the public through credit law institutions. In addition to these functions, banks can also provide a variety of banking services needed by customers and society in general.<sup>3</sup>

The banking sector as an intermediary institution has a strategic position in supporting the national economy, especially in providing bank loans to finance the interests of community businesses. So, the bank is one of the pillars of the country's economy in order to improve the welfare of its people and is an integral part of a country's financial and payment systems.<sup>4</sup> Banks in carrying out activities in the banking sector must

1 Abd. Shomad Trisadini P. Usanti, *Hukum Perbankan* (Jakarta: Kencana, 2017).

2 Resi Pranacitra, *Seri Hukum Perbankan, Rahasia Bank, As a Tool of Economic Engineering* (Yogyakarta: Lautan Pustaka, 2019).

3 Rudyanti Dorotea Tobing, *Aspek-Aspek Hukum Bisnis, Pengertian, Asas, Teori dan Praktik* (Surabaya: laksana Justitia, 2015).

4 Henry Donald Lbn. Toruan, "Implikasi Hukum Pemberian Kredit Bank Menjadi Tindak Pidana Korupsi," *Penelitian Hukum De Jure* 2, no. 3 (2016): 357.

always innovate in creating products according to the needs required of the economy and business in society. The format of the bank guarantee agreement in a banking transaction has been made unilaterally by the bank where there are several conditions that question the standard contract so that the agreement is deemed not to provide room for negotiation.

However, Bank Guarantee agreements are not specifically regulated in the Banking Law. Juridically, Bank Guarantees are based on Article 1820 - Article 1850 of the Civil Code concerning Guarantee Agreements (*borgtocht*) and Decree of the Board of Directors of Bank Indonesia Number 23/88/KEP/DIR dated 18 March 1991 concerning Provision of Guarantees by Banks. In the Decree of the Board of Directors of Bank Indonesia Number: 23/88/KEP/DIR, Bank Guarantees are classified into three broad categories (Article 1 point (3)) without any conceptual limitations for each of these categories. For example, Article 2 paragraph (1) of the Decree of the Board of Directors of Bank Indonesia Number: 23/88/Kep/Dir seems to equate the meaning of Bank Guarantee with Standby L/C. In fact, in banking transactions, Bank Guarantee and Standby LC agreements are often not distinguished. The absence of a conceptual definition of a Bank Guarantee has resulted in different interpretations from one bank to another in translating the applicable regulations. These differences in interpretation can lead to legal uncertainty in the practice of Bank Guarantee agreements.

As with credit agreements in general, the Bank Guarantee agreement format in banking transactions has been prepared unilaterally by the bank in the form of standard conditions set forth in an application form. Some legal experts questioned the standard contract because it is deemed not to provide room for negotiation between contracting parties and tends to create an imbalance of rights and obligations between the bank and the debtor customer. The existence of this standard contract has created an interesting legal problem related to the tension between the principle of contractual freedom and contractual justice which is an important foundation in contract law.

Another legal issue that often occurs in Bank Guarantee agreements is fraud or falsification of documents (fraud). Opportunities for certain parties to commit acts of fraud in the Bank Guarantee agreements are very likely to occur because Bank Guarantee agreements are generally made privately and without involving a notary. Acts of fraud in this Bank Guarantee agreement have not been regulated in national banking law, particularly in the Decree of the Board of Directors of Bank Indonesia Number 23/88/KEP/DIR which is the legal basis for Bank Guarantee agreements. Therefore, the solution to overcome fraud problems deserves attention because it is closely related to the legal protection of the parties to the Bank Guarantee agreement.

A bank guarantee is a guarantee given by a bank to a guarantor in which the bank states a written acknowledgment containing the bank's agreement to binding itself to the guarantee beneficiary to fulfill the guaranteed obligations within a certain period of time and under certain conditions. This is to ensure if in the future the guaranteed party does not fulfill its obligations to the guarantee beneficiary. For the provision of the bank guarantee, the bank will receive a fee and is guaranteed in the form of a certain amount of money which is called a provision. The amount of this provision is calculated on the basis of a certain percentage of the amount of the bank guarantee for a certain period.

To limit the risk in issuing bank guarantees, the bank requires a counter-guarantee which the value is determined by bank policy but is generally equivalent to the guarantee value stated in the bank guarantees. The counter-guarantee does not have to be in the form of cash but can be in the form of demand deposits, deposits, securities, or other things deemed safe by the bank. With the payment of a bank guarantee to the guarantee beneficiary, the amount paid becomes a guaranteed debt to the bank. The bank will immediately disburse the counter-guarantee that has been guaranteed to pay back the funds submitted by the bank to the guarantee beneficiary. If this step still leaves debt for the guaranteed party to the bank, then the guaranteed party has to pay off the debt within a certain period of time. If within a predetermined period of time, the guaranteed party does not pay off the debt, then the legal relationship between the guarantor (bank) and the guaranteed party (customer) changes to a creditor-debtor relationship in an ordinary credit agreement. Based on this condition, a deed of credit agreement is drawn up between the guaranteed party and the bank for a period of time determined by the bank.

Based on Article 1820 of the Civil Code, a guarantee agreement or *borgtocht* is called a Bank Guarantee agreement, which is an agreement in which a third party binds himself to fulfill the debtor's obligations, if the debtor is in default. In the underwriting agreement, there is an obligation to fulfill the achievements of

the insurer listed in the accessoir agreement.<sup>5</sup> A Bank guarantee agreement is also referred to as an accessoir agreement in accordance with the provisions of Article 1821 of the Civil Code, which agreement is linked to the main agreement so that the fulfillment of them is guaranteed by a guarantee agreement. As a follow-up agreement, the existence of a guarantee agreement depends on the preliminary agreement which is the basis for guarantees binding. This means that the guarantee agreement is intended to change the creditor's position to become a preferred creditor. Thus, the creditor will feel safe and obtain certainty over the repayment of the loan given to the debtor, because it is followed by the provision of a guarantee/collateral to the creditor. Based on this, the guarantee agreement is an additional agreement to the predecessor agreement or the main agreement, which is an agreement that strengthens the preliminary agreement.<sup>6</sup>

Based on the provisions of Article 1820 and Article 1821 of the Civil Code above, there are several characteristics of the guarantee agreement as follows: (1) The guarantee agreement is assesoir in nature; (2) The rights arising from a guarantee are contractual in nature, not material rights; (3) The position of creditors is concurrent; (4) Guarantor is the target after the debtor; and (5) Guarantees cannot be disputed. The legal consequences arising from a guarantee agreement between the guarantor and the guarantee beneficiary are regulated in Articles 1831 to Article 1838 of the Civil Code. Meanwhile, the legal consequences that arise between the guarantor and the guaranteed party are determined in Article 1839 to Article 1844 of the Civil Code. Provisions regarding agreements regulated in Book III of the Civil Code include provisions regarding guarantee agreements (debt guarantees) in Articles 1820 - Article 1850 of the Civil Code.

In general, the Civil Code has regulated provisions regarding Bank Guarantee agreements. However, the implementation of these provisions is not sufficient enough so the bank still requires other provisions. In this regard, Bank Indonesia has issued guidelines in the form of a Decree of the Board of Directors of Bank Indonesia Number: 23/88/KEP/DIR dated 18 March 1991 concerning Provision of Guarantees by Banks, which circulated through SEBI Number: 23/7/LJKU dated 18 March 1991 concerning Provision of Guarantees by the Bank. In the Decree of the Board of Directors of Bank Indonesia Number: 23/88/KEP/DIR dated 18 March 1991, the term bank guarantee is defined in 3 (three) categories that are quite broad, as stated in Article 1 number (3) as follows

Guarantee means:

- a. Guarantees in the form of bank drafts issued by the bank result in an obligation to pay the party receiving the guarantee if the guaranteed party is in default.
- b. Guarantees in the form of second and subsequent signings of securities such as avals and endorsements with recourse rights can result in payment obligations for the bank if the guaranteed party is in default.
- c. Other guarantees that occur due to conditional agreements that can result in financial obligations for the bank.

The absence of definitions and conceptual boundaries regarding Bank Guarantees has resulted in different interpretations between banks in translating the applicable legal regulations. As mentioned above, in the Bank Guarantee agreement two legal bases serve as references, namely the Civil Code of the Third Book Chapter XVII, specifically Articles 1820 to Article 1850 concerning Guarantees, and Bank Indonesia Regulations in the form of Decree of the Board of Directors of Bank Indonesia Number: 23/88/KEP/DIR dated 18 March 1991 which circulated through SEBI concerning Provision of Bank Guarantees by Banks.

In addition to the problem of legal uncertainty, the practice of Bank Guarantee agreements in Indonesia tends to open opportunities for injustice for the parties. This injustice occurs because the agreement clauses have usually been stipulated unilaterally by the bank. Today many credit agreements including bank guarantees are made without any agreement between the parties. The form and content of the agreement are usually prepared by the bank unilaterally in the form of standard terms that must be filled out in a printed form and then to be filled out and approved by the prospective debtor customer without leaving a gap to find an agreement. Even though the prospective debtor customer is given space to find an agreement, the decision to change the standard conditions remains with the head of the bank's headquarters and not the head of the bank's branch office so it

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5 Subekti, *Aneka Perjanjian* (Bandung: Citra Aditya Bakti, 1995). 187

6 Usman Rahmadi, *Hukum Keperdataan* (Jakarta: Sinar Grafika, 2008). 154

takes quite a long time for the negotiation process and of course the prospective customer feels disadvantaged because of the urgent need for funds. The services provided by the bank to prospective customers who have agreed with the standard conditions required by the bank tend to provide more services.<sup>7</sup>

The absence of room for negotiation in the credit agreement tends to create an imbalance of rights and obligations between the bank and the debtor customer. This imbalance is often detrimental to the debtor customer. In such circumstances, prospective debtor customer is faced with a “take it or leave it” condition without the freedom to make a choice. In other words, even if there is an agreement, then the agreement occurs because it is forced. Agreeing forcefully is a “*contradictio in terminis*”, because compulsion implies disagreement.<sup>8</sup>

This condition is called a standard agreement. According to Sutan Remy Sjandeini, a standard agreement is “an agreement in which almost all of the clauses have been standardized by the user and the other party has no opportunity to negotiate or ask for changes.” The clauses are standardized.<sup>9</sup> According to Syandeini, the balance of the contracting parties will only be realized if the parties are in an equally strong position. Leaving the contractual relationship of the parties solely on the mechanism of freedom of contract often results in injustice when one of the parties is in a weak position. Thus, the state should intervene to protect weak parties by determining certain clauses that must be contained or prohibited in a contract.<sup>10</sup>

A bank credit agreement is a contract between a bank and its customer regarding borrowing money from the bank to the customer concerned.<sup>11</sup> In banking practice, each bank has provided a blank or credit agreement form whose contents have been prepared in advance (standard form). The form of this credit agreement is submitted to the debtor for approval without giving any freedom at all to negotiate the terms offered. Such agreements are known as standard agreements or adhesion agreements. In the English legal literature for the term standardized agreement the term “standardized agreement” or “standardized contract” is used, while the Dutch legal literature uses the terms “*standard voorwaarden*”, and “*standaard contract*”. If legal language is standardized, it means that legal language is determined by size, and standard, so that it has a fixed meaning, which can become a general guideline.<sup>12</sup>

In writing this paper, the author made comparisons with several previous researchers. First, namely Asaruddin with the dissertation title protection and legal certainty of bank guarantee agreements. According to him, a bank guarantee in national banking law is a form of traditional agreement that is different from standby L/C in international banking law. A bank guarantee is a Dependent Guarantee which requires evidence of actual default as a reason for obtaining guarantee payments from the guarantor. On the other hand, standby L/C is an Independent Guarantee which does not require evidence of actual negligence as a reason for demanding payment of guarantees from the guarantor. But in national banking practices.

Second, namely Lia Laurensia with the title Application on Provision of Bank Guarantees at PT. Bank Ekonomi Raharja Semarang Branch. The implementation of the provision of Bank Guarantees at PT. Bank Ekonomi Raharja has complied with the regulations from Bank Indonesia regarding the provision of Bank Guarantees by Banks. PT. Bank Ekonomi Raharja Semarang Branch in providing Bank Guarantees as stated in the Bank Credit Guidelines, Systems, and Procedures Section (Chapter KR-IX) in accordance with SK. BI DIR No 23/72/KEP/DIR dated 28 February 1991 and SE BI No. 23 / 5 / UKU dated 28 February 1991. This can be seen from several policies implemented by the management at PT. Bank Ekonomi Raharja in implementing its Bank Guarantee includes among others the minimum requirements that must be fulfilled in every provision of a Bank Guarantee, prohibitions and restrictions that must be obeyed, counter-guarantee, and currency used. So far, there have been no problems at Bank Ekonomi Raharja Semarang Branch, and there have never been any

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7 Djoni S. Gazali dan Rachmadi Usman, *Hukum Perbankan* (Jakarta: Sinar Grafika, 2010). 87

8 Sutan Remy Sjandeini, *Kebebasan Berkontrak dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia* (Jakarta: PT. Pusaka Utama Graffiti, 2009). 192

9 Sjandeini. 193

10 Sjandeini. 193

11 Marulak Pardede, *Hukum Perjanjian Teknologi Informasi dan Kejahatan* (Jakarta: Sinar Papas Sinanti, 2021). 114

12 Johannes Ibrahim Kosasih, *Akses Perkreditan dan Ragam Fasilitas Kredit Dalam perjanjian Kredit bank* (Jakarta: Sinar Grafika, 2019). 117

problems related to obstacles in default, debtors experiencing bankruptcy, and relinquishment of all privileges by the bank.

Third, namely Lutfiah Intang Suliati with the title Bank guarantee as a transfer of obligations in the event of default by the customer. The bank guarantee plays a role when the customer commits a default by the bank, which is to collect, but if the customer avoids it, the second is given a warning letter. When associated with the problems written by the author, there are differences from the three titles mentioned above in the discussion where the author focuses on standard contracts/agreements regarding bank guarantees. In writing this paper, the issues raised are regarding the legal protection of the parties in a bank guarantee agreement.

## 2. METHOD

Normative law research uses case studies of normative law in the form of legal behavior products, for example reviewing draft laws. The main subject of study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior so that normative legal research focuses on inventorying positive law, legal principles, and doctrine, legal discoveries in cases in concreto, legal systematics, degree of synchronization of comparative law, and legal history. In the context of legal case study legal research, there are three types of legal case studies, as follows

- (a) non-judicial case study, a non-conflict legal case study that does not involve a court.
- (b) A judicial case study is a legal case study due to conflicts resolved through court decisions, also called jurisprudence study.
- (c) Direct case study, a legal case study that is still ongoing from the beginning to the end of the case process.<sup>13</sup>

This research is normative juridical research. As a normative juridical research, this research is based on an analysis of legal norms, both law in the sense of law as it is written in the books and statutes (in the literature and legislation).<sup>14</sup> The focus of the analysis is the legal norms contained in the literature and legislation. As a support, empirical legal research was also carried out on informants who were used as sources. Normative legal research on the normative side of the law as a normative practical science describes how the process of making a legal decision occurs, how related parties fill a legal vacuum, explain obscure norms, and narrow the meaning of a rule of law so that it can be applied to a concrete event that requires a legal settlement, even finding the rule of law.<sup>15</sup>

## 3. FINDINGS AND DISCUSSION

The increase in financial crises over the last quarter century has prompted an active research agenda not only into the causes of these crises but also on their impact on the real economy. One of the fundamental problems facing the financial sector today, both at the national and international levels, is the problem of adverse selection and moral hazard. As is well known, moral hazard is the risk that a party has not entered into a contract in good faith or has provided misleading information about its assets, liabilities, or credit capacity. There are several ways to make the implementation of a bank guarantee agreement in accordance with existing provisions. It must be considered that there must be efforts to reduce some violations, thereby reducing moral hazard, among others by limiting the scope of guarantees that the agreement can run according to the mutual agreement.<sup>16</sup> One of the factors that open up opportunities for the practice of adverse selection and moral hazard is "asymmetric information" between those who demand and those who provide financial services.

Laws of Letter of Credit (L/C) and Bank Guarantees (BG) developed through international trade customs. These two types of banking services are basically credit instruments in the form of documents (documentary credits) which are intended to minimize asymmetric information as mentioned above. In international financial

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13 Suteki, *Metodologi Penelitian Hukum Filsafat, Teori dan Praktik* (Jakarta: Rajawali Press, 2018). 27

14 Ronald Dworkin, *Legal Research, Daedalus* (Daelus: Spring, 1973). 89

15 Johny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, 3 ed. (Malang: Bayumedia Publishing, 2007). 59

16 Zulkarnain Sitompul, "Perlindungan Dana Nasabah Bank Suatu Gagasan Tentang Pendirian Lembaga Penjamin Simpanan Di Indonesia" (Universitas Indonesia, 2002). 325

transactions, buyers and sellers can basically choose from a variety of different payment methods. However, among all available methods, Mautner points out the significant use of documentary credits, which guarantee payment to the seller upon delivery of the agreed goods.

Mann argues that the Letter of Credit serves as a verification body for this asymmetric information for three reasons. First, because of the asymmetry between the parties, sellers prefer to use documentary credits, because the bank will verify information about the buyer. Second, the buyer cannot stop paying the seller for any reason due to the bank's unconditional obligations. Third, the state benefits from the use of Letters of Credit because it can keep the national currency under control, and if necessary, the state can also prevent money laundering.<sup>17</sup>

Thus, credit in the form of documents is very important for international trade. It is even the lifeblood of international trade. Therefore, the court prefers to withdraw from the process. Only in exceptional cases, the court will interfere with the machine of obligations that cannot be canceled by the bank. However, the principle of autonomy in L/C can sometimes lead to unfair results because the bank may not enter into the underlying contract even when the seller is acting in bad faith. The ease of obtaining payment can motivate sellers to create fake documents or principal contracts. So, unwanted results may occur, where the system actually has the opportunity to open fraudulent practices.

Fraud is an act that is carried out intentionally and carried out for personal or other people's purposes, and this intentional action has caused harm to certain parties or certain institutions. The word fraud itself can be interpreted with various meanings contained in it, namely fraud, lies, deception, crime, embezzlement of goods, data manipulation, and information falsification.<sup>18</sup> Fraud is manifested in the form of behavior or actions that violate the rules.

One of the legal problems that often occur in the practice of documentary credit agreements is a fraud, especially in the type of Independent Guarantee/Standby LC. Even though the Standby L/C is a form of agreement that is *accessoir* in nature, the request for payment of the Standby L/C does not require actual proof of default made by the guarantor, as is the case with Bank Guarantees. In principle, the Standby L/C is an independent guarantee and also a documentary guarantee, and an irrevocable guarantee. The principle of independence and the principle of being attached to the standby L/C document is a revocable guarantee instrument.

The principle stated in the document is the implementation of the Standby L/C based on the submission of the documents required in the Standby L/C. This causes the bank to only deal with documents. Actually, apart from being made for the purpose of smooth implementation of international trade, the principle of independence and the principle of attachment to documents can also be used by parties with bad intentions for the purpose of committing fraud by making changes to the use of the L/C.

All letters, maps, symbols, and numbers as well as pictures that can be read are documents in the Standby L/C so that fraud in the implementation of the underlying contract or submission of documents in the Standby L/C is carried out using fictitious documents that contain the meaning of fictitious documents (blank, absent) which is written, contained in the document which not exist that widely used to fulfill requirements or conditions so that if the requirements or conditions are fulfilled it can give rise to a right to the object even though the right arises later.<sup>19</sup>

Fraud in a contractual relationship between the issuing bank and the beneficiary is fraud in Standby L/C transactions where the fraud is generally carried out by the beneficiary. Fraud can also be committed by third parties, but generally based on the knowledge or consent of the beneficiary. In the implementation of the underlying contract, the fraud that occurs when the perpetrator is not a beneficiary is clearly not fraud in a Standby L/C transaction so it does not become a basis for refusing Standby L/C payments.

. The practice of document forgery in Bank Guarantee and Standby L/C agreements as described above is an important legal issue that must be of concern to the government. Basically, fraud has a negative impact,

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17 Ronald J. Mann, "The of Letters of Credit in Payment Transaction," *Michigan Law Review* 2, no. 3 (2008): 98.

18 Fahmi Irham, *Analisis Kredit dan Fraud: Pendekatan Kualitatif dan Kuantitatif* (Bandung: Alumni, 2008). 79

19 Tubagus Irman, *Anatomi Kejahatan Perbankan* (Bandung: MQS Publishing, 2006). 45

both internal and external on the bank. This can also result in a decrease in customer confidence in banking institutions.

In accordance with current law and practice, the fraud rule can be summarized as a rule which confirms that even though the documents/requests submitted to the guarantor are in strict compliance with the terms and conditions of the Standby L/C, payment on the Standby L/C request can be stopped if fraud is proven to have been committed in the transaction before the payment was made. This is done on the condition that the applicant or party demanding payment is not a protected class. Fraud is the only exception that authorizes the court to intervene in Standby L/C transactions.

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Standby L/C is fraud committed by the beneficiary against the issuing bank or the designated bank (nominated bank) by the issuing bank to make payment of Standby L/C claims to the beneficiary. When there is fraud in the implementation of the Standby L/C, the principle of independence and attachment to documents is null and void by law. This means that the court has the right to determine that the Standby L/C payment must be refused on the basis of fraud. In this case, the application of the principle of independence and attachment to documents was ignored by the court.

Thus, the fraud must be proven with evidence. According to Hernoko, if the evidence submitted by the applicant does not convince the issuing bank, then the issuing bank or applicant can ask the court to obtain an injunction. In this case, an injunction is a court decision that prohibits the issuing bank from paying the beneficiary and debiting the applicant's account. The injunction is the basis for the issuing bank to refuse payment to the beneficiary. Regarding breach of contract, the injunction is a remedy decided by the court as an alternative for specific performance. Injunctions are divided into two types, namely mandatory injunctions, if the decision orders a certain action to be taken, and prohibited injunctions if the decision prohibits a certain action from being carried out<sup>21</sup>

This crime can be classified as an act of fraud which is an act of dishonesty or abuse of position or a deviant act committed by the parties on purpose, guile, deception, fraud, cunning, omission, or fraud. These actions result in losses for the organization or other people which ultimately benefit the perpetrators and/or other people in carrying out banking activities.

The designation of general courts as the appropriate forum for resolving disputes related to violations of the fundamental principles of justice is based on the notion of "public order" in Private International Law, which basically starts from the assumption that a court has the authority to apply its own law in cases brought against him.<sup>22</sup>

Based on the description above, in order to provide legal protection from fraudulent and deceptive practices, Bank Guarantee and Standby L/C regulations that have an international perspective in several aspects need to be adopted as a reference to regulate Bank Guarantee and Standby L/C practices in Indonesia. These various international legal instruments are expected to complement and strengthen the national rules on Fraud in SEBI No.13/28/DPNP concerning the Implementation of Anti-Fraud Strategies for Commercial Banks which are still general in nature. However, efforts to strengthen legal protection for parties from fraudulent and deceptive practices in banking transactions are not enough to reach that stage.

The efforts for law reform and law enforcement above are basically in line with the idea that the law must be able to provide protection to the public both in a preventive/passive and repressive/active way. Therefore,

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20 Bona Purba, *Fraud dan Korupsi, Pencegahan, Pendeteksian, dan Pemberantasannya* (Jakarta: Lestari Kiranatama, 2015).

21 Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial* (Yogyakarta: Laksbang Mediatama, 2008). 16

22 Hardjowahono, *Dasar-Dasar Hukum Perdata Internasional* (Bandung: Citra Aditya Bakti, 2006). 21

in an effort to strengthen legal protection for parties to bank guarantee agreements and banking transactions in general, steps that can be taken by the government include:

First, the government needs to reform Bank Guarantee and Anti-Fraud laws based on the hierarchical principle of laws and regulations. This step can be taken in several scenarios as follows: (1) SEBI No. 13/28/DPNP concerning the Application of Anti-Fraud Strategy for Commercial Banks, it is best if efforts are made to upgrade it to become a Bank Indonesia Regulation or a Financial Services Authority Regulation; (2) Decree of the Board of Directors of Bank Indonesia No. 23/88Kep./Dir dated 18 March 1991 concerning Provisions of Guarantees by Banks should be revised and upgraded to PBI/POJK, which contains specific rules on Anti-Fraud and accommodates various international legal instruments relevant to fraud rules as described above ; (3) The government needs to revise the Banking Law and include special provisions regarding Bank Guarantees and Anti-Fraud so that regulations related to Bank Guarantees and Anti-Fraud in Indonesia have more binding force; (3) The government needs to enact an Anti-Fraud Law as an umbrella act that regulates acts of fraud in various economic and financial fields in general.

Second, in an effort to anticipate the practice of fraudulent, deception, and falsification of documents in the Bank Guarantee agreement, the Bank Guarantee agreement needs to involve a notary so that the Bank Guarantee documents reflecting the agreement of the parties can be guaranteed for their authenticity. "Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws." By involving a notary, the authenticity of the Bank Guarantee document can be guaranteed because it is in the form of an authentic deed. According to Article 1870 and Article 1871 of the Civil Code, an authentic deed is a perfect means of proof for both parties, and the heirs, as well as those who receive their rights from the deed, provide the parties with absolute proof.

Third, strengthening and optimizing the performance of the Financial Services Authority (OJK) as an independent body whose function is to organize an integrated regulatory and supervisory system for all activities in the financial services sector. OJK must make regulations with a standard that contains stability and predictability for the regulations for all activities in the financial services sector. In general, OJK regulations or rules must cover the following objectives: (1) Protecting investors to build trust in the market; (2) Ensuring that the market formed is a fair, efficient, and transparent market; (3) Reducing systemic risk; (4) Protecting financial institutions from abuse or malpractice from consumers; (5) Maintaining consumer confidence in the financial system. Such regulation must be accompanied by a strong supervisory system because regulation will not be effective in establishing an efficient and stable financial system regime without consistent and comprehensive supervision.

#### **4. CONCLUSION**

The practice of fraudulent, deception, and falsification (fraud) is one of the legal problems faced by the parties in the Bank Guarantee and Standby L/C agreements. The fraud has been proven to have a detrimental effect on both internal and external banking parties. The higher the intensity of fraud, the higher the level of decline in customer trust in banking institutions. Therefore, the prevention of acts of fraud is a central component in various international legal instruments and is regulated in a special provision called the Fraud Rule. This rule is intended as a guideline for the parties and the court to examine the facts behind the document as well as evidence to cancel the guarantee payment if one party is proven to have committed fraud in the Bank Guarantee or Standby L/C agreement. In order to provide legal protection for parties from acts of fraud, various international legal instruments that contain provisions regarding Fraud Rules need to be adopted by the government to complement the national regulations concerning Anti-Fraud in SEBI concerning Implementation of Anti-Fraud Strategies for Commercial Banks which are still general in nature. This is in line with the concept of preventive legal protection, which is intended to anticipate the occurrence of a dispute, fraud, or deception in an agreement. The bank issuing the guarantee acts as a guarantor in the implementation of the construction of flats, in the event that the contractor commits a default. The existence of a bank guarantee can normatively guarantee reimbursement of funds if the contractor is in default. This is what encourages contractors who have good intentions to carry out their achievements in accordance with what was agreed upon.

## REFERENCES

- Abidin, Zainal. "Perspektif Hak Asasi Manusia Terhadap Perawat Tenaga Kesehatan Sukarela Yang Bekerja Di Instansi Pemerintah." Tesis, Unika Soegijapranata, 2019.
- Dworkin, Ronald. *Legal Research, Daedalus*. Daelus: Spring, 1973.
- Hardjowahono. *Dasar-Dasar Hukum Perdata Internasional*. Bandung: Citra Aditya Bakti, 2006.
- Henry Donald Lbn. Toruan. "Implikasi Hukum Pemberian Kredit Bank Menjadi Tindak Pidana Korupsi." *Penelitian Hukum De Jure* 2, no. 3 (2016): 357.
- Hernoko, Agus Yudha. *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*. Yogyakarta: Laksbang Mediatama, 2008.
- Ibrahim, Johny. *Teori & Metodologi Penelitian Hukum Normatif*. 3 ed. Malang: Bayumedia Publishing, 2007.
- Irham, Fahmi. *Analisis Kredit dan Fraud: Pendekatan Kualitatif dan Kuantitatif*. Bandung: Alumni, 2008.
- Irman, Tubagus. *Anatomi Kejahatan Perbankan*. Bandung: MQS Publishing, 2006.
- Kosasih, Johannes Ibrahim. *Akses Perkreditan dan Ragam Fasilitas Kredit Dalam perjanjian Kredit bank*. Jakarta: Sinar Grafika, 2019.
- Mann, Ronald J. "The of Letters of Credit in Payment Transaction." *Michigan Law Review* 2, no. 3 (2008): 98.
- Marulak Pardede. *Hukum Perjanjian Teknologi Informasi dan Kejahatan*. Jakarta: Sinar Papas Sinanti, 2021.
- Pranacitra, Resi. *Seri Hukum Perbankan, Rahasia Bank, As a Tool of Economic Engineering*. Yogyakarta: Lautan Pustaka, 2019.
- Purba, Bona. *Fraud dan Korupsi, Pencegahan, Pendeteksian, dan Pemberantasannya*. Jakarta: Lestari Kiranatama, 2015.
- Rahmadi, Usman. *Hukum Keperdataan*. Jakarta: Sinar Grafika, 2008.
- Sitompul, Zulkarnain. "Perlindungan Dana Nasabah Bank Suatu Gagasan Tentang Pendirian Lembaga Penjamin Simpanan Di Indonesia." Universitas Indonesia, 2002.
- Sjandeini, Sutan Remy. *Kebebasan Berkontrak dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia*. Jakarta: PT. Pusaka Utama Graffiti, 2009.
- Subekti. *Aneka Perjanjian*. Bandung: Citra Aditya Bakti, 1995.
- Suteki. *Metodologi Penelitian Hukum Filsafat, Teori dan Praktik*. Jakarta: Rajawali Press, 2018.
- Tobing, Rudyanti Dorotea. *Aspek-Aspek Hukum Bisnis, Pengertian, Asas, Teori dan Praktik*. Surabaya: laksbang Justitia, 2015.
- Trisadini P. Usanti, Abd. Shomad. *Hukum Perbankan*. Jakarta: Kencana, 2017.
- Usman, Djoni S. Gazali dan Rachmadi. *Hukum Perbankan*. Jakarta: Sinar Grafika, 2010.
- Kompas. "Ratifikasi Konvensi Untuk Perlindungan HAM." February 10, 2021.
- Michael, Donny. *Menggapai Harapan Penyandang Disabilitas Menjadi Calon Pegawai Negeri Sipil*. Jakarta: Balitbangkumham Press, 2020.
- Pardosi, Rodes Ober Adi Guna, and Yuliana Primawardani. "Perlindungan Hak Pengguna Layanan Pinjaman Online Dalam Perspektif Hak Asasi Manusia." *Jurnal HAM* 11, no. 3 (2020): 353–68.
- Penulis. "Data Lokasi Kasus/Provinsi." Badan Penelitian dan Pengembangan Hukum dan Hak Asasi Manusia, 2018. <http://sipkumham.balitbangham.go.id/petalitkumham/grafik>.
- Kompas. "Penyelenggara Pemilu 2024: Antara Perpanjangan Dan Pemendekan," November 30, 2022.
- Peraturan Pemerintah Nomor 48 Tahun 2021 tentang Perubahan Ketiga atas Peraturan Pemerintah Nomor 31 Tahun 2013 tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian, § Lembaran Negara Republik Indonesia Tahun 2021 Nomor 58 (2021).

Peraturan Presiden Nomor 62 Tahun 2022 tentang Otorita Ibu Kota Nusantara, § Lembaran Negara Republik Indonesia Tahun 2022 Nomor 102 (2022).

Undang-Undang Dasar Republik Indonesia (1945).

Undang-Undang Republik Indonesia No. 39 Tahun 1999 tentang Hak Asasi Manusia, § Lembaran Negara Republik Indonesia Tahun 1999 Nomor 165 (1999).

Universal Declaration of Human Rights (1948).