



## Juridical Review On Micro, Small, And Medium Business Loans (SMES) With Fiduciary Guarantee In Bank BPD Aceh

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### ABSTRACT

The background of writing this thesis is an interest in the issue of Micro, Small and Medium Enterprise Credit. In writing this thesis, the problem is how to implement micro, small and medium business credit at Bank BPD Aceh, how to provide fiduciary guarantees in micro, small and medium business loans at Bank BPD Aceh, and how to resolve disputes over micro, small and medium business loans. medium that is associated with fiduciary guarantees. based on the title of this thesis, the research is located at Bank BPD Aceh The research method is carried out by data collection, and data collection is carried out by seeking information based on the documents and archives of Bank BPD Aceh related to research, where this aims to find out Micro, Small and Medium Business Credit, namely how to explain the implementation of business credit micro, small and medium enterprises, provision of fiduciary guarantees in micro, small and medium business loans, and dispute resolution of micro, small and medium enterprises credit related to fiduciary guarantees. The results of the study indicate that the settlement of disputes related to fiduciary guarantees can be carried out peacefully, and can be carried out on debtors who have good intentions to settle their credits. Problem solving is carried out by examining in advance the extent to which the goods are tied up through a guarantee institution, so that Bank BPD Aceh can find out its position as a concurrent creditor and the problems it will face in terms of the collateral that has been tied up with other debts it receives as credit collateral. Legal protection in Micro, Small and Medium Business Loans at Bank BPD Aceh with the implementation of the general credit policy (KUP) of Bank BPD Aceh which is the implementation of the Decree of the Board of Directors of Bank Indonesia No. 27/162/KEP/DIR dated March 31, 1995, concerning the obligation to formulate and implement bank credit policies for commercial banks. It was concluded that the micro, small and medium business in the PPK-BM (Guidelines for the Implementation of Small Business Business Credit) is one of the business segments in Bank BPD Aceh which is a banking system implemented by Bank BPD Aceh in carrying out its function as a financial intermediary. for financing micro, small and medium enterprises.

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### 1. Introduction

The more advanced the national economic growth at the community level, it is necessary to pay more attention to micro, small and medium enterprises to improve the standard of living of the community, both materially and spiritually. In this regard, the Concept Line of the national political framework based on the 2005 National Development Planning System (SPPN) which

was prepared in the same systematic way as the 1998 GBHN in its mandate states that the capabilities and roles of Small Businesses and Cooperatives continue to be developed by providing facilities for making investments, obtaining capital and other sources of financing.

To realize the mandate stated in the 2005 SPPN. The government has implemented various policies in an effort to encourage and assist micro, small and medium enterprises to become strong and independent businesses, namely a business that has high competitiveness and has the ability to solve problems that arise. faced by relying on their own beliefs and abilities.

Banks as trust institutions have aims and objectives, as well as the basic and main characteristics of a Banking Institution. In Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 (hereinafter referred to as the Banking Law) Article 1 number 2 states: "Bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public."

From the article, it can be seen that the function of the Bank in the banking legal system in Indonesia is as an intermediary for people who have surplus funds and people who lack funds. The collection of public funds carried out by banks based on this article is called "savings", while the distribution back from the bank to the public is called "credit". The definition of credit is contained in Article 1 number 12 of the Banking Law, which reads: "Credit is the provision of money or equivalent claims, based on an agreement or loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with the amount of interest, compensation or profit sharing."

The government has started the guidance and development of micro, small and medium enterprises since the Long-Term Development Phase I (PJPT I). In the field of capital, the Government has provided significant assistance, especially in the distribution of various types of loans specifically given to small entrepreneurs throughout Indonesia. In order to support economic development, part of the credit provided by each Bank is provided for Micro, Small and Medium Enterprises. This is in accordance with the mandate of the National Development Planning System which states that fostering Small Businesses and cooperatives is an important aspect that needs to be considered in every policy setting.

In improving the program towards ensuring the provision of funds for Micro, Small and Medium Enterprises and productive cooperative activities, it is necessary to be supported by all Banks through the provision of credits of 20% of the total loan disbursement of each Bank financed from the Bank's funds. Grants to small community businesses or more commonly referred to as Micro, Small and Medium Enterprises (MSMEs) Loans will be taken into account in the assessment of the soundness level of the Bank concerned, if implemented effectively.

The definition of Small Business is regulated in various provisions, including Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises are productive economic businesses that stand alone, which are carried out by individuals or business entities that are not subsidiaries or not branches of companies that owned, controlled, or become part either directly or indirectly of a Medium or Large Business that meets the criteria of a Small Business as referred to in this Law. Small Business Loans are loans given to businesses that meet the criteria for small businesses.

Credit provided by the Bank contains risks, so that in its implementation the Bank must pay attention to sound credit principles, including credit agreements made with a written agreement. To reduce the risk of loss in granting credit, credit guarantees are needed in the sense of confidence in the ability and ability of the debtor to pay off the debt in accordance with the agreement.

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Meanwhile, according to Gatot Supramono, a guarantee is an agreement between a creditor and a debtor, where the debtor agrees a certain amount of his assets to pay off the debt according to the applicable provisions, if within the specified period there is a delay in the payment of the debtor's debt.<sup>3</sup>The community's need for credit guaranteed by movable objects, but still needs these objects for daily use and utilized in companies that have developed is a fiduciary credit guarantee which is written in Indonesian as fiduciary. Fiduciary is the transfer of ownership rights to an object on the basis of trust, while Fiduciary guarantee is a guarantee right to movable objects, both tangible and intangible.

Fiduciary guarantees have been used in Indonesia since the Dutch colonial era. The Fiduciary Guarantee incident was decided for the first time by the Supreme Court in the *bataafsche Petroleum Maatschappy v. Pedro Clignett* dated August 18, 1932 with the fiduciary object being a movable object (a car). Prior to the issuance of Law Number 42 of 1999 concerning Fiduciary Security as a guarantee institution, it was recognized based on jurisprudence.<sup>6</sup>

## 2. Method

The normative law research method is descriptive in nature. Normative legal research is legal research that manages and uses secondary data, but in legal research methods, the descriptive nature of the research is sometimes carried out by conducting field surveys to obtain information that can support existing theories.

The method used to analyze the data is qualitative analysis, ie the data obtained are then arranged systematically and then analyzed qualitatively to achieve clarity of the problems to be discussed and the results are poured in the form of a thesis. Qualitative methods are carried out in order to obtain data that is descriptive in nature, namely data that will be researched and studied as a whole.

## 3. Analysis and Results

### 3.1 Provision of Fiduciary Guarantees in Micro, Small and Medium Business Loans at Bank BPD Aceh

To provide legal certainty, Article 11 of the Fiduciary Guarantee Law requires objects that are burdened with fiduciary guarantees. This obligation even remains in effect even though the objects burdened with Fiduciary Guarantees are outside the territory of the Republic of Indonesia.

The procedure for binding fiduciary guarantees at Bank BPD Aceh contains:<sup>73</sup> :

- a. The identity of the Fiduciary Giver and Recipient;
- b. The date, number of the Fiduciary Guarantee deed, the name and domicile of the notary who made the Fiduciary Guarantee deed;
- c. Fiduciary guaranteed principal agreement data;
- d. Description of the object that is the object of the Fiduciary Guarantee;
- e. Guarantee value; and
- f. Value of the object that is the object of the Fiduciary Guarantee.

The binding of fiduciary guarantees in Micro, Small and Medium Business Credit is required by a Notary deed by Bank BPD Aceh, an agreement in accordance with Article 1320 of the Civil Code. In general, there are three groups of factors that cause troubled bad credit debtors, namely:

- a. Macroeconomic conditions
- b. Conditions and allocation of sources of funds.
- c. Banking internal conditions

Macroeconomic conditions are economic growth, price stability and macroeconomic stability, as well as the level of distortion in the economy. High economic growth also reflects a high rate of return on investment. In general terms, since the deregulation, the rate of return on investment in Indonesia is quite high, around 22-29%. This shows that with the current interest rate, investment in Indonesia is very profitable, so there is no reason for companies to have difficulty paying back their debts.

The use of credit that deviates from the agreed purpose will result in credit jams. Credit for working capital if used by the debtor for investment is an example of irregularities in the use of credit. Late interest payments and/or delays in principal installments are indicators that credit is leading to bad debts. If the credit becomes bad at all, then a criterion can be set to determine if a credit is bad.

In order to secure credit at Bank BPD Aceh, follow-up and credit development are very important. Customers need to be nurtured so that their business can progress and develop so that they will be able to fulfill their obligations properly. This means paving the way for achieving bank profitability and credit security.

If bad loans arise, Bank BPD Aceh as the Government bank will hand it over to the Branch Office for follow-up to the Committee for State Receivables and Auctions (PUPPLN).

### **3.2 Settlement of Micro, Small, and Medium Business Credit Disputes at Bank BPD Aceh**

Objects that can be encumbered with fiduciary guarantees at Bank BPD Aceh are land certificates, 2 or more wheeled motorized vehicles (cars, trucks, etc.) But the fiduciary guarantee for Bank BPD Aceh uses a certificate of ownership of assets.

Fiduciary guarantee format.

- a. The identity of the fiduciary giver and fiduciary recipient.
- b. Date, Fiduciary Guarantee deed number, name,
- c. The domicile of the notary who made the Fiduciary Guarantee deed.
- d. Fiduciary guaranteed principal agreement data.
- e. Description of objects that are objects of Fiduciary Guarantee The use of fiduciary guarantee institutions in bank practice is increasing day by day.

Increasingly popular in the hearts of debtor customers and is a coveted requirement as debt security both in the Bank BPD Aceh credit agreement and in other financing agreements. Fiduciary guarantees are not regulated in the Civil Code, but are known in Indonesia through the recognition of jurisprudence and in its development it is confirmed in positive law, the regulation of which is still partial.

Since the issuance of Law Number 42 of 1999, the existence of fiduciary guarantees in a formal juridical manner has become a legal subsystem of material security. The law clearly distinguishes between fiduciary and fiduciary guarantees.

Fiduciary is the transfer of ownership rights to an object on the basis of trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object, while fiduciary guarantee is a guarantee right over movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be moved. encumbered with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage which remains in the control of the Fiduciary Giver, as collateral for the repayment of certain debts, which gives priority to the Fiduciary Recipient over other creditors.

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In the law, it can be seen that there is a development of the object of fiduciary security, namely not only movable objects but also immovable objects in the form of buildings that cannot be encumbered with mortgage rights.

If a building or house is to be used as collateral for a loan to a bank regardless of the land, the guarantee institution installed is a fiduciary guarantee. An object of credit guarantee often has a situation that has the potential to be a dispute, which in order to resolve it, Bank BPD Aceh must refer to the applicable regulations. In general, disputes that can be attached to a credit guarantee at Bank BPD Aceh can be in the form of the following.

- a. There is the imposition of other debts on the object of credit guarantees.

The object of the credit guarantee submitted by the credit applicant is often bound as collateral for other debts. In this case, the object of the credit guarantee has the potential for a dispute to arise, so that in this case Bank BPD Aceh needs to examine, among other things, the extent to which the goods have or are not bound through an applicable guarantee institution. If it has been bound through a guarantee institution, then Bank BPD Aceh will further examine the validity and perfection of the binding so that the position of the bank as the recipient of the guarantee will be known. next legally. Meanwhile, if it is not bound through a guarantee institution, it is necessary to examine its relation to the provisions of the credit agreement or other documents. In connection with the clarity regarding the binding of the goods as collateral for the debt of another party, it will be possible to identify the problem in the event that the goods in question are then approved as credit guarantees by the bank. Bank BPD Aceh will be able to find out its position as a concurrent creditor and the problems it faces in terms of guarantees that have been tied to other debts it receives as credit guarantees.

- b. There is a dispute over the object of credit guarantee

The object of credit guarantees is related to a dispute that has a legal aspect which can cause difficulties for the bank in the future in disbursing when the debtor defaults. Disputes related to an object of credit guarantee that are often found, for example in the form of inheritance disputes that have not been divided, disputes over the distribution of assets between husband and wife who are divorced (separated), disputes in the context of buying and selling goods that will be used as objects for credit guarantees because they have not fully repaid so that it is difficult to resolve legally, debt disputes related to the object of credit guarantees as mentioned above have legal aspects and have potential risks for banks. In this regard, Bank BPD Aceh needs to conduct an assessment among other things from a legal perspective.

### **3.3 Legal Protection for Aceh's BPD Bank in Providing Micro, Small, and Medium Business Credit**

The basic legal basis for banking activities in Indonesia today is the Indonesian Banking Act 1992/1998, the Act regulates the institutions and operations of commercial banks in Indonesia, namely Banks whose function is to serve the needs of public banking services.

The term commercial bank is not contained in the Indonesian Banking Act 1992/1998, and the Act in its provisions governing the provisions on types of banks only stipulates the existence of Commercial Banks and Rural Banks. The two types of banks carry out business activities that are commercial in nature, seeking profit, among others, in conducting business activities in the form of providing credit. The provision of bank credit in Indonesia is subject to the 1992/1998 Indonesian banking regulations and implementing regulations, including those issued by Bank Indonesia and the internal regulations of each Bank. The granting of credit is a legitimate business for Commercial Banks and Rural Banks. The two types of banks are business entities that channel funds to the public in the form of lending in addition to other financial institutions. Article 1 number 2 of the Indonesian Banking Law 1992/1998 stipulates the definition of a bank as follows. "Bank is a business entity that collects funds from the public in

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the form of savings and its distribution to the public in the form of credit and or other forms in order to improve the standard of living of the people at large."

### **3.4 Resolution of Credit Problems for Micro, Small, and Medium Enterprises in the Case of Payment Congestion at Bank BPD Aceh with Fiduciary Guarantees**

Resolving Micro, Small and Medium Business Credit problems at Bank BPD Aceh is prioritized in the form of kinship because the legal route is more complicated, but if the creditor's credit is above 100 million Rupiah, the settlement is through law. This is done if the creditor does not show good ethics in solving the problem.

Settlement of Debtor Negligence Regarding Rights and Obligations in Micro, Small and Medium Business Credit The Bank as a creditor has the right unilaterally and at any time to make changes to the maximum amount of credit, the period and method of repayment  
The settlement of non-performing loans on Micro, Small and Medium Enterprise loans at Bank BPD Aceh with Fiduciary Guarantees is almost all resolved amicably this is due to the good faith of the Debtor.

Settlement of non-performing loans peacefully is carried out on debtors who still have good intentions (cooperative) to settle their obligations.

**a. Types of amicable credit settlement**

The types of amicable credit settlements include : Reduction of interest arrears and or fines  
The granting of interest relief and or a maximum fine of interest and or fines that have not been paid by the person concerned.

- 1) Sale of part or all of the collateral under the hand by the debtor or the owner of the collateral for installments or settlement of debtor obligations.
- 2) Taking debtor assets by for installments or settlement of debtor obligations.
- 3) Reduction of loan principal arrears Settlement of credit by reducing arrears of new credit principal can be done after obtaining approval from the General Meeting of Shareholders (GMS).

**b. Terms and conditions of amicable credit settlement**

Solution credit peace could done if fulfil terms/conditions as follows :

- 1) The debtor has good intentions (cooperative) to settle his credit.
- 2) Loans classified as KL quality, doubtful and bad (intra-compatible and extra-compatible) with a special note for granting interest relief and/or fines can only be granted to debtors with collectibility D and M.
- 3) Does not meet the requirements or is no longer possible for credit restructuring.
- 4) The settlement of the credit taken is better than the alternative settlement through the DJPLN / Regional Office of BUPLN / KP3N.

**c. Settlement through legal channels**

If the restructuring/amicable settlement efforts have been maximally pursued and have not yielded results or the debtor does not show good faith (on will) in completing the Kupedes, then the settlement can be pursued through legal channels. Settlement through legal channels must be based on the belief that the position of Bank BPD Aceh from a juridical perspective is strong and the burden of litigation costs is light.

**d. Completed credit collectibility**

The quality of credit after a settlement decision is made in installments cannot be changed for the better than the original collectibility.

**e. Analysis of amicable credit settlement**

Loans to be settled must be analyzed and stated in the memorandum of analysis of credit settlement. For consumer credit, you can use the same form with the necessary settlement.

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Credit settlement analysis includes, among others:

- 1) Debtor data
  - 2) The original purpose of credit users
  - 3) Actual use of credit
  - 4) The cause of credit is a problem
  - 5) Debtor Integrity
  - 6) Alternative credit settlement
  - 7) Calculation of financial implications
  - 8) Positive and negative aspects
- f. Settlement through legal channels  
Credit settlements through legal channels or assistance from third parties include:
- 1) Credit settlement through the district court  
Loan settlement through the district court can be done by taking the following alternatives:
    - 2) Summons/warnings
    - 3) Parate Executie
    - 4) lawsuit
- g. Credit Under Special Supervision (KDPK)  
Based on the level of risk and the division of restructuring or settlement tasks, loans under special supervision (KDPK) are divided into loans with special mention and non-performing loans (substandard, doubtful and bad collectibility).<sup>86</sup>.
- 1) Credit In Special Mention
  - 2) Special Mention Loans are performing loans with special mentions.
  - 3) The handling of restructuring and or settlement of credit with collectability in Special Mention is carried out by the Line Credit Officer/RM Division.
- h. Follow-up  
Based on data on extracombatel loans (loans that are in arrears for more than 270 days) and Bank BPD Aceh, also known as the black list, Kanca makes a list of debtors in order of priority to follow up efforts to resolve them by referring to on convenience credit withdrawal/refund.

#### 4. Conclusion

The implementation of Micro, Small and Medium Business Loans at Bank BPD Aceh is initiated by filling out the credit application form, namely to facilitate the Bank in obtaining the required data, then the Bank uses a credit application form that must be filled in by the customer, after which Bank BPD Aceh holds examination of the completeness and file of the application, the application is declared complete if it has met the requirements specified for the submission of the application, according to the type of credit. Then after the Bank has checked the completeness and application file, the bank also conducts an investigation and credit analysis.

Bank BPD Aceh also continues to take various policy steps and implements in providing Micro, Small and Medium Business Loans associated with Fiduciary Guarantees, but still consistently refers to the applicable laws and regulations, especially those relating to the application of prudential principles, providing capital, provision of funds, and provision of revolving fund assistance.

Settlement in the event of a Dispute in Micro, Small and Medium Business Loans associated with a fiduciary guarantee is a peaceful settlement, namely actions taken so that within a certain period of time the problem can be completely or partially resolved in accordance with the applicable provisions, so that in this case the Bank BPD Aceh needs to examine, among other things, the extent to which the goods have or are not bound through an applicable guarantee institution. If it has been bound through a guarantee institution, then Bank BPD Aceh will further examine the validity and perfection of the binding so that the position of the

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bank as the recipient of the guarantee will be known. next legally. Meanwhile, if it is not tied through a guarantee institution, it is necessary to examine the relationship with the provisions in the credit agreement or other documents. In connection with the clarity regarding the binding of the goods as collateral for the debt of another party, it will be possible to know the problem in the event that the goods in question are then approved as credit guarantees.

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