

Check and Bilyet Giro as Debt Guarantee.

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Abstract: This check or bilyetgiro is used as collateral which aims to make it easier when there is a default. If a check or bilyetgiro is used as collateral for debt, then for the unpaid debt, the creditor as the holder of the check or bilyetgiro as collateral can make a withdrawal to the bank for the check or bilyetgiro that is used as the object of the guarantee. The formulation of the problem in this study is what is the legal position of checks and bilyetgiro as debt guarantees and how is legal responsibility in terms of using checks and bilyetgiro as debt guarantees. The result of this research is that the position of checks and bilyetgiro is very difficult to be categorized as collateral in the legal guarantee system regulated in the Civil Code, but in the practice of business transactions in the community, these checks and bilyetgiro are used as collateral based on business developments in the community. Against legal responsibility in a criminal context can be held accountable, with the consideration that in the use of bilyetgiro, it is different from the use of checks. By its nature, a bilyetgiro is a “promise to pay”, so when the drawer provides a bilyetgiro to the recipient, in other words, the withdrawer gives his promise to pay the debt within the effective period in accordance with the provisions governing bilyetgiro, which is 70 (seventy) days. When the withdrawer is unable to make a payment, the promise to pay must be settled in a civil manner. The civil settlement is submitted to the local District Court where the location of the defendant (drawer) is based on a breach of promise (wanprestasi).

Keywords: Check, Bilyet Giro, Debt.

1. Background

Checks and bilyetgiro (BG) are always used as a means of payment in conducting business transactions. According to Article 178 number 2 of the Commercial Code (hereinafter referred to as the KUHD), essentially it is stated that a check is an order to pay someone appointed. Meanwhile, the bilyetgiro is regulated in the Decree of the Board of Directors of Bank Indonesia Number 28/32/Kep/Dir/2005 concerning Bilyet Giro, which states that the Bilyet Giro is a customer order that has been standardized/standardized to a depository bank to transfer funds from the account concerned to the named beneficiary at the same or different bank. Thus, a check is a means of cash and direct payment, while for a bilyetgiro it is a book-entry transaction or known as a transfer from the owner of a checking account to a designated person (Ramlan, 2012).

The use of checks and bilyetgiro as payment instruments in conducting business transactions aims to make it easier to make payment transactions, because people who issue checks and bilyetgiro no longer need to carry large amounts of money in a business transaction that requires large amounts of money. Provided that the nominal amount written in the check and bilyetgiro does not exceed the amount of money in the checking account owned by the owner of the check or bilyetgiro. In other words, the issuance of a check or bilyetgiro is not given a limit on a certain Rupiah value in it (Fatma, 2011).

There are two types of checks, namely checks on behalf of and checks on behalf of. Check in name is a check that includes the name of the beneficiary and the bank will make payment to the name listed on the check. Meanwhile, the so-called check on show is a check that does not include the name of the recipient of the funds and the bank will make payments to anyone who brings the check (Bank Indonesia, 2011). Bilyetgiro is an order from the customer to the bank depositing funds to transfer a certain amount of funds from the account concerned to the account of the holder whose name is mentioned.

For example in the use of checks and bilyetgiro, if someone brings cash in large quantities, of course he feels threatened. However, it is safer to use checks and bilyetgiro because there is no need to carry cash. In other words, someone who will pay a certain amount of money to another person does not need to physically carry a lot of money, but only needs to bring a check and bilyetgiro. Just write down how much will be paid, then the business is done. Then the recipient of the check and bilyetgiro can cash or clear it through the bank of interest.

Another example, can be described as follows: if there is a meeting between two company leaders and discussing a project, when a transaction occurs during the discussion, and one of the superiors does not bring cash in cash, the supervisor of company A, for example, can provide checks and current accounts to company superiors B. Checks and bilyetgiro certainly make it easier for companies to conduct business transactions. Without the need to go to the bank first to withdraw cash (Huang, 2006).

Based on the two examples above, checks and bilyetgiro can be used as payment instruments. For someone who wants to make a payment using a check or bilyetgiro, he can open a checking account, either at private banks or at a government bank, because the party who will pay the check or bilyetgiro must first have a checking account. Current accounts are a product of both private and state banks. So it can be said that checks and bilyetgiro are one of the products of the bank, because it is these banks that issue or print the check or bilyetgiro.

Demand Deposit Account is an account that can be withdrawn by cheque, bilyetgiro, other means of payment orders or by book-entry. In terms of opening an account, banks are prohibited from accepting customers whose names are listed on the national black list which is still valid by OJK, 2016). After getting a check or bilyetgiro from the issuing bank where you opened a checking account before, then the check or bilyetgiro can be used to make payments. Under normal circumstances a check or bilyetgiro is used as a means of payment, but currently under certain circumstances a check or bilyetgiro is often used by the public as collateral for a payment.

For example, in society, if there is a lending and borrowing transaction between a creditor and a debtor, the practice of using a check or bilyetgiro is used as collateral for the debtor to the creditor. This check or bilyetgiro is used as collateral which aims to make it easier in the event of a default. If a check or bilyetgiro is used as debt security, then for the unpaid debt, the creditor as the holder of the check or bilyetgiro as collateral can make a withdrawal to the bank for the check or bilyetgiro which is used as the object of the guarantee (Chaidir Ali, 2010).

If the check or bilyetgiro is rejected by the issuing bank, either because the balance in the checking account is insufficient or because the checking account has been closed, the creditor as the holder of the check or bilyetgiro can take criminal action by filing a report to the police. This is because if the settlement is carried out through civil legal remedies it will take a very long time. So it can be concluded that the use of checks or bilyetgiro as debt guarantees for debtors to creditors is only a form of promise to pay which may not necessarily be disbursed. In this study, the problem that will be analyzed is how the legal position of checks and bilyetgiro as debt guarantees and how is legal responsibility in the use of checks and bilyetgiro as debt guarantees.

2. Method

This research is a juridical-normative legal research. Data collection techniques in this study used literature and documents or archive studies, namely by collecting data related to the needs of the research to be studied, in addition to various books and other supporting legal materials. The analysis technique used was descriptive qualitative data.

3. Discussion

3.1 Legal Position of Checks and Bilyet Giro as Debt Collateral.

The use of checks and bilyetgiro as debt guarantees in a business relationship has given legal consequences, both civil law and criminal law. However, until now there is still no regulation that regulates the categories of using checks and bilyetgiro which can be considered as an unlawful act in a criminal context and how it is said to be an unlawful act in the context of civil law. The current source of law is the jurisprudence of the Supreme Court of the Republic of Indonesia as one of the sources of law in Indonesia.

In the past, there were regulations regarding the prohibition of the use of blank checks which were regulated in Law Number 17 of 1964 concerning the Prohibition of Withdrawing Blank Checks. This has created a stigma in the community that every existence of a blank check can be held criminally responsible. In the statutory provisions, it has been regulated regarding severe sanctions for people who issue blank checks. In Article 1 of Law Number 17 of 1964 concerning the Prohibition of Withdrawing Blank Checks it is stated that: "Anyone who draws a check, while he knows or should reasonably suspect, that since the time it was drawn for the check there are not enough funds available at the bank in the name of the check. If the check is withdrawn (blank check) the penalty is death, life imprisonment or a maximum imprisonment of twenty years and a maximum fine of four times the amount written on the blank check in question"

Based on the above provisions, it can be said that a person who issues a blank check is a criminal act as regulated in Article 3 of Law Number 17 of 1964 concerning the Prohibition of Withdrawing Blank Checks. Blank checks according to these provisions are checks drawn which at the time of withdrawal were not supported by sufficient funds. According to the characteristics of the check, it is true that at the time the check is drawn there must be funds available at the time of withdrawal by the recipient. This is what causes people's reluctance to use checks, so that the next payment product is born, namely "Bilyet Giro" as a bank product that can be used as a means of payment to replace checks (Julisman, 2019).

The issuance of Government Regulation in Lieu of Law (Perpu) No. 1 of 1971 concerning the Revocation of Law no. 17 of 1964 concerning the Prohibition of Withdrawing Blank Checks made this

provision change. Since it was revoked and declared no longer valid, the crime of blank check is no longer a banking crime, but a general crime. Therefore, with the revocation of the provisions concerning the prohibition on the withdrawal of blank checks, it does not make people become arbitrarily using blank checks.

Acts against the law in the context of civil law, meaning that the act violates the law and causes harm to other parties, therefore it is obligatory for the party who because of his mistake caused the loss to compensate for the loss, which is in accordance with the formulation of Article 1365 of the Civil Code. Guarantee law institutions in Indonesia recognize the existence of 2 (two) guarantees, namely: material guarantees, and individual guarantees (Tan Kamelo, 2006). The status of checks and bilyetgiro is very difficult to be categorized as collateral in the legal guarantee system regulated in the Civil Code, but only occurs in the practice of business transactions in society. These checks and bilyetgiro are used as collateral based on business developments in the community.

Relation to collateral in business transactions, where a form of facility provided by the bank to customers related to the delivery of collateral in the form of securities or also known as a means of payment or book-entry orders. This means that the securities can be collected and will be disbursed on time. If the check and bilyetgiro are used as collateral in a business relationship by the drawer, then the current account belonging to the withdrawer at the interested bank must be filled, which will later be disbursed to pay off the debtor of the drawer to the customer. receiver/bearer (Keister, 2004).

The obligation to pay arises when there is an agreement between the parties first and then issues securities as the implementation of the payment. So, the agreement is an engagement that forms the basis for the issuance of securities which is called a basic engagement. This basic agreement forms the basis for the issuance of checks and bilyetgiro and will become a valid agreement between the two parties. A valid agreement here is an agreement that meets the conditions determined by law so that the agreement is recognized by law (legally concluded contract). , there is the ability of the parties to make agreements (capacity), there is a certain thing (a certain subject matter) and there is a legal cause (Abdul Kadir, 1990).

Checks and demand deposits can be used as collateral for debt because checks and bilyetgiro are included in the category of securities. Securities is a document that has the value of money that has been recognized and protected by law for the purposes of trade transactions, payments, or other similar. The letter gives rights to the holder that is beneficial to those who receive or own it, therefore securities are so important and their value is the same as cash.

From the definition above, it can be concluded that checks and bilyetgiro can be: valued in money, have been recognized and protected by law, where checks are regulated in the Commercial Code and Bilyet Giro in Bank Indonesia Regulations, used for trade transactions, payments or other similar purposes and gives rights to the holder in the form of a claim for a certain amount of money (CST Kansil, 2008).

According to the provisions in the KUHD that regulates checks and the Bank Indonesia Regulations that regulate Bilyet Giro, in principle checks and bilyetgiro are not objects that can be pledged as collateral. Because the ownership of checks and bilyetgiro is transferred on the basis of delivery, so that since the delivery of the check and bilyetgiro, the ownership will shift from the drawing party to the recipient party. Therefore, it is not possible that the recipient of the check and bilyetgiro will receive a guarantee of his own property.

The development of the use of checks and bilyetgiro in the community occurs a legal phenomenon that checks and bilyetgiro are used as debt guarantees in business relationships (Jensen, 1986). This is solely intended as a guarantee of payment for creditors for the return of a sum of money or goods that have been received by the debtor. In addition, there is a legal phenomenon in the use of the guaranteed check and bilyetgiro in the event of non-fulfillment of payments or it is found that the check and bilyetgiro cannot be cashed/transferred because the funds/balance in the checking account does not exist or is insufficient, then the recipient/creditor has several legal options for solving legal problems that arise.

Legal options for resolving these legal issues can be in the form of civil legal remedies and criminal legal remedies. If you look at the legal phenomenon of checks and bilyetgiro being used as collateral for debt in a business relationship, it is associated with the law of guarantees, then checks and bilyetgiro are included in the category of securities that can be valued in money, so checks and bilyetgiro can be pledged as collateral. The second question is, if checks and bilyetgiro can be used as collateral, then what are the guarantee institutions included in the check and bilyetgiro? The answer is that checks and bilyetgiro are movable objects, if the object is movable and can be valued in money, then it is clear that they can be guaranteed, but the guarantee institution has not yet been regulated. However, in society checks and bilyetgiro are often pawned, so that the guarantee institution can be equated with pawning. Why a lien, because there is a claim right in the use of checks and bilyetgiro, and the claim right is the intangible movable property that is guaranteed.

Furthermore, if the check and bilyetgiro can be used as collateral, then the check and bilyetgiro can be used as debt security, especially in a legal relationship that is a business relationship. With checks and bilyetgiro that can be used as collateral for debt, it is clear that there can be legal consequences for the first holder and the

first holder, the second holder, and so on. Regarding the legal consequences of guaranteeing a check and bilyetgiro against a debt, and because checks and bilyetgiro are in principle different, the legal consequences of checks and bilyetgiro are also different. If the drawer guarantees the check to the recipient, the check which is a "cash payment instrument", if the check cannot be cashed, the legal consequences for the withdrawer can be held criminally responsible. Meanwhile, if the drawer guarantees the bilyetgiro to the beneficiary, the bilyetgiro which is a "promise to pay", if the bilyetgiro cannot be executed/transferred due to insufficient balance, the legal consequences for the drawer can be held civilly responsible.

In essence, checks and bilyetgiro are means of payment. A check is a cash payment instrument, while a bilyetgiro is a payment promise. Both checks and bilyetgiro can be used as collateral for debt in a business relationship. The guarantee institution is in the form of a pawn, because what is pawned is the right to collect. When the check and bilyetgiro can be cashed or transferred, then there is no legal problem between the drawer and the recipient. However, when the check and bilyetgiro cannot be cashed or transferred because the checking account has been closed or the current account balance is insufficient, then legal problems arise between the drawer and the recipient. It is this legal issue that differs between the use of blank checks and blank bilyetgiro.

3.2 Legal Liability in the Use of Checks and Bilyet Giro as Debt Collateral.

As described in the discussion above, that legal problems arising from the use of blank checks and bilyetgiro which are used as debt guarantees in business transactions can be in the form of criminal liability as a result of unlawful acts in the context of criminal law and civil liability as a result of unlawful acts. in the context of civil law. Actions against the law in a civil context are called *onrechtmatigedaad*, while acts against the law in a criminal context.

Checks can be compared to cash. Drawer who gives a check to the recipient as a debt guarantee in a business transaction that has been agreed upon in advance, then the recipient has the hope that when the check is cashed, the recipient will receive cash equal to the amount written on the check. However, when the check is cashed, it turns out that the current account of the withdrawer at the withdrawn bank has insufficient balance or the checking account has been closed, the withdrawer may be held criminally responsible.

The relationship between the beneficiary and the beneficiary is always an engagement, both written and unwritten. At the time of an agreement between the debtor and the creditor in a business transaction relationship using the check, the debtor as the drawer submits the check to the creditor. When the surrender occurs, the debtor must know for sure and be aware that the money in his checking account must be sufficient. In other words, when the previously agreed time period is getting closer, the debtor must also ensure that the funds in his checking account must meet the value of the check he has issued.

For debtors who submit checks as collateral to creditors even though they know that at the time of delivery, the funds in their accounts do not exist or are insufficient for the value of the checks they draw, then the agreement made by the debtor contains an element of fraud. Likewise, for debtors who submit checks as collateral to creditors, but during the time period or date of disbursement of the checks it turns out that there are no or insufficient funds in the checking account, then this also contains an element of fraud.

The use of blank checks and bilyetgiro as collateral for debt in a business relationship which can be categorized as an unlawful act in a criminal context complies with the provisions of Article 378, Article 372, and Article 379a of the Criminal Code. In essence, these blank checks and bilyetgiro are used as tools for false identities, a series of lies, and to persuade and seduce others. The most basic element is that it must first be proven that there is "intention" (*mens rea*) from the perpetrator who knows from the beginning that the check and bilyetgiro issued, the perpetrator cannot provide the funds on time respectively. Against checks must be provided when the check is written and handed over to the beneficiary. Meanwhile, bilyetgiro obligation to provide funds must be carried out on the effective date.

In the use of bilyetgiro, it is different from the use of checks. According to its nature, a bilyetgiro is a "promise to pay", so when the drawer provides a bilyetgiro to the recipient, in other words, the withdrawer gives his promise to pay the debt in an effective time period in accordance with the provisions governing bilyetgiro, namely: 70 (seventy) days . When the withdrawer is unable to make a payment, the promise to pay must be settled in a civil manner. The civil settlement is submitted to the local District Court where the location of the defendant (drawer) is based on a breach of promise (*wanprestasi*).

As is known, based on Article 1234 of the Civil Code, it has determined achievements that can be prosecuted, in the form of: surrendering an item, doing an act, not committing an act". In accordance with Article 1234 of the Civil Code mentioned above, when the withdrawer does not carry out his achievements based on the previously made engagement, the recipient may demand that the withdrawer perform it. The implementation of these achievements can be in the form of: delivery of goods (amount of money); perform an action; or not to do an action. Thus, Article 1234 of the Civil Code provides protection for bilyetgiro recipients who are harmed due to non-payment. Publishers whose obligations do not fulfill the agreement or default, can

cause the publisher to be sued in court. The party who is obliged to fulfill the demands is the debtor, while the party who demands is the creditor.

4. Conclusion

The position of checks and bilyetgiro is very difficult to be categorized as collateral in the legal guarantee system regulated in the Civil Code, but in the practice of business transactions in the community, checks and bilyetgiro are used as guarantees based on business developments in the community. Checks and bilyetgiro cannot be categorized as collateral because when the check is issued, the funds must already be there. A check written by the drawer is handed over to another party, meaning that the drawer makes a cash payment to the beneficiary. With legal logic that if the check is handed over to someone else, the ownership has been transferred. How is it possible that checks and bilyetgiro can be guaranteed while ownership changes when they are handed over. Thus, the laws of checks and bilyetgiro in Indonesia are not related to the main agreement, checks and bilyetgiro are independent acts.

Against legal responsibility in a criminal context can be held accountable, with the consideration that in the use of bilyetgiro, it is different from the use of checks. By its nature, a bilyetgiro is a "promise to pay", so when the drawer provides a bilyetgiro to the recipient, in other words, the withdrawer gives his promise to pay the debt within the effective period in accordance with the provisions governing bilyetgiro, which is 70 (seventy) days. When the withdrawer is unable to make a payment, the promise to pay must be settled in a civil manner. The civil settlement is submitted to the local District Court where the location of the defendant (drawer) is based on a breach of promise (wanprestasi).

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