

Validity of The Guarantee Bond Agreement with Life Insurance Policy as The Object of Guarantee

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Abstract. This study examines the legal status of conventional life insurance policies as collateral objects in bank financing based on the Civil Code (KUHPperdata). The main focus lies on two issues: (1) whether life insurance policies can be categorized as intangible objects according to Article 511 paragraph (3) of the Civil Code; and (2) how is the validity of the collateral binding agreement for the life insurance policy. By using the normative legal research method through literature study, it was found that life insurance policies are conditional obligations whose validity depends on certain events (for example, the death of the insured). Therefore, this policy cannot be classified as an object within the meaning of Article 511 paragraph (3) of the Civil Code because it does not contain any achievements that can be directly collected. In addition, as an independent principal agreement, insurance policies cannot be used as primary collateral in credit agreements because they conflict with the principle of accessory agreements. Combining the function of the policy as primary collateral in one unit with a credit agreement has the potential to cause the agreement to be void by law. However, insurance policies can be used as additional collateral (second way out) as long as they maintain their basic function as risk coverage contracts. This research contributes to strengthening the legal framework of guarantees and providing legal certainty for financial institutions and customers in credit guarantee practices.

Keywords: accessoir agreement; civil code; civil law; life insurance policy; guarantee

1. INTRODUCTION

In the Indonesian civil law system, Article 1131 of the Civil Code states that collateral covers all the property belonging to the debtor, both movable and immovable, that already exists as well as that which will exist in the future. Based on this provision, the collateral must be in the form of an object that has economic value and can be transferred. If the debtor defaults, the object can be sold or auctioned to settle the debt (Shoim, 2022).

One of the main constraints faced by entrepreneurs in developing their businesses is the limitation of capital. Along with business growth, the need for capital also increases. To address this issue, entrepreneurs usually apply for loans from financial institutions, both banks and non-banks. In order to apply the principle of prudence, banks require collateral in the loan agreement. This collateral can take the form of pledges, fiduciary agreements, encumbrances, or mortgages on specific objects, including ships with a weight of 20m³ (Subagiyo, 2018).

However, in practice, these various types of collateral are often not sufficient to meet the needs of the bank. The problems that arise include difficulties in executing collateral that has been transferred by the borrower, blockages of access by certain parties, attempts to hinder execution by the borrower or their heirs, as well as auction results of collateral that are not enough to settle the debt. In fact, the death of the borrower before the debt is settled can also impede the settlement process. Therefore, banks often request additional collateral, including life insurance policies in the name of the borrower.

Life insurance policies are a form of insurance business regulated by Law Number 40 of 2014 concerning Insurance. According to this law, life insurance is a business that provides financial protection to the policyholder or the entitled party in the event of the insured's death or survival, in accordance with the terms of the agreement. This insurance agreement is conditional, as the insurer's obligation only arises if the agreed event occurs, such as death or permanent disability (Nurhayati & Budhiawan, 2023).

From a civil law perspective, a life insurance policy can be categorized as a property guarantee secured by a pledge or fiduciary based on Article 1152 of the Civil Code. As a document or agreement issued by an insurance institution, a life insurance policy serves as a receivable that can be transferred to another party. However, a life insurance policy is not a primary guarantee, but rather an additional guarantee aimed at protecting the bank from credit risk if the debtor dies before settling their debt (Purwaningsih, 2019).

Nevertheless, the use of life insurance policies as collateral still sparks legal debate. One of the main issues is whether life insurance policies can be classified as property as referred to in Article 511 paragraph (3) of the Civil Code. In theory, a life insurance policy is a legal obligation, not a tangible object that can be directly transferred. Different interpretations of this provision may lead to legal uncertainty in credit guarantees.

Another issue is the balance of rights and obligations in the agreement. Life insurance policies used as collateral for loans often burden customers with

additional premium costs that must be paid to the insurance company. If the customer remains alive until the loan agreement is completed, the life insurance policy is often considered to end alongside the main agreement. However, in contract law, life insurance agreements should remain in effect until all obligations under the agreement are fulfilled (Nurhayati & Budhiawan, 2023).

The termination of a life insurance policy without the consent of the policyholder can cause losses for the policyholder, as they lose their rights to insurance claims and the premiums that have been paid. On the other hand, the bank benefits because it has additional collateral without considering the financial impact on the policyholder. Therefore, further studies are needed to determine the legal position of life insurance policies as collateral objects in bank financing and their role in financing risk mitigation.

2. METHODOLOGY

This research is a normative legal research or library legal research conducted through library studies. Therefore, the data used in this research is secondary data that consists of primary legal materials and secondary legal materials. All legal materials that have been collected will be analyzed descriptively qualitatively with an emphasis on legal reasoning. This analysis will examine the concept of objects in the Civil Code, determine obligations that can be classified as objects based on Article 511 of the Civil Code, and assess the validity of collateral binding agreements that use conventional life insurance policies as collateral objects. Thus, this research aims to find a logical framework of the issues so that it can be concluded systematically and comprehensively.

3. RESULTS AND DISCUSSION

Classification of Intangible Goods in the Civil Code (KUHPerd)

In accordance with the provisions of Article 511 paragraph (3) of the Civil Code, an obligation can be classified as an object in the category of intangible assets. Therefore, before entering a life insurance policy as an object, it is necessary to first understand the definition of intangible

objects in Indonesian civil law. In Indonesian civil law, there are several classifications of objects, namely tangible and intangible objects (Article 503), movable and immovable objects (Article 504), consumable and non-consumable objects (Article 505), objects in commerce and objects outside commerce (Article 1332 of the Commercial Code), objects that already exist and objects that will still exist (Article 13-34), objects that can be divided and objects that cannot be divided (Article 1163), as well as objects that can be replaced and objects that cannot be replaced (Article 1694) (La Tanrang et al., 2021).

The entire classification of objects is regulated in Book Two of the Civil Code (KUHPerdata), although some of its provisions have been removed and replaced by new legislation. Book Two of the Civil Code has a closed regulatory system, so its provisions cannot be set aside by the parties through agreements. Property law regulates three main aspects, namely the definition of objects, types of objects, and property rights. Based on this classification, not all objects in the Civil Code can be used as collateral. The classification of objects related to collateral law includes tangible and intangible objects, as well as movable and immovable objects. Therefore, further discussion will focus on these two classifications (Purwaningsih, 2019).

Article 499 of the Civil Code defines an object as any goods or rights that can be owned by property rights. This definition includes tangible objects, such as jewelry, vehicles, and houses, as well as intangible objects, such as rights to a specific receivable. In further classification, tangible and intangible objects can be distinguished into movable and immovable objects. Movable objects (*roerend zaak*) are divided into two groups: based on their nature (Article 509 of the Civil Code), which are objects that can be transferred or moved, and based on legal provisions (Article 511 of the Civil Code), which are objects considered movable by law, such as usufruct rights, shares, and securities. Meanwhile, immovable objects (*onroerend zaak*) are also divided into three groups: according to their nature (Article 506 of the Civil Code), which are objects that cannot be moved, such as land and buildings; then based on their purpose (Article 507 of the

Civil Code), which are objects attached to land or buildings, such as machines in a factory; and finally based on legal provisions (Article 508 of the Civil Code), which are rights over immovable objects, such as the right to collect proceeds (Shoim, 2022).

The provisions in Articles 506 to 511 of the Civil Code indicate that intangible objects in the Civil Code are rights of a person over an object, including the rights of creditors in obligations that require the debtor to fulfill a debt. For an obligation to be categorized as an object, it must contain a performance or a debt that can be collected, as mentioned in Article 511 paragraph (3) of the Civil Code.

A contract is considered valid if it meets the requirements set out in Article 1320 of the Civil Code, namely the agreement of the parties, legal capacity (Aptaningsih et al., 2025), a clear object, and a lawful cause. When these conditions are fulfilled, the contract becomes binding and generates legal consequences, including the debtor's obligation to fulfill the performance to the creditor. This performance can take the form of giving something, doing something, or refraining from doing something (Article 1234 of the Civil Code). In the context of obligations, the creditor's right to this performance is a right that can be categorized as an intangible asset that can be used as collateral (Sutopo, 2021).

However, not all obligations meet the criteria in Article 511 paragraph (3) of the Civil Code. Conditional agreements, such as agreements with a suspensive condition and agreements with a resolutive condition, can affect the existence of performance. In a suspensive condition agreement, the creditor's rights only arise after a certain event occurs, which may not necessarily happen. If that event does not occur, the agreement ends without the creditor having the right to demand performance. Meanwhile, in a resolutive condition agreement, an agreement that has been executed can be annulled if a certain condition is fulfilled, allowing the promised performance to be revoked at any time (Supraptiningsih & Rahmawati, 2020).

Based on the description above, an obligation can only be categorized as a thing if it meets the provisions of Article 511 paragraph (3) of the Civil Code, which states that it contains a performance or debt

that can be claimed. In a conditional agreement that suspends, performance cannot be claimed until the promised event occurs. Therefore, this conditional agreement cannot be categorized as a thing because the right (intangible property) in the agreement has not yet materialized. Thus, a conventional life insurance policy that still depends on certain events and can be canceled due to conditions that can nullify it cannot be categorized as a thing based on Article 511 paragraph (3) of the Civil Code.

In addition, in the development of modern civil law, the concept of intangible assets is becoming broader, encompassing intellectual property rights, licenses, and digital rights. This change affects the legal recognition of intangible assets as objects of obligations and guarantees. Therefore, it is important for the Indonesian legal system to update the definition of intangible assets to accommodate economic and technological changes. Regulations related to digital assets and intellectual property rights need to be aligned with civil law provisions to ensure clear legal certainty for the parties involved in transactions.

Considering the legal aspects of guarantees, intangible assets can be used as objects of fiduciary security, as regulated in Law Number 42 of 1999 concerning Fiduciary Security. Life insurance policies that have economic value and can be transferred can also serve as collateral if they meet the elements of enforceable performance certainty. Therefore, although Article 511 of the Civil Code provides limitations related to the classification of objects, a modern interpretation is necessary to keep civil law relevant with current economic and technological developments.

The validity of the Guaranteed Collateral Agreement that uses a life insurance policy as the object of collateral.

In the economic system of Indonesia, the practice of using collateral as a requirement for granting loans is common, especially by financial institutions such as banks and financing companies. The legal basis for this practice is contained in various regulations such as the Civil Code, the Mortgage Law, the Fiduciary Guarantee Law, and other implementing regulations

that govern the mechanisms and legal provisions regarding guarantees.

Collateral serves as a form of legal protection for creditors, to ensure the repayment of loan funds from debtors (Raharjo, 2009). In general, guarantees are divided into two types, namely personal guarantees (such as surety and warranty) and real guarantees (such as pawn, collateral rights, fiduciary, and mortgages). Each has different legal characteristics and execution procedures (Purwaningsih, 2019).

However, it should be noted that the guarantee binding agreement is an accessory agreement, which is a supplementary agreement whose existence depends on the main agreement, such as a credit or debt agreement. As a derivative agreement, the guarantee agreement cannot stand alone without a valid main agreement. This is in accordance with the principles of contract law stipulated in Article 1320 of the Civil Code, which requires the existence of agreement, capacity, a specific object, and a lawful cause (Sudarto & Santoso, 2019).

On the other hand, life insurance policies are not accessory agreements, but rather are fundamental agreements that stand independently, governing the legal relationship between the policyholder and the insurance company based on the principle of risk coverage. Insurance policies have a very distinct nature that can only give rise to claims rights if certain agreed-upon risks occur, such as the death of the insured, and not based on default in a loan relationship (Sarwini et al., 2019).

In this context, a problem arises when life insurance policies are used as collateral. If the insurance agreement (which is the main agreement) is equated with an accessory agreement such as a collateral agreement, then there has been a violation of the principle that 'one agreement can only contain one legal act.' This means that one agreement cannot simultaneously contain clauses regarding risk coverage and the binding of collateral, because each has different legal characteristics and functions that cannot overlap.

If an insurance policy is imposed as the primary collateral in a credit agreement without meeting the characteristics of material collateral, then the agreement may

be classified as a legally defective agreement and its consequence is null and void.

"Void by law" (null and void by operation of law) means that from the very start, the agreement is considered to have never existed and does not produce any legal effects. An agreement that is void by law does not require cancellation from the court, because it has been invalid from its formation due to conflicting with prevailing regulations or legal principles (Hia et al., 2024).

Thus, the encumbrance of security on the insurance policy as a primary guarantee that is not in accordance with the characteristics of accessory agreements, and equated in legal status, contradicts the legal systematics of agreements as well as the legal principle prohibiting the mixing of types of legal actions in a single agreement. This has implications for the invalidity of the agreement and cannot be enforced against the parties (Sitorus, 2022).

Although some financial institutions accommodate insurance policies as additional collateral, their use must be within the framework of supplementary guarantees (second way out) that do not alter the basic function of the insurance agreement as a risk coverage contract (Palar, 2018). On the contrary, if the agreement is intended as a unity with the credit agreement without a clear legal basis and merges two types of agreements with different characters, then the agreement has lost its legal foundation.

Therefore, the utilization of insurance policies as collateral objects must be clearly distinguished based on their legal nature and function, and should not blur the boundaries between accessory agreements and primary risk coverage agreements, in order to avoid legal consequences that could be detrimental to the parties and to ensure legal certainty in the execution of agreements.

4. CONCLUSION

Based on the explanation provided, it can be concluded that in the Indonesian civil law system, a conventional life insurance policy cannot simply be categorized as an object as intended in Article 511 paragraph (3) of the Civil Code. This is because a life insurance policy is a conditional obligation

that will only give rise to rights or performance if certain events occur, such as the death of the insured, thus failing to meet the elements of performance certainty that can be claimed as required by that provision. On the other hand, binding the life insurance policy as a primary guarantee in a credit agreement has the potential to create legal defects, as it contradicts the principle of legality and the principle of one agreement one legal act, considering that the insurance policy is a standalone primary agreement and not an accessory agreement. Therefore, the use of life insurance policies as collateral in bank financing can only be justified if they are functioned as supplementary or additional guarantees (second way out) while still maintaining their characteristics as risk coverage contracts. A misinterpretation of the legal status of life insurance policies in collateral agreements not only risks causing legal uncertainty but can also harm debtors who have fulfilled premium obligations without obtaining the protection benefits they should have. Thus, a systematic interpretative approach and regulatory updates are needed to ensure the clarity of the legal status of life insurance policies as collateral in the modern financing legal system.

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