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Characteristics of Collateral As A Special Guarantee in The Banking Environment

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ABSTRACT: The characteristics of collateral as special guarantees in the banking environment can be divided into two, namely general guarantees and special guarantees. existing or new ones that will exist in the future, become dependents for all individual engagements". And a special guarantee is regulated in article 1132 BW: "The object becomes a joint guarantee for all those who owe it; The income from the sale of the objects is divided according to the balance, that is, according to the size of each bill, unless there are valid reasons for the debtors to take precedence. Special guarantees are born from material guarantee agreements, namely: liens, mortgages, mortgages and fiduciaries which give birth to liens, mortgage rights, mortgage rights and fiduciary rights. As for the main characteristics of collateral, among others: the first is absolute. Material rights are absolute, meaning that rights can be enforced against anyone Droit de suite. Material rights will follow the object in the hands of whoever the object is. Second, there is the principle of priority, meaning that material rights that were born first take precedence over material rights that were born later. The third is preferential, meaning that material rights are rights given to creditors to take precedence in taking repayments over other creditors.

Keywords*: main characteristics of collateral, special guarantees, banking*

I. PRELIMINARY

Business people in running and developing their business must compete in a healthy manner. Due to the limited funds owned by business people, a solution is needed to overcome the lack of funds that can disrupt operations. Business people will apply for loans/credits as additional capital to financial institutions. Business people will choose financial institutions that can provide loans/credit through a fast process and very low interest rates. Business people prefer banks as financial institutions that have integrity. For business people, loans/credit funds are an advantage to maintain the stability of their business activities, on the bank side it is a profit if the customer pays off his debt, on the customer side it increases capital for his business. Banks in disbursing funds are required to prioritize and enforce the prudential banking principles which are based on the principles of democracy as regulated in Article 2 of the Banking Law. (capability), capital (capital), condition of economy (economic condition) and collateral (guarantee). Banks in distributing loan funds always apply the principle of "security, strictly defined, is an interest in property which secures the performance of an obligation, in our case payment".[1]

Banks in disbursing credit are required to apply the precautionary principle, the aim is to anticipate as early as possible the risks that will arise in the future, namely the failure to return funds. collateral element or collateral in the form of property belonging to the customer which is used as collateral. The parties will use the law as a vessel as outlined in a contract law. The law of the contract alone is not enough, therefore another legal instrument is needed, namely the law of guarantee. The law of guarantee is used as a legal umbrella to anticipate the failure of the customer to return the borrowed funds, in addition to strengthening the position of the bank as the lender. Banks in transactions generally use material guarantee institutions, this is different from other financial institutions that use individual guarantee institutions. The legal history of material guarantee institutions in Indonesia has experienced significant developments, including: mortgages, mortgages, mortgages and fiduciaries. Material guarantee institutions have an important role to guarantee the repayment of debts.

The legal relationship between the bank and will make a contract in a debt agreement. The accounts payable agreement made has many benefits for the parties, because in the debt agreement it creates the rights and obligations of each party and the position of each party. Banks as distributors of funds or those

[1]GazaliDjoni S & Usman Rachmadi, 2016,*HukumPerbankan*. CetakanKetiga,SinarGrafika, Jakarta.

who provide loans are called creditors. The customer, either a person or a corporation who receives a loan of funds, is called a debtor. Creditors and debtors will make a debt agreement or credit agreement which is the main agreement. A credit agreement is an obligatory agreement that will give birth to a claim right and is classified as a personal right or individual right. That in fact the authorities have given general guarantees as regulated in Article 1131 BurgerlijkWetboek, hereinafter written by BW "all the objects of the debtor, both movable and immovable, whether existing or new in the future, shall be borne by the individual for all engagements. ". The legal relationship between the creditor and the debtor's claim rights has been guaranteed by Article 1131 BW, but it turns out that Article 1131 BW has not been able to provide payment certainty for all debtors' receivables if the debtor defaults, it will be detrimental to the bank as a creditor. The creditor can recover the debtor's receivables by asking for help from the law, namely suing the court with the legal domicile that has been determined in the credit agreement. The lawsuit process was quite long and lengthy and finally a judge's decision was obtained which had permanent legal force at a certain level.

If the debtor still ignores the decision, so that the debtor has not been able to pay off all his debts. The debtor's debt is not only limited to the bank, but the debtor has debts to other parties, therefore the proceeds from the auction sale of the debtor's property must be divided proportionally in accordance with the provisions of Article 1132 BW that "the object becomes a joint guarantee for the debtor's assets". all those who owed him; The income from the sale of the objects is divided according to the balance, that is, according to the size of the receivables of each, unless there are valid reasons for the debtors to take precedence. Proceeds from auction sale of debtor's property based on Article1131 BW, then the creditors must compete to get their receivables repaid, because these creditors are classified as concurrent creditors. The position of the bank as a concurrent creditor has the potential to bear unfavorable risks, if the proceeds from the auction sale of the object are insufficient to pay off all debtors' debts.

Banks as concurrent creditors if they only rely on general guarantees which are a fortress created by the authorities, but it turns out that it proves that the authorities have not been able to provide a safe and comfortable position for creditors. Creditors to get repayment of receivables on debtor's assets must painstakingly go through a lawsuit process in court which is time consuming, relatively expensive and this is very draining of mind and energy. Guarantee law provides a breakthrough by providing other tools, the aim is so that creditors do not lose, namely in the form of special guarantees. . A special guarantee is born from an agreement, the agreement must be made by the parties themselves on the basis of an agreement. Legal protection created by the parties themselves through a material guarantee agreement, then the creditor gets a more secure and stable position. Legal protection is actually not only by the authorities who provide it, on the contrary that the parties can make their own legal protection by compiling the clauses of the agreement made by the parties themselves.

Banks as financial intermediaries or financial intermediaries that channel loan funds, do not only rely on a relatively strong position for themselves, but also have to consider the benefits for the people who have entrusted funds. Banks must act quickly by taking steps as early as possible to take advantage of the existence of a material guarantee institution through a material guarantee agreement based on an agreement by requesting certain objects belonging to the debtor to be specifically bound as collateral.

The material guarantee agreement is born from a certain agreement consisting of (1) against certain goods such as pawns, mortgages, mortgages and fiduciary guarantees, (2) against certain people such as personal/corporate guarantees, bank guarantees. This material guarantee agreement is in addition to the credit agreement which is the main agreement that is able to make the bank domiciled as the preferred creditor. The material guarantee agreement is an additional agreement (accessoir). Banks have the potential to threaten their health condition without an additional agreement (accessoir), it will have a systemic impact on the national banking system. If a bank only relies on general guarantees, then the bank only has a position as a concurrent creditor, thus the bank is very disadvantaged. In order to avoid a bank from being a concurrent creditor, the bank must ask for certain objects belonging to the debtor to be bound by a special agreement to guarantee a number of receivables that have been received from the bank.

Certain objects belonging to the debtor will be analyzed first. After conducting a careful analysis of the bank and certain objects belonging to the debtor are declared eligible, then between the bank and the debtor will make a debt agreement and a material guarantee agreement to bind the object. The material guarantee agreement that has been made and signed by the parties will be registered in the general register, thereby creating material rights that have superior characteristics that exceed the personal rights that arise from credit agreements. The characteristics in question are that the material rights are absolute, have the nature of droit de suite, have the principle of priority and most importantly the principle of preference that can make the bank domiciled as a preferred creditor, meaning that the settlement of bank receivables must take precedence over other creditors.

If the debtor defaults or is in breach of contract and is unable to pay off his debt, the creditor does not need to file a lawsuit in court. In the credit agreement and material guarantee agreement that have been agreed and signed by the parties, the bank is able to carry out its own execution of the debtor's object which is the object guarantees easily and simply, namely through a parate execution institution or in the form of a certificate of material security rights, for example on a mortgage certificate there are "For the sake of Justice Based on the One Godhead", meaning that the object of the material guarantee is executorial, i.e. of the same nature. with the result of a court decision that already has permanent legal force, even though it has not gone through a judicial process.

In connection with the binding force of the contract as referred to in Article 1338 paragraph (1) BW concerning freedom of contract. Contracts are made at the parties' own wishes based on an agreement and cannot be withdrawn for any reason, other than on the basis ofmutual agreement and also based on good faith. Good faith must refer to values that develop in society and reflect standards of justice or propriety. Deviations committed by the parties will not result in the loss of their legal relationship. Banks in channeling credit to customers must prioritize in-depth analysis, namely the ability, ability and good faith of each debtor in paying off all of their debts as regulated in Article 8 number (1) of the Banking Law. Both creditors and debtors who are bound in a debt agreement or credit agreement certainly need legal protection and certainty. Protection and legal certainty for debtors and creditors, the aim is to reduce risks that will arise in the future.

The legal problem in this research is the vage norm. Based on Article 1131 BW in book II BW has a closed nature and has a special character that can be qualified as regelendrecht, which means that the parties can deviate from the article on the basis of an agreement, but based on the exception mentioned in the last sentence of Article 1132 BW which is a guarantee of a special nature, namely the rights granted to creditors in a better/higher position compared to other creditors in repayment. Based on the description in the statement as in the previous paragraph, there are problems, namely: 1. How are the characteristics of collateral to be used as special guarantees in the banking environment, 2. What are the main characteristics of collateral as special guarantees in the banking environment.

II. DISCUSSION

1. CHARACTERISTICS OF COLLATERAL CAN BE USED AS SPECIAL GUARANTEE IN THE BANKING ENVIRONMENT

1.1. Characteristics of Collateral as Special Collateral When Compared to General Guarantees in the Banking Environment

Humans in their lives cannot live alone, humans always live in groups with groups called society. People in their lives always need law, "the law regulates relations in society between people and people or between members of one community and other members of society".[2] Law serves to protect and regulate the entire community, aims to create public order. Humans in their lives are always social interactions, although everyone has limitations. The limitations of a person with one another must complement each other with both shortcomings and advantages, so that people in living their lives become more perfect. Laws that regulate daily human needs are classified as civil law or private law. Civil law or private law which has an inherent character as a norm, besides that it also has coercive power to regulate all levels of society.

Humans in life in society will carry out social interactions and meet the needs of their respective personal lives. Social interaction in the form of cooperation, business and others, all of which are always profit-oriented. Law is always used to frame cooperation, business, and others, all of which boil down to profit as the main target so that it can be realized. The profit and loss calculation is used as a guide and will in obtaining profits for each party. According to Marcus Tullius Cicero, an expert from Rome, he argued that ubisocietasibiius means that where there is society, there is law. Even though there is law, if there is no society, then the law is useless. Business competition in the business world occurs everywhere, so it takes creativity in the face of the times. Every business person will compete by innovating to seize the market. Not only business people, people also have to struggle continuously in fulfilling their lives for the welfare of their families. Humans in life cannot be separated from the role of objects. Humans live as members of society, so they will never be separated from objects of various kinds, shapes and appearances. Humans will look for objects that have economic value and whose property rights can be transferred. Humans will never get tired of getting objects, both moving and immovable objects for the sake of prestige by competing with others for their satisfaction, by owning: immovable objects such as: land, houses, and others, moving objects in the form of: cars , motorcycles and more.

The need for objects in everyday human life is used as the basis for forming the laws that are regulated in

[2]R. Soeroso, 2007, *PengantarIlmuHukum*,Cetakanke-sembilan,SinarGrafika, Jakarta.

book II BW on the law of objects. Book II BW is the beginning of the birth of property law. Book II regulates things, the occurrence of social interaction between people and people or people with corporations, so in book III BW regulates the law of engagement. The existence of book II BW and book III BW has always acted independently which is summarized in a codification and the nature of the two books is very much different. Book II BW has a closed nature, while Book III BW has an open nature, that the two books are a unified whole which is summarized in property law. The articles contained in book II BW are often related to the provisions contained in book III BW. At first glance, the articles in Book II BW seem less meaningful, this is because there are several related provisions contained in Book III BW, so that the objectives are complementary. The legal relationship between a person and a person or a person with a corporation will create a bond between the parties as regulated in book III BW concerning the law of engagement. Engagement law is part of property law (vermogenrecht) which has an open nature. Another part in property law, namely the law of objects, the law of objects has a closed nature. The norms contained in book III BW are used as guidelines to regulate all activities in the community in meeting daily needs. Business people in carrying out their business activities cannot be separated from the banking sector. "Banking is everything related to the Bank, including institutions, business activities, as well as methods and processes in carrying out their business activities. Black's Law Dictionary states: "The business of banking, as define by law and custom, consist in the issue of notes payable on demand intented to circulate as money when the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing and negotiable securities issued bythe government, state and national, and municipal and other corporations". (Cambell, 1991) and (Esposito, 2002)".[3] (Business of banking as determined by law and custom, consists of issuing notes payable upon request which are intended to be circulated as money when the bank becomes the issuing bank; in accepting deposits which must be paid upon request; in discounting securities; providing loans of money collateralized; buying and selling of notes; negotiating loans; and dealing and negotiating securities issued by governments, states and nationals, and other municipalities and corporations). Business people in running and developing their business are often hit by limited capital by applying for credit to the bank. Credit is the provision of money or an equivalent claim, based on a loan agreement or 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 based on article 1 paragraph (11) Banking Law. Business people will apply for credit through bank financial institutions and non-bank financial institutions. Banks are financial intermediaries or financial intermediaries that have been trusted by all levels of society. Banks as financial intermediaries or financial intermediaries function to collect funds from the public. In addition to collecting funds from the public, banks must also channel funds to the public in the form of working capital loans, house renovations, building construction, and others. Refunds disbursed in the form of short-term credit, medium-term credit and long-term credit. Banks have a central role in national development. The bank will disburse credit to anyone, both individuals and corporations, those who apply for credit must complete the specified requirements. Banks in disbursing credit must apply the principles of 5C selectively and carefully. After approving the application from individuals or corporations, the bank issues a decree containing the identity of the borrower, the object used as collateral, the nominal debt, the term of the credit and the date of signing the credit. The bank as the lender/credit and the customer as the credit recipient will be bound by a debt agreement or credit agreement or referred to as the principal agreement. The engagement is regulated in Article 1233 BW "the engagement is born from an agreement or born from law". Engagements that are often used in society are sourced from agreements.

One party will be bound by another party, it can be caused by law, and it can also be caused by an agreement. If someone is bound by law, then the element of will of the related party will not take part. This is very different if the parties are bound by agreement, that from the beginning the parties agreed by carefully drafting the clauses in the agreement to obtain benefits, namely profits. Engagements that are often used in society are sourced from agreements. The existence of a legal relationship will have legal consequences, therefore if one of the contractors does not fulfill his promise, then of course the law can be enforced by force. For the injured party, in this way it can be recovered. Every engagement born of an agreement must fulfill the validity of an agreement, so that it is in a legal constellation. In contrast to the engagement that was born by law. The law is the source, so there is no need for the legal terms of the agreement as regulated in Article 1320 BW.

An engagement made by the parties will create a legal relationship for an achievement in carrying out the rights and obligations of each party. The parties will fulfill everything that was agreed based on an agreement as an achievement. Fulfillment of an achievement which is an obligation, this is reflected in article 1235 BW "every engagement to give something is an obligation of the debtor to surrender the object in question

[3]RennySupriyatniBachro. PerjanjianBagiHasilDalamPembiayaanSyariah Yang BerkeadilanSebagai Salah SatuUpayaPengembangan Bank Syariah. Hal. 254. Sosiohumaniora. Vol. 12. No. 3. November 2010 : 250 – 269.

and to care for him as a good housewife, until the time of delivery". On each side are burdened with rights and obligations, namely achievement. For the party who bears the achievement must fulfill it, this party is referred to as the debtor, while the other party who receives the achievement as the embodiment of his rights, this party is referred to as the creditor. In every contract there is a legal relationship between the parties who have their respective roles, both as creditors and as debtors. The debtor has an obligation to fulfill the achievements stated in the agreementn, while the other party will receive the achievement of the agreement partner who is the creditor.

Every engagement that is assembled by the parties is certainly profit-oriented. The parties bound in an engagement must understand their rights and obligations. Expectations are expected from the debtor, so that the debtor has a commitment to fulfill his achievements in accordance with the agreement that has been stated in an agreement or contract. If one of the parties reneges and does not keep their promise or defaults, then the aggrieved party must bear the risk. According to BW, parties who suffer losses must be recovered, thus the injured party can claim their rights by asking for help from the law, namely filing a lawsuit to the district court. The creditor as the aggrieved party in addition to filing a lawsuit to the court with a request for confiscation of collateral for the debtor's property. Based on the court's decision and it is decided that the party who is in default is proven guilty, the party who defaults is obliged to comply with the judge's decision which has permanent legal force or inkracht van gewisjde, namely by paying compensation and other costs. If a debtor is in default if he ignores a court decision that has permanent legal force or inkracht van gewisjde, the aggrieved party will request that the debtor's property be increased to confiscation of execution, so that the creditor is allowed to sell the debtor's property by paying off the debt. The auction sale of the property belonging to the debtor in default, when paying off the debt, he is obliged to pay compensation, costs, and interest suffered by the creditor in accordance with Article 1131 BW "all the property of the debtor, both movable and immovable. , both existing and new ones that will exist in the future, become dependents for all individual engagements. All of the debtor's assets that are guaranteed are intended for all creditors, thus based on Article 1131 BW it is referred to as a general guarantee born from the law.

Every business actor will use the law as a frame to provide guarantees in every engagement with the ultimate goal of making a profit. Article 1131 BW is classified as a general guarantee that can be called a mainstay of the authorities, in social interactions that will give birth to an engagement for the sake of obtaining an advantage, but in reality this general guarantee is very detrimental to the creditor. The general guarantee makes the creditor domiciled as a concurrent creditor, the creditor does not want continuous losses, then the creditor will ask for the debtor's property as collateral which will be bound in an additional agreement or accessoir based on article 1132 BW "the object becomes a mutual guarantee for everyone who is indebted to him; The income from the sale of the objects is divided according to the balance, that is, according to the size of each bill, unless there are valid reasons for the debtors to take precedence.

1.2. Objects as Transaction Objects

According to Aristotle, humans as social beings or zoon politicon that humans cannot live alone, humans always interact socially with society to meet their needs. Humans apart from being social beings are also economic beings or homo economicus that humans will realize prosperity in order to maintain their lives. Humans in their lives need clothing, food and shelter. Humans have ambitions and are never satisfied with pursuing their desires for the satisfaction of their lives. Humans will strive continuously to fight for all their needs, it turns out that these human wants and needs cannot be separated from the objects around them. Humans have a hedonistic nature to achieve happiness and life satisfaction without giving up on pursuing objects that have economic value that can be transferred at any time.

Humans are very closely related to the role of objects in their lives, to anticipate the occurrence of collisions and chaos in the future, humans need a fortress in the form of legal norms that are coercive in the form of a rule for the creation of order throughout society. The legal norm in question is BW which regulates private law in Indonesia. In book I it is regulated about people as subjects, while in book II BW it is regulated about objects.

The role of objects in the order of human life is very important, even though the arrangement is in a side by side between book I and book II BW. A thing that is impossible to happen, if humans live without owning and using objects, what happens is just the opposite, that humans will sacrifice everything in order to get the things they have.oh dream. Human desire to obtain these objects, but unfortunately not supported by sufficient finances. One way to do this is to apply for a loan/credit at a financial intermediary institution that can guarantee the public, namely a bank.

Based on article 8 of the Banking Law that "in providing credit, commercial banks are required to have confidence in the ability and ability of the debtor to pay off his debts in accordance with the agreement". Credit in a special sense, namely lending money (or delaying payments), if people say buying on credit then it means

the buyer does not have to pay it at the same time"[4], that "credit is the provision of achievements (for example money or goods) in return for achievements (counter-achievement) that will occur in the future".[5] Credit in a broad sense, which concerns modern life today that every credit transaction is always related to achievements in the form of money and goods. Credit is cooperative in that the lender and the credit recipient or the creditor with the debtor each gain and share risks.

For creditors, an important element in channeling credit is that the debtor can fulfill his obligations by paying off all his debts, the ultimate goal of the creditor is to benefit from paying the debtor's receivables. The capital obtained from the debtor by taking counter-achievements, while on the debtor's side, the creditor can meet his needs in the form of achievement. Between achievement and counter-achievement there is a gulf that results in risks experienced by creditors due to uncertainty in fulfilling debtor's achievements, therefore material guarantees are needed. Credit transactions require several elements, including: 1. Trust, the creditor as the creditor has the belief that the achievements given to the debtor in the form of money, goods or services can be received back, 2. The time period, the time that has been agreed upon between the creditor and the debtor in a certain period of time, this element contains the value of money, namely the current value of money has a higher value than the value of money that will be received by creditors in the future, 3. Risk, the risk faced by creditors due to the relatively long credit period , the longer the debtor's credit period, the higher the level of risk and 4. Achievement, the object of credit is not only in the form of money, but also in the form of goods or services.

For the party who bears the achievement, then the party is obliged to fulfill and this party is known as the debtor, while the other party who receives the assistance from his achievements as a manifestation of his rights is known as the creditor. Each contractor will each act as a creditor or debtor. The debtor is obliged to fulfill the achievements in the agreement that has been agreed upon, and the creditor is the party who receives the achievement from the agreement partner. There are generally 2 (two) parties involved in credit transactions, namely the creditor and the debtor. People generally apply for loans/credits through banks. This is emphasized in article 8 paragraph (1) of the Banking Law that banks in providing credit or payments based on sharia principles, commercial banks are required to have confidence based on an in-depth analysis of the customer's intention and ability and ability to pay off their debts or return the financing in accordance with promised. Banks in disbursing credit must apply the precautionary principle, namely The Five Cs of Credit, the 5C principle, which is mandated by the Banking Law. One of the elements of the debtor's ability and ability to repay the borrowed funds is included in the collateral. Collateral is the debtor's property which is voluntarily handed over to the creditor to be bound by an additional agreement as collateral. Not all debtors have objects that are used as collateral, so it will involve a third party as guarantor for the loan.

Bank as a financial intermediary or financial intermediary that collects and distributes funds collected from the public. Banks as distributors of funds are referred to as creditors and people or corporations that borrow money are referred to as debtors. Creditors and debtors will be bound in an engagement as regulated in Article 1233 BW that the engagement is born from an agreement or born from law and must be fulfilled from the legal requirements of an agreement as regulated in Article 1320 BW that the parties in making an agreement must: 1. Agree, 2. Capable, 3. A certain thing and 4. Causal that is allowed. One of the principles in contract law is to provide flexibility in following faster business developments, namely the principle of freedom of contract. The principle of freedom of contactThe tract is regulated in Article 1338 BW, namely "All agreements made in accordance with the law apply as law for those who make them. The agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Approval must be carried out in good faith". The bank "in providing credit to customers, the bank is guided by the principles in the agreement as follows, the principle of freedom of contract, the principle of consensualism, the principle of PactaSuntServanda, the principle of good faith (GoedeTrouw) and the principle of personality (personality)".[6]

The principle of freedom of contract makes it easy for business actors to freely assemble their respective rights and obligations according to their needs into agreed-upon clauses, so that the profits that have been aspired can be fulfilled as expected. The clauses that are agreed upon and contain the obligations are fulfilled, then the expected rights can be realized. The principle of freedom of contract is the pillar of the law of the agreement with a proportional and balanced position between rights and obligations, so that the contract can be realized in a fairness manner. According to John Rawls "different concepts of justice can still agree that institutions are just when there are no arbitrary distinctions between people in assigning rights and obligations and when the rules determine the right balance between opposing claims for the benefit of social life" , besides that, because of the view of arbitrary distinction and proper balance, including the concept of justice by choosing the principles of equality and difference that are more relevant in determining rights and obligations

[4]Budi Untung. 2000.*KreditPerbankan Indonesia*, Andi, Yogyakarta, hal 23.

[5]OP Simorangkir. 1998. SelukBeluk Bank Komersial. Cetakanke-V. (Jakarta: AksaraPersada Indonesia)

[6]Ni Made Arini, I GustiNgurahWairocanadkk. PenyelesaianPermasalahanKreditTanpaAgunan (UMKM) di Denpasar. Hal. 124. JurnalIlmiah Prodi Magister Kenotariatan. 2016-2017

and determining the proper distribution of benefits.

A contract can be realized in a healthy manner, if observed carefully, it turns out that the principle of freedom of contract as regulated in Article 1338 BW cannot stand alone. The principle of freedom of contract is always in synergy with the need for other principles to support its existence, namely: the principle of consensualism, the principle of pactasuntservanda, the principle of equality, the principle of privity of contract and the principle of good faith. The principles contained in Article 1338 BW can be described as follows:

1. **The principle of freedom of contract**

   Every member of the community or corporation is given the freedom and freedom to make agreements. The agreement made can be in the form of a named agreement, the articles in the named agreement are regulated in book III BW. In addition to named agreements, there are also nameless agreements. The nameless agreement is not specifically regulated in book III BW. The contents of an anonymous agreement can be independently regulated by the parties according to their aims and objectives based on an agreement. The principle of freedom of contract as regulated in Article 1338 BW, among others:

   - Free to determine who the partner will be invited to make a contract.
   - Free to determine the form of the contract, whether you want it with a written model or in an unwritten form, the parties are free to determine for themselves on the basis of an agreement.
   - Free to determine the contents of the contract, where the parties are given the flexibility and freedom to determine the content of the contract with any number of clauses, as desired based on their business objectives.
   - Free to determine the forum for the settlement of the contract dispute, whether it will be resolved in court or in an arbitration body if there is a difference of opinion in the future.
   - Free to determine the type or type of agreement, whether to choose one of the Named Agreements contained in Book III BW or to make an Unnamed Agreement.[7]

   The existence of the principle of freedom of contract is open and always in line with book III BW. The parties will be given the freedom and freedom to use or not to use the articles regulated in book III BW. The parties are also given the freedom to override or deviate from the articles in book III BW based on an agreement. Bearing in mind that the articles contained in book III BW are dominated by legal provisions having the position of regelendrecht, it is indeed permissible, because of their regulatory nature, so that they can be deviated freely by the parties. The parties, if there is an agreement, then the parties can waive the provisions in the law which is domiciled as regelendrecht. The parties are free to make their own rules according to the agreement in lieu of the article that has been set aside. In essence, the parties on the basis of an agreement can freely override the provisions in the law that have the position of regelendrecht, but the parties are obliged to make replacement rules by creating on the basis of an agreement. That the provisions in book III BW regarding agreements or contracts are indeed very suitable for commercial usewith various innovations.

   Even though business is developing and changing very quickly based on the principle of freedom of contract, the law must be used as a frame, because the task of the law is to fortify if something is not right. If there is a contract rule in book III BW which is domiciled as a dwingendrecht, if the agreement violates the provisions of this dwingendrecht, then it does not result in the agreement being null and void. What is special is that the rules of agreement or contract contained in book III BW are very flexible, so that the regulated provisions must also be flexible, including legal provisions that have a position as dwingendrecht. Whereas usually the provisions of the law which are located as dwingendrecht have a strong and inflexible figure, thus if struck by an agreement, the agreement will collapse, namely null and void.

   The nature of the law is never absolute and there are still exceptions, if a provision is domiciled as a dwingendrecht as regulated in book III BW, but if the agreement made by the parties violates the provisions, for example article 1467 BW "between husband and wife there may not be a sale. buy…", then the legal consequence of the agreement is null and void. On the principle of freedom of contract, the parties are not allowed to enter into an agreement if it violates public order, morality and the law.

2. **The principle of consensualism**

   A legally made agreement as regulated in Article 1338 BW and Article 1320 BW concerning the conditions for the validity of an agreement or contract, namely: 1. agreed, 2. competent, 3. certain object and 4. a permissible cause. The first condition is "agree", that the parties express their will with an agreement or consensus, the birth of an agreement or contract is based on an agreement which is classified as a consensual agreement.

3. **The principle of proportionality**

   Agreements made legally are regulated in Article 1320 BW. The existence of a consensus of the parties to exchange their promises in the form of the will of the parties in carrying out the fulfillment of

[7]Moch. Isnaeni, 2018, *Seberkas Diorama HukumKontrak*, Revka Petra Media, Surabaya, hal 3.

achievements which is an obligation. The achievements exchanged by the parties are based on an agreement, then the rights and obligations that must be borne by each party are not the same, but must be comparable. The rights and obligations borne by each party are in accordance with the proportion of the principle of propriety. The principle of proportionality must be based on a balance between rights and obligations, these rights and obligations must be fulfilled by each party and which must be borne by the parties. The agreement of the parties is healthy, of course the obligations and rights are borne proportionally. If there is a default, even though one of the parties makes a small mistake, the agreement is not immediately declared terminated, but the error made by one of the parties must be calculated proportionally in proportion to the error.

4. **The principle of propriety**

   The principle of propriety is related to the principle of consensualism. Consensus is formed because there is a meeting between offer and acceptance/acceptance, for example: there is a seller of an object offering the object to a prospective buyer. Prospective buyers before buying an object will of course ask the price of the object being offered and will compare it elsewhere. If the object is sold by the seller to the prospective buyer, then the offer of the object must be made based on the principle of propriety, the aim is that the agreement between the seller and the buyer does not feel unpleasant. The seller is obliged to offer the object at a fair price and the seller must not offer it higher than the market price, the aim is to reach a healthy agreement.

5. **The principle of legal certainty**

   The principle of legal certainty is one of the most important things in the agreement. An agreement that has been legally made by the parties and is the same as the law is a guarantee of legal certainty. Later, if one of the parties is harmed as a result of the actions of his partner, the injured party can ask for help from the authorities by suing the court so that the losses suffered are recovered. Based on article 1131 BW, the losses suffered can be recovered. The principle of legal certainty is very much needed by business people as regulated in Article 1338 BW.

6. **The principle of privity of contract**

   A valid agreement has the same binding force as the law. This agreement only applies to the parties, while other parties who are not included in the agreement are not bound by it. The principle of privity of contract as regulated in Article 1315 junto 1340 BW in essence this agreement only applies to the parties who make the agreement.

7. **The principle of equality**

   The parties have an equal position, one of the parties cannot terminate the agreement without the consent of the partieshis partner. The parties have a balanced position, so that each party has the freedom to express his will in accordance with the planned business objectives. This freedom will only become concrete and proper if the parties are in an equal position. If the contract is based on an agreement, then the agreement can only end with an agreement, thus the parties have the same degree.

7. **The principle of pactasuntservanda**

   The agreement made by the parties legally, in its implementation must be kept. If one of the parties is harmed, because his obligations are not fulfilled by the contracting partner, then the other party should be obliged to keep the promise that has been agreed upon.

8. **The principle of good faith**

   The parties with the commencement of pre-contract, contract and post-contract, both must have good intentions as regulated in Article 1338 paragraph (3) BW "an agreement must be carried out in good faith".

The law that was born from the agreement, although very flexible with the principles that underlie the law of the agreement. The law that is used as a tool is indeed far behind with the very rapid development of business in modern times like today. The development of digital technology is very fast, so the law has not been able to fully accommodate it. Inadequate conditions will certainly cause legal concerns and uncertainty. Creditors and debtors will sign a contract in the form of a credit agreement which is the principal agreement. The main agreement is regulated in article 1131 BW. The existence of the principal agreement alone is very risky because of the bank's position as a concurrent creditor.

Items used in business transactions between creditors and debtors are classified as follows:

1. Intangible objects (Article 503 BW);
2. Immovable objects (Article 504 BW);
3. Consumables-non-consumables (Article 505 BW);
4. Existing objects - existing objects will still exist (Article 1131 BW);
5. Objects can be divided - objects cannot be divided (Article 1163 BW);
6. Goods in trade-objects outside trade (Article 1332 BW);
7. Objects that can be replaced-things that cannot be replaced (Article 1694 BW);

8. Objects with no owner (Article 519 BW)."[8]

The classification of objects mentioned above is contained in the BW, even though it looks complete and almost perfect, but the existence of objects that will be used as transaction objects often changes the ownership of the object, for example: consumables and non-consumables. Consumables that are used as the object of the loan agreement. Since the object is received by the borrower, it is immediately clear that the borrower will become the owner of the object. Everything is in accordance with the agreement of the parties, that the borrowing party is obliged to return the object that has been borrowed, the quantity and quality must be the same as when borrowing the object. A non-consumable object that is used as an object in a loan agreement, then the ownership of the object remains with the lender, while the borrower, even though the object has been given and received, still cannot become the owner even though it is in the control in question. cause problems in the future, because it is related to the legal status of these objects.

The role of objects in modern life today can change and shake the business world, drastic changes with e-commerce shopping cannot be prevented. In accordance with the nature of civil law, it makes its own advantages, by showing the flexibility of the nature of civil law as a result of the existence of several types of interpretation. The analogy makes the legal position of registered objects able to synergize with immovable objects in the BW. Classification of movable and immovable objects in BW, as a central key. The division of movable and immovable objects has legal consequences for levering or delivery, verjaring, bezwaring or guarantees, bezit, and beslag.

For movable objects and immovable objects there is a very important difference, especially bezwaring or guarantees. Movable objects, if pledged as collateral, will be bound by a pledge guarantee agreement, while immovable objects if pledged are burdened with a mortgage guarantee institution. The classification of movable objects and immovable objects is indeed very important, this can be seen from the attitude of the legislators specifically stipulating anything, including movable objects and objects that qualify as immovable objects. In accordance with the rules set by the authorities, what is meant by immovable objects are:

1. The object is immovable according to its nature, because the object cannot be moved according to its natural structure, for example land (Article 506 BW);
2. Objects that do not move because of their purpose (Article 507BW);
3. Immovable objects due to statutory provisions (Article 508 BW).[9]

Based on the description above, what includes immovable objects focus on land affairs. Since ancient times, land affairs have been one type of object in the very central order of life, whereas in Article 507 BW implicitly there is the principle of attachment (principle of accessia). The principle of attachment occupies a very central position, as evidenced by article 584 BW "the right of ownership of an object cannot be obtained in other ways, but by ownership, because of attachment ..." that in the acquisition of property rights due to an attachment (principle of accessia).

The movable object in question, that the object can be moved is regulated in article 509 BW "movable objects because of their nature are objects that can be moved or moved". Movable objects based on the provisions of the law as regulated in Article 511 BW:

1. The usufructuary and usufructuary rights of movable goods;
2. The right to the promised interest, whether continuous interest, or living forked;
3. Engagements and claims regarding the amount of money that can be billed or regarding movable goods;
4. Proof of shares or shares in a money trading partnership, trading partnership or company partnership, even though the movable goods in question and the company belong to the partnership. This proof of shares or shares is seen as movable property, but only for each participant, as long as the partnership is running;
5. Shares in Indonesia's sovereign debt, whether registered in the general ledger, as well as certificates, debt acknowledgments, bonds or other securities, along with coupons or proof of interest related thereto;
6. Sero-sero or bond coupons from other loans, including loans made by foreign countries.

Objects that can be used as objects of transactions are objects that have economic value and the property rights can be transferred as regulated in Article 570 BW "Property rights are the right to enjoy an item more freely and to act on the item completely freely. , provided that it does not conflict with the law or general regulations stipulated by the competent authority and as long as it does not interfere with the rights of others; all of which does not reduce the possibility of revocation of rights in the public interest and appropriate compensation, based on the provisions of the legislation."

Everyone will compete and always try to pursue property rights to a desired object. This is because property rights are the parent of other civil rights, property rights are quantitatively more complete than other rights, because property rights are permanent. The acquisition of property rights is regulated in article 584 BW:

[8] *Ibid.*

[9] Moch. Isnaeni, 2016, *LembagaJaminanKebendaanDalamBurgerlijkWetboekGadai Dan Hipotik*, Revka Petra Media, Surabaya, hal.58.

"Property rights to an object cannot be obtained in any other way, but by ownership, because of attachment, due to expiration, due to inheritance, either according to law or according to a will, and because the appointment or submission is based on a civil event to transfer property rights, carried out by a person who has the right to act freely on the object."

Property rights owned by a person, both movable objects or immovable objects, make that person has the flexibility to carry out transactions on an object, including guaranteeing it. Movable objects used as collateral will use a pawning institution, while immovable objects used as collateral before the UUHT is promulgated use a mortgage institution. The provisions of the rules provided by the mortgage guarantee agency will not overlap with the guarantee of immovable property. Whereas the main purpose of the guarantee institution is to obtain legal certainty and not override the element of justice, this is different from the distribution of objects regulated in customary law. In customary law, only 2 (two) kinds of objects are regulated, namely land objects and non-land objects. Along with the development of modern times so that the need for objects is also increasingly advanced and increasing, there is a new classification of objects, namely registered objects and unregistered objects. Registered and unregistered objects, for example: ships, airplanes, helicopters, these objects are not found in BW because they were born after codification.

Since the enactment of Law No. 42 of 1999 concerning Fiduciary Guarantees, which was then written the Fiduciary Law, new types of objects have been discovered, namely capital objects and non-capital objects. The essence of a fiduciary guarantee institution is in the form of capital objects. Capital objects are a group of objects that are used to run their business, either directly or indirectly. The object that is burdened by the fiduciary guarantee can still be controlled by the debtor in carrying out his business, the results of theThenda is used by the debtor to pay and repay the debtor's debt every month, thus the collateral object remains in the control of the debtor.

1.3. Functions of Property in Engagement

Daily human life cannot be separated from the existence of objects around it. Based on article 499 BW that "According to the understanding of the law, what is called material is, every item and every right, which can be controlled by property rights", so it can be concluded that the object (zaak) in it is in the form of goods (goed). and rights (recht) that can be controlled and can be used as objects of property rights. Objects (zaak) are abstract, namely in the form of tangible objects and intangible objects. Goods are concrete and tangible, that the goods can be seen and touched, for example: tables, chairs, paper and others. Rights contain the meaning of objects that are intangible (immaterial), for example: receivables, receivables on behalf (opnaam), receivables on carry (anantoonder) and receivables on show (anantoonder) and bills. BW is not consistent, because BW often confuses the meaning of things and goods. Whereas goed (goods) based on BW has a broader meaning than zaak (objects). Goods are objects and assets, while objects are objects that are tangible and can be controlled by humans, in fact goods have a broader meaning than objects. Property rights can be described as follows: that property rights are the parent of civil rights and other material rights. Ownership rights are possible to give birth to various kinds of civil rights that can be used as the basis for transactions by the parties. Property rights can give birth to material rights in the form of building rights, but also from property rights, personal rights are born in the form of rental rights. Quantitatively, property rights holders can carry out legal actions more freely and more than other types of civil rights. Owners of property rights can carry out legal actions freely, by buying and selling, grants, exchanging, borrowing and borrowing and can also be used as collateral. Property rights are permanent and will give birth to material rights and personal rights, for example building rights or rental rights and both will not result in the property rights being nullified. Ownership rights have no validity period such as building use rights, when the owner of the property rights dies, the property rights can be transferred to their heirs. Other civil rights of course have an expiration period according to the agreement by the parties. Property rights have superior characteristics when compared to other civil rights without exception. The extraordinary advantages of property rights, therefore it is not surprising that property rights are always being chased and pursued by everyone. As a result of the superior characteristics that exist and are inherent in property rights, making legislators provide extraordinary and reliable legal protection for their holders. One example of such legal protection is contained in the right of revindication which is regulated in Article 574 BW "every owner of an object has the right to demand that whoever controls it, will return the object in the state it is in".

Ownership of property rights over objects, generally the owner will try and defend it persistently. Ownership rights should not be transferred to other parties without a clear reason, for example, if they need cash, then the person does not sell his property, but seeks a loan with guaranteed property rights. If you want to transfer property rights to another party, then in addition to buying and selling or granting or exchanging or other transfers, this must be followed up with delivery, for example selling, exchanging with other objects, or also donating to a party. The holder of an object with a proprietary label not only has the authority to sell, but can also pledge the object. Debtor's property which is collateralized by a certain debt, if the debt is not paid,

then the object will be sold in public through auction in order to facilitate execution through the power to sell. The power to sell that is given by the debtor to the creditor is not the only reason for the object to be auctioned, but there are other ways that are regulated by the legislators for the settlement of creditors' receivables so that it can be carried out simply, smoothly, and easily. Objects that can be used as collateral include:

1. Tangible objects and intangible objects as regulated in Article 503 BW. Object
   tangible means that the object is a type of object that can be seen with the five senses, while the intangible object is an object that cannot be seen with the five senses but can only be observed naturally. These two objects have a very significant difference, because it involves levering/submission inan event of the transfer of his property. Tangible objects, if the ownership rights are to be transferred, then it is enough to simply hand over the tangible objects from one hand to another based on article 612 BW. In contrast to intangible objects, what happens is the opposite, for example receivables in the name, if you want to transfer your property rights, you need the process regulated in Article 613 BW, namely through cession.
2. Movable and immovable objects as regulated in Article 504 BW.
   The most central division of objects in the BW is movable objects and immovable objects as regulated in Article 504 BW. The division of movable and immovable objects results in a continuous law, namely:
   a. Bezit (position of power)
      One of the classifications of movable objects and immovable objects, related to bezit (position of power). Bezit contains the principle contained in Article 1977 BW "Whoever controls movable objects is considered the owner, only applies to movable objects. The principle of Article 1977 BW cannot be applied to the control of immovable objects and registered objects which results in the application of analogies. The principle contained in Article 1977 BW is one of the efforts to overcome and regulate the intricacies of the existence of such a high level of movable objects and the very complicated process of mobility. The transfer of property rights from movable objects from one party to another is not easy, so it requires the assembly of important principles contained in Article 1977 BW. Is it true that the person who is in control of the movable object is really the owner? This requires proof to get legal certainty. A follow-up question is addressed to the party who is in control of the movable object, is it true that the owner of the object being controlled is his or her own? If the person who controls the object answers "it is his right", then in accordance with the principles contained in Article 1965 BW, if there is still any doubt, then he is obliged to look for other evidence as the ultimate weapon, so as to ensure that the person who is in control of the movable object Currently it is not actually the owner. People no longer need to doubt the ownership of movable objects for those who are in control of them. The existence of Article 1977 BW can create peace in social life, the purpose of the law is to create order and does not require tedious procedures. Thanks to the existence of this article 1977 BW, it is obtained to live in harmony, safety and peace in society, generally someone will not be suspicious when they meet people who are in control of moving objects, they should be considered as owners.
   b. Levering (submission)
   c. Verjaring (expired)
      Based on article 1946 "expiration is a tool to obtain something or to be released from an engagement with the passage of a certain time and on conditions determined by law.
   d. Bezwaring (guarantee or encumbrance)
      Loading of movable and immovable objects
   e. Beslag (confiscation or confiscation).
      Beslag is requested in the lawsuit, so that the defendant does not transfer the object that is the object of the dispute to another party until the case has permanent legal force to ensure legal certainty.
3. Consumables and non-consumables as regulated in Article 505 BW. Consumables in question are objects when used or used and then run out. Non-consumable objects are objects that are used or used every time the form is still the same as before. Based on article 505 BW that the type of each object will have different legal consequences when the object is used as the object of a transaction, for example a person who borrows a consumable object to another party, since that party lends and hands over a consumable object, then the other party who receives the consumable object, at the same time the borrower turns into the owner in his legal position, for example cooking oil. This is different from the object of the loan agreement where the object is not consumable, even though the non-consumable object is already in the hands of the lender who actually controls the object, but the legal position is permanent and will not change to the owner because his position is still the same, namely as a borrower. . The person has an obligation to return non-consumable objects that have been borrowed in their original state, such as books.
4. Existing objects and objects that will still exist are regulated in Article 1131 BW. The object already exists, the object is already in someone's hands, the object that will still exist means that it is not currently in anyone's hands.

5. Divisible objects and indivisible objectsArticle 1160 BW states that "the pawned property cannot be divided, even if the debt is between the debtor's heirs or the debtor's heirs can be divided" and Article 1163 BW states that "the right is essentially indivisible. -divided and lies above all immovable objects which are bound in its entirety, above each of these objects, and above each part thereof. The objects are still burdened with that right, in whoever's hand he moves".
6. Goods in trade and goods outside trade in Article 1332 BW.
   Objects in trade are objects that are used as objects of transactions that have economic value and their property rights can be transferred, and objects outside of trade are objects that cannot be used as objects of transactions in the market.
7. Items that can be replaced and items that cannot be replaced are regulated in Article 1694 BW. Objects that cannot be replaced, for example: if the object is used as the object of a safekeeping agreement, when the time comes for the party who entrusted the object to take the object, then the form and amount of the object when it is taken must be in the same condition as it was since the object was deposited. When the object is returned from the party entrusted with it, the object is not replaced with another object. This is very different from objects that can be replaced, objects when they are deposited and when they are taken are different, because it is the result of replacing other objects according to a previous agreement. For example: a person saves several pieces of money through a bank teller, then when the required money is taken, the bank cannot return sheet after sheet of money that was deposited to the teller according to the original serial number.
8. Ownership and non-master objects (Article 519 BW). Res nullius or unclaimed property is classified as a type of object that has no owner, but in fact the object still has economic value according to the size of certain parties, so that one day it can be taken to be owned by an interested party. On the other hand, the owner of the object, it is clear that the object in question has the owner, so that if desired, the owner may one day become the object of a transaction in order to achieve a certain goal.[10]

1.4. Existence of General Guarantee in Article 1131 BW

Black dictionary “What is Collateral Security ? A security given in addition to the direct security, and subordinate to it, intended to guarantee its validity or convertibility or insure its performance ; so that, if the direct security fails, the creditor may fail back upon the collateral security[11] (“What is a Collateral Guarantee? A guarantee provided in addition to a security/direct security, and under it, is intended to guarantee its validity or convertibility or to guarantee performance; so that if the guarantee fails immediately, the creditor can re-defeat the collateral). Collateral is an object given by the debtor, so that the creditor is sure that the debtor will fulfill his obligations until paid off, on the other hand that the guarantee is everything that is received by the creditor and submitted by the debtor. to guarantee a debt in the community and is emphasized by:

a. Mariam DarusBadrulzaman as quoted by Mrs. Frieda HusniHasbullah stated that a guarantee is a guarantee given by a debtor and or a third party to a creditor to guarantee his obligations in an engagement.
b. Thomas Suyanto argues that a guarantee is a surrender of wealth or a statement of one's ability to bear the repayment of a debt.[12]

According to the researcher, collateral is a legal regulation that regulates guarantees from creditors' debts to debtors, or legal provisions governing the legal relationship between the guarantor (debtor) and the guarantee recipient (creditor) which results in a debt-to-debt relationship. certain receivables by submitting a certain object belonging to the debtor which is submitted voluntarily to the recipient of the guarantee (creditor).

The birth of a credit agreement between a creditor and a debtor as a general guarantee as regulated in article 1131 BW. Every engagement that is assembled by the parties is certainly profit-oriented. The parties involved in an engagement must understand their respective rights and obligations. Expectations for the debtor to have commitments and fulfill their achievements in accordance with the agreement set forth in an agreement or contract. If there is one party who reneges and does not keep his promise, then the injured party must bear the risk. For parties who suffer losses based on BW must be restored, then the injured party can claim their rights by requesting assistance from the law, namely by filinga lawsuit to the district court. The creditor as the aggrieved party in addition to filing a lawsuit to the court with a request for confiscation of collateral for the debtor's property. Based on the court's decision and it is decided that the party who is in default is proven guilty, the party who defaults is obliged to comply with the judge's decision which has permanent legal force or inkracht van gewisjde, namely by paying compensation and other costs. If a debtor is in default if he ignores a court decision that has permanent legal force or inkracht van gewisjde, the aggrieved party will request that the debtor's property be increased to confiscation of execution, so that the creditor is allowed to sell the debtor's property by paying off the debt. The auction sale of the property belonging to the debtor in default, when paying

[10]Moch. Isnaeni,2016, *Hukum Benda DalamBurgerlijkWetboek*., Revka Petra Media, Surabaya, h.68.
[11] https://thelawdictionary.org/collateral-security
[12]Ibid.

off the debt, he is obliged to pay compensation, costs, and interest suffered by the creditor in accordance with Article 1131 BW "all the property of the debtor, both movable and immovable. , both existing and new ones that will exist in the future, become dependents for all individual engagements. All of the debtor's assets that are guaranteed are intended for all creditors, thus based on article 1131 BW it is referred to as a general guarantee born of a law that will bring the greatest benefit to all members of society as expected according to John Stuart Mill that "the conception of Utilities or Happiness is really just, which is considered to be the rule that directs human behavior, which means the greatest happiness overall "and that the world in general benefits greatly".[13]

III.ESSENTIALCHARACTERISTICS OF COLLATERAL AS SPECIAL GUARANTEE IN THE BANKING ENVIRONMENT

3.1. The essence of the main characteristics of material rights that burden the collateral as special guarantees belonging to the bank as creditor

Bank is a business entity that collects funds fromthe community in the form of savings and distribute them tocommunity in the form of credit and or other formsin order to improve the standard of living of the people based on Article 1 number (2) of the Banking Law. Every member of society's life cannot be separated from the role of the bank, the role of the bank is increasingly central in the daily routine of every business. “A successful banking system has not only become crucial for the functioning of every business, it has also become central to the daily routine of most people's.[14] Banks as financial intermediaries or financial intermediaries whose function is to collect funds from the public in the form of deposits in the form of savings, current accounts, deposits and time deposits, in addition, banks can also channel funds from public deposits to individuals or corporations in the form of loans/credits. The credit packages offered by the bank include: working capital loans, construction loans, land ownership loans (KPT), home ownership loans (KPR), apartment ownership loans (KPA) with credit terms: short term 1 (one) years and long-term credit of a maximum of 20 (twenty) years. Banks in disbursing loans to individuals and corporations that need funds to develop their businesses, banks must apply the precautionary principle, namely the 5C mandated by the Banking Law. Business people if they lack funds take smart steps, namely taking advantage of the role of banks with working capital loans rather than having to sell their assets. Business people will apply for credit by attaching several requirements that have been determined by the bank. After the application and requirements are received by the bank, the bank will distribute it to the appraisal section for analysis and checking of Bank Indonesia, the aim is that before conducting a survey on the object that is used as collateral, the bank will know in advance the black record of the prospective customer. If the customer does not have a black record, then the bank will submit the appraisal and analysis to the surveyor to survey the object that is used as collateral by matching a photocopy of the certificate, a tax notice due for land and building tax (SPPT PBB) for the current year and a building permit (IMB). . The surveyor will submit and report to the appraisal section for more detailed analysis. Appraisal and analysis will convey to the head of credit regarding the market price and the feasibility of the object being used as collateral in writing. The head of credit will issue a decision letter regarding the eligibility of the customer. Customers who are declared eligible to be given credit with a value determined in writing by the head of credit, the customer will be invited to the credit department while bringing and submitting the original certificate, original SPPT PBB for the current year, original proof of payment of land and building tax (PBB) and original permit constructing a building (IMB) and signing the details of the costs to be paid, including: provision fees, administration fees, certificate checking fees, certificate plotting checks and certificate validation, life insurance costs and first installments. The bank will submit to the Notary as well as the Land Deed Making Officer (PPAT) to sign the credit agreement in the form of a debt agreement and a material guarantee agreement. The bank as the provider of funds is called the creditor and the customer as the debtor will sign a debt-receivable agreement. The legal relationship between creditors and debtors is stated in a debt agreement or credit agreement generally known as a principal agreement. The main agreement includes general guarantees as regulated in article 1131 BW. General guarantee implies that the guarantee for all assets of the debtor and which is intended for all creditors. General guarantees are born from law. The debtor is obliged to pay the amount owed to the creditor so that the creditor does not suffer a loss. The fulfillment of the obligations of the debtor in the form of repayment of the debt, the creditor's rights in the form of profits can be realized. The debtor does not fulfill his obligations and does not pay his debt, what happens otherwise the creditor will experience a loss. The losses experienced by creditors certainly interfere with their business, when in fact the purpose of creditors is to channel loans in order to make a profit. The law does not require any losses suffered by creditors, so with legal

[13]John Stuart Mill. 1863. Utilitarianisme. (Kanada : BukuBatocheTerbatas)
[14]Moch. Isnaeni, 2016, *Loc.Cit.*

assistance the losses can also be recovered. The law will recover the losses suffered by the creditor, then the creditor must file a lawsuit to the district court with a request for confiscation of the debtor's property until the court's decision has permanent legal force. Court decisions are condemnator (condemnatoir), meaning that the decision will punish the losing party so that the party fulfills its achievements by paying allspirit of debt. Based on a court decision that has permanent legal force and the debtor still ignores it, the confiscation of certain goods belonging to the debtor will be increased to an execution confiscation until the debtor can pay off all his debts.

If a bank only relies on general guarantees, then the bank has a position as a concurrent creditor and this is very detrimental to him. The bank's efforts to anticipate early on, the bank will ask for certain objects belonging to the debtor which will be tied up specifically as a special guarantee which is an additional guarantee (accessoir) as collateral. Collateral is a collateral right belonging to the debtor must have economic value and be easily transferred to anyone. The guarantee of material rights in accordance with the characteristics of the material has the following characteristics: 1. has a direct relationship with or on certain objects belonging to the debtor, 2. is absolute, that is, it can be maintained or directed against everyone, 3. suite, meaning that the right follows the object in the hands of whoever the object is, 4. receivables born first have a higher position or rank, namely older material rights occupy a higher rank than material rights that arise later, 5. have the nature of droit de preference or priority, namely giving priority position, pre-emptive rights, or special rights to the holder of material rights, 6. material lawsuits can be filed against anyone who interferes with or contradicts the property rights he holds, 7. can be transferred / transferred to anyone too.

The guarantee of material rights is a right given to creditors to take precedence in taking repayments over other creditors, on the proceeds of the sale of certain objects that are specifically bound. Material security rights thus have the characteristics of preferences and preferential rights. The position of the creditor is preferred, because the creditor has a guarantee of material rights that have absolute characteristics that can be defended against anyone who has a direct relationship with certain objects belonging to the debtor, and receivables that have a higher position first. This is contained in the last sentence in the provisions of Article 1132 BW which is: "... unless among the debtors there are valid reasons to take precedence". This sentence indicates that there are exceptions or objects belonging to creditors can be specially bound as special guarantees, it can also be interpreted that on the equality of positions of creditors who owe debts, deviations can be made on the basis of prior rights which are referred to as preferred creditors. The exception mentioned in the last sentence of Article 1132 is a guarantee of a special nature, which is a right granted to creditors in a better/higher position compared to other creditors in paying off debtors' receivables. A better/higher position among creditors who have special guarantee rights is not the same, this depends on the special guarantee rights owned by creditors. Special guarantee rights that have a better/higher position are obtained because they are given by law as regulated in Article 1133 BW "things to take precedence among debtors arise from privileges, from pledges and from mortgages" and based on Article 1134 BW " a special right is a right that is given by law to a debtor so that the level is higher than other debtors, solely based on the nature of the debt. Pawns and mortgages are superior to privileges, except in cases where the law provides otherwise".

The birth of a special guarantee because it was agreed in advance, for example: Article 1151-1161 BW concerning pawning, Article 1162 BW concerning mortgages, Law Number 4 of 1996 concerning Mortgage Rights and Law Number 42 of 1999 concerning Fiduciary Guarantees. The existence of an additional agreement in the form of a material guarantee agreement made by the parties can at least provide legal certainty, according to Gustav Radbrouch "legal certainty is a definite (condition) matter, provision or provision. The law must essentially be certain and fair. It must be a code of conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and carried out with certainty the law can carry out its functions.[15]

3.2 Correlation of Principal Agreement With Accessoir Agreement

Accounts payable agreements made by the parties are classified as obligatory agreements. The loan agreement has received a guarantee from the legislators as regulated in Article 1131 BW as a general guarantee. Even though the guarantee is given by the authorities because of its general nature, namely that the guarantee is intended forukkan for all creditors for all property belonging to the debtor, it turns out that it has not been able to provide a comfortable and safe position for creditors. The risk for creditors if they only rely on general guarantees, still creates uncertainty for the debtor in paying off all his debts. Article 1131 BW has been proven and cannot guarantee the entire debt of the debtor, because if the auction sale the debtor's assets must be divided proportionally to pay off the bills of all creditors. It is this condition that is feared by creditors that the funds that have been disbursed by creditors cannot be ascertained to return in full in accordance with expectations.

[15]DominikusRato, 2010,*FilsafatHukumMencari, MengenaldanMemahamiHukum*, LaksbangPressindo, Yogyakarta, hal.49.

Creditors must anticipate and avoid various possible risks that occur. From the beginning, creditors must be able to take advantage of the facilities provided by the rules of the collateral law, namely making special guarantees through the assembly of clauses in the material guarantee agreement. Accounts payable agreement which is used as the main agreement, must be added to the making of an additional agreement in the form of a material guarantee agreement as an effort to deviate from the general guarantee as regulated in Article 1131 BW. The material guarantee agreement made by the parties will give birth to special guarantees that only burden certain objects belonging to the debtor and are only intended for certain creditors, namely pledges, mortgages, mortgages and fiduciaries.

Banks in disbursing credit to debtors by making basic agreements and material guarantee agreements which are additional agreements or accessories. The nature of the guarantee agreement is that the guarantee agreement cannot stand alone without a principal agreement which is a preliminary agreement. The material guarantee agreement is an additional or accessoir agreement, so the existence of the guarantee agreement is largely determined by the presence or absence of the preliminary agreement or the main agreement. In general, the principal agreement is in the form of a debt agreement or credit agreement or other agreement that creates a legal relationship between creditors and debtors. The nature of the additional agreement (accessoir) may result in legal consequences, as follows: 1. The additional agreement (accessoir) is dependent on and determined by the main agreement,2. If the main agreement is canceled, then the additional agreement (accessoir) will also be canceled, 3. If the main agreement is transferred, then the additional agreement (accessoir) will also be transferred, 4. If the main agreement is switched due to cessie/subrogation, then the additional agreement (accessoir) will also be transferred without special delivery, 5. Additional delete agreement (accessoir), then the main agreement will not be deleted.

3.3. Material Guarantee Agreement as an Additional Agreement (Accessoir)

The right of material security is a right that can give the creditor a higher position, because the creditor will take precedence in taking the repayment of the debtor's receivables taken from the sale of certain objects belonging to the debtor. Certain objects belonging to the debtor that are submitted voluntarily to the creditor and bound by the creditor with a material guarantee agreement, for example: movable objects and immovable objects that are used as collateral. immovable property which will be used as collateral to be bound by a pledge guarantee agreement, a lien will be born belonging to the creditor. This lien will be used to guarantee a certain amount of debt belonging to the debtor. Guided by an additional agreement (accessoir) in the form of a lien, it is true that the creditor gets a special guarantee for the loan of funds distributed to the debtor. A lien is basically used to guarantee a certain amount of debt belonging to the debtor. Preferred creditors are the highest or ultimate weapon owned by creditors in paying off a number of debtors' receivables. The guarantee of material rights in accordance with the characteristics of the material has the following characteristics: 1. has a direct relationship with or on certain objects belonging to the debtor, 2. is absolute, that is, it can be maintained or directed against everyone, 3. suite, meaning that the right follows the object in the hands of whoever the object is, 4. receivables born first have a higher position or rank, namely older material rights occupy a higher rank than material rights that arise later, 5. have the nature of droit de preference or priority, namely giving priority position, pre-emptive rights, or special rights to the holder of material rights, 6. material lawsuits can be filed against anyone who interferes with or contradicts the material rights he holds, 7. can be transferred/transferred to siwhatever.

The guarantee of material rights is a right given to creditors to take precedence in taking repayments over other creditors, on the proceeds of the sale of certain objects that are specifically bound. Material security rights thus have the characteristics of preferences and preferential rights. There are forms of guarantee agreements that are required by statutory provisions to be made in writing and using an authentic deed, if the implementation deviates from these provisions, the agreement made is null and void.

Types of guarantee agreements that require an authentic deed to be drawn up include: 1. Ship mortgage deed used by creditors and debtors for imposition of mortgage guarantee agreements on ships, airplanes and helicopters drawn up by the Registrar and Registrar of Transfer of Names of Ships, 2. Power of Attorney to impose Mortgage (SKMH) made before a Notary, 3. Deed of Granting Mortgage (APHT) drawn up before a Land Deed Authorization Officer (PPAT), 4. Power of Attorney to Charge Mortgage (SKMHT) made before a Notary or PPAT , 5. Deed of Fiduciary Security drawn up before a Notary, 6. Other provisions that require guarantee agreements to be made authentically are regulated in the provisions of Article 19 of Government Regulation Number 10 of 1961 concerning Land Registration

"Every agreement that intends to transfer land rights, grant new land rights, pawn land or borrow money with land rights as collateral, must be proven by a deed made by and before an official appointed by the Minister of Agrarian Affairs (hereinafter referred to in this Government Regulation as acting). The form of the deed is determined by the Minister of Agrarian Affairs.

The regulation has been updated with Government Regulation Number 18 of 2021 dated February 2, 2021, concerning Management Rights, Land Rights, Flat Units, and Land Registration.

Based on the above provisions, the main task of PPAT in assisting the Minister of Agrarian Affairs is to make deeds regarding certain legal actions related to land rights, namely: deed of transfer of land rights, deed of granting new rights to land, deed of pawning land rights. , deed regarding the imposition of land rights as dependents on debt, apart from the guarantee agreements mentioned above, the guarantee agreement can also be made in writing under the hand, for example a pawn.

The material guarantee agreement cannot stand alone without a main agreement which is a preliminary agreement. The material guarantee agreement is an additional agreement (accessoir). Additional agreement (accessoir), the existence of the guarantee agreement is highly determined and depends on the presence or absence of the preliminary agreement or the main agreement. The principal agreement is generally in the form of a debt-receivable agreement or referred to as a credit agreement or other agreement that will give rise to a debt-receivable legal relationship. The legal consequences of an additional or accessory agreement include: 1. the existence of a guarantee agreement is dependent on and determined by the main agreement, 2. if the main agreement is canceled, then the accompanying agreement will also be void, 3. if the main agreement is transferred, then the accompanying agreement will follow. switch, 4. if the main agreement changes due to cessie/subrogation, then the follow-up agreement also changes without special delivery, 5. if the guarantee agreement is void, it does not automatically make the main agreement also void.

If the creditor only makes the principal agreement, then the creditor's position is as a concurrent creditor. Concurrent creditors are very detrimental to the bank, the bank does not want to lose and has the same fate as the previous debtor, the bank will ask for an object belonging to the debtor which is tied up as additional collateral which is a material guarantee so that the creditor's position becomes the preferred creditor.

IV.CONCLUSION

1. The characteristics of collateral as special guarantees in the banking environment can be divided into 2, namely general guarantees and special guarantees: a. General guarantees are the implementation of the law regulated in article 1131 BW "All objects of the debtor, both movable and immovable , both existing and new ones that will exist in the future, become dependents for all individual engagements". b. The special guarantee is regulated in article 1132 BW: “The object becomes a joint guarantee for all those who owe it; The income from the sale of the objects is divided according to the balance, that is, according to the size of each bill, unless there are valid reasons for the debtors to take precedence. Special guarantees are born from material guarantee agreements, namely: liens, mortgages, mortgages and mortgagesfiduciary rights that give birth to liens, mortgage rights, mortgage rights and fiduciary rights.
2. The nature of the main characteristics of collateral, among others: a. Absolute nature. Material rights are absolute, meaning that rights can be enforced against anyone. Droit de suite. Material rights will follow the object in the hands of whoever the object is. b. Priority principle. Material rights that have been born first take precedence over material rights that are born later. c. preference. Material rights are rights that are given to creditors to take precedence in taking repayments over other creditors.

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