

**THE ROLE OF BANK GUARANTEE AS COLLATERAL IN THE
IMPLEMENTATION OF WORK ON PROJECTS AT PT HUTAMA KARYA
(PERSERO) EPC DIVISION (STUDY ON THE MUARA TAWAR 2 X 650 MW
POWER PLANT PROJECT)**

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ABSTRACT

Keywords: Bank Guarantee; Large projects such as power plants require guarantees for the implementation of the work to ensure the project's smooth running. A Bank guarantee is commonly used in these large projects to ensure contract fulfilment and good performance. This research aims to evaluate bank guarantees' role in projects such as the 2 x 650 MW Muara Tawar Power Plant run by PT Hutama Karya (Persero) EPC Division. This research uses qualitative research methods. Data collection techniques in this study include literature studies and interviews. Data analysis techniques used in this study include data reduction, data presentation, and conclusion drawing. The results showed that bank guarantees are essential in implementing work on projects at PT Hutama Karya (Persero) EPC Division. Bank guarantees can be used to guarantee various things, such as quality of work, timely completion, and payments to third parties. Bank guarantees have various benefits in the implementation of work on projects at PT Hutama Karya (Persero) EPC Division, including increasing the employer's trust in service providers, increasing the certainty of work implementation, and increasing efficiency in the work implementation process.



Introduction

National development is a series of sustainable development efforts covering the entire life of the community, nation, state to carry out the task of realising national goals, as stated in the preamble to the 1945 Constitution, namely to form an Indonesian state government that protects the entire Indonesian nation and all Indonesian bloodshed and to realise general welfare, educate the life of the nation, participate in implementing order a world based on freedom, lasting peace and social justice (Anisah, 2022).

As is known, the State of Indonesia is a developing country that is actively developing in all physical and non-physical fields (Majid, 2023). One form of realisation of development carried out is in the form of construction of facilities projects and infrastructure, in the form of construction and rehabilitation of roads, bridges, ports, irrigation, waterways, public housing, offices, and so on (Suri, 2021).

According to the provisions of Law No. 7 of 1992 concerning Banking jo. Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 stated the importance of efforts to increase the protection of public funds entrusted to banking institutions, where one of the efforts is the application of prudential banking principles. The precautionary principle is a logical consequence of creating a relationship between the bank and the public

(customers) who entrust their funds to be managed by the bank as well as possible. According to the provisions of Article 6 letter (d) of Law No. 7 of 1992, it is only explained that commercial banks can buy, sell, or guarantee at their own risk or for the benefit and at the behest of customers on various types of securities. However, in Article 6 letter (n) and its explanation, it is implied that there is recognition of banking services in the form of bank guarantees as long as they do not conflict with applicable laws and regulations (Agustina, Widodo, & Sharon, 2021).

A Bank guarantee is a guarantee provided by a bank to provide guarantees to the recipient of guarantee that the bank, as a guarantor, will fulfil all obligations as promised. Suppose the guaranteed party (customer) does not fulfil its obligations (Pujayanti & Bagiastra, 2014). In that case, the guaranteed party is contractors or contractors, which are companies or individuals who are legal entities or entities engaged in implementing contracting. Contractors can be individuals or legal entities, both government and private. For government projects, contractors must be legal entities (Mandagi, 2020).

Understanding Bank Guarantee is a written guarantee from the bank that is given/addressed to its customers (guaranteed parties) to fulfil an obligation. Suppose the guaranteed party in the future does not fulfil obligations to other parties by the agreement (default). In that case, the bank, as the guarantor, can take action to inform the beneficiary. Bank Guarantee Bank Indonesia Regulation Number 14/26/PBI/2012 (CHANDRA, 2023). From this understanding, in the issuance of Bank Guarantees, there are always three parties involved (Harahap, 2017):

1. Guarantor, which is a bank that issues bank guarantees to its customers
2. Guaranteed, namely the customer as a guaranteed party, the customer who requests the bank to issue a bank guarantee from the customer
3. Recipient of Guarantee, namely a third party who receives collateral for an agreement with a guaranteed party or a party who receives a guarantee for a consequence of error (default) committed by the guaranteed party and is entitled to obtain compensation for the incident.

A Bank guarantee is beneficial to use in various activities, for example, in the construction of a tendered project. Usually, the employer will ask for a bank guarantee from the contractor who will work on the project. This is intended in addition to being a guarantee of work; it can also show the bona fide status of the contractor who will work on the project (Darmawan, 2023). The types of Bank Guarantee types are as follows (Siswanto, 2017):

1. Bid bond is a bank guarantee as a condition for participating in tenders
2. An advance payment bond is a bank guarantee for the down payment received when winning a tender
3. Performance bond is a bank guarantee for the implementation of project work
4. A Maintenance Bond is a bank guarantee for maintenance after completing the project.

Based on the description above, further research is needed on the relevance of the use of bank guarantees in financing government projects, which will be outlined in the

title of the thesis, *The Relevance of Using Bank Guarantees as Collateral in the Implementation of Muara Tawar 2 x 650 MW Power Plant Project Work*.

Research Methods

This study used qualitative research methods. According to (Habsy, 2017), qualitative research intends to holistically understand phenomena about what is experienced by research subjects, for example, behaviour, perception, motivation, action, etc. This understanding is achieved through descriptive analysis using words and language in a specific, natural context and utilising various natural methods.

Data collection techniques in this study include literature studies and interviews. A literature study was conducted to collect information and references related to the role of Bank Guarantee in construction projects. Interviews were conducted with related parties, such as project managers and banks, to gain direct insight into using Bank Guarantees in project implementation. Furthermore, the data analysis techniques used in this study include data reduction, data presentation, and conclusions. Data is reduced by organising and simplifying the data collected through literature studies and interviews. The presentation of data is carried out by presenting relevant findings and describing them narratively. Finally, conclusions are drawn based on data analysis that has been carried out to answer research questions.

Results and Discussion

Bank Guarantee is a guarantee or guarantee provided by the bank, where the bank guarantees the customer (guaranteed) to fulfil an obligation if what is guaranteed in the future turns out not to fulfil obligations to other parties by the agreement because the bank guarantee is one of the bank services in addition to providing other services, the bank guarantee is given to its customers to provide assistance that is supportive of customers who will make a purchase or activities that do not require credit from banks (Siswanto, 2017). In this case, the bank will be the guarantor, and the contractor will be guaranteed. If the guarantee cannot fulfil its obligations, the bank will pay a sum of money (Ibrahim, Octora, & Sirait, 2016). The purpose of providing bank guarantees by the bank to guarantee recipients is: a). Providing assistance in facilities and convenience in facilitating customer transactions. b). The holder of a bank guarantee guarantee is to provide confidence that the guarantee holder will not suffer losses if the guaranteed party neglects its obligations because the holder will receive compensation from the bank. c). Fostering mutual trust between guarantors and those who receive guarantees. d). Provide a sense of security for Bang and other parties when doing business. e). Banks will benefit according to the agreed contract (Harahap, 2017).

According to Simorangkir (Dariwu, 2016) stated that a bank guarantee as a guarantee in the implementation of a cooperation agreement is one of the services provided by the bank, where the bank provides guarantees to guarantee recipients fulfil the obligations of the guaranteed party (its customers) to provide assistance that supports customers who will make transactions that do not require credit from the bank (Siswanto,

2017). Based on the Civil Code, bank guarantees in the guarantee clause (personal guarantee) or borscht Article 1820 to Article 1850 where the bank acts as the insurer. As with other guarantees, the nature of the warranty agreement is a tail agreement or accessory, meaning following the principal agreement. As a consequence of the nature of the accessory other than that this guarantee can only be given after the principal agreement has been made, the subsequent consequence that the guarantee cannot be given for an amount that exceeds the obligations of the secured debtor or includes conditions that are more onerous than the principal agreement (Widyorini, 2020).

Bank Indonesia, as the central banking regulator, issued a Circular Letter of the Board of Directors of Bank Indonesia No.11/110/KEP/DIR/UPPB concerning the Provision of Guarantees by Banks and the Provision of Guarantees by Non-Bank Financial Institutions, which has been enhanced by the Decree of the Board of Directors of BI No.23/88/KEP/DIR concerning the Provision of Bank Guarantees. The issuing bank guarantee (Bank) contains the following provisions: transactions between the guaranteed party and the recipient of the guarantee adjusted to the type of bank guarantee. This means a bank guarantee is an agreement based on or preceded by a previous agreement (Darmawan, 2023). To get the desired bank guarantee by its intended use, a person, entrepreneur, or agency/institution that applies to get a bank guarantee from a bank must meet several conditions or procedures set by the bank concerned to provide bank guarantees (Mandagi, 2020).

The maturity time of the bank guarantee is generally stated in the bank guarantee certificate or billet bank guarantee (Agustina et al., 2021). A bank guarantee may expire if:

1. Returned the original bank guarantee because an agreement has been executed correctly and on time;
2. The deadline for bank guarantee claims has expired without any claim from the recipient of the guarantee; and
3. There is a statement of default from the debtor so that the bank guarantee ends with the claim submission process.

Bank guarantees are essential in implementing various construction projects, such as power plants. One company that often uses bank guarantees as a form of guarantee in several of its projects, including the Muara Tawar 2x 650 MW Power Plant project, is PT. Hutama Karya (Persero) EPC (Engineering, Procurement, and Construction) Division. The role of using Bank Guarantee as collateral in implementing the Muara Tawar 2 x 650 MW Power Plant Project is as follows.

Performance Bond

A Bank guarantee can be used to guarantee the performance of the contractor. Thus, if the contractor does not complete his work by the mutually agreed contract, the project giver can claim a certain amount from the bank guarantee for compensation.

1. Payment Guarantee (Payment Bond)

Bank guarantees can be used to guarantee payments to parties interested in the project, including subcontractors and suppliers. So, if the main contractor fails to pay a third party, then the recipient of the bank guarantee can file a claim to get payment.

2. Maintenance Bond

Bank guarantees can be used for down payment guarantees that are used correctly and by the terms of the contract.

Jaminan Uang Muka (Advance Payment Guarantee)

A Bank guarantee can be used to guarantee that the contractor will deliver the work results according to the contract. You can claim a bank guarantee if there is a delay or something inappropriate.

3. Handover Guarantee (Delivery Bond)

A Bank guarantee can be used to guarantee that the contractor will deliver the work results according to the contract. You can claim a bank guarantee if there is a delay or something inappropriate.

4. Auction Guarantee (Bid Bond)

Bank guarantees can be used to guarantee that if a contractor wins an auction, they will sign a contract. Bank guarantees help create a fair business environment and protect project givers and parties involved in it. The Muara Tawar power plant project, which is high-scale and complex, reduces risk and ensures smooth project implementation. Thus, bank guarantees provide benefits in the implementation of projects at PT Hutama Karya (Persero) EPC Division, namely, increasing the level of trust from employers in service providers involved in the project, ensuring certainty of work implementation by the contract, and increasing efficiency in the process of carrying out work by reducing risks related to uncertainty or delays.

Conclusion

Bank guarantees are vital in implementing work on projects run by PT Hutama Karya (Persero) EPC Division. A Bank guarantee is a guarantee that covers essential aspects, such as quality of work, timeliness in project completion, and payments to third parties. In this context, bank guarantees bring several significant benefits in project implementation at PT Hutama Karya (Persero) EPC Division, among others, increasing the level of trust from employers in service providers involved in the project, ensuring certainty of work implementation by the contract, and increasing efficiency in the process of carrying out work by reducing risks related to uncertainty or delays. Thus, bank guarantees are identified as essential elements in ensuring the smooth and successful implementation of the project, providing confidence and assurance for all parties involved.

Bibliography

- Agustina, Riska, Widodo, Hartono, & Sharon, Grace. (2021). Kepastian Hukum Bank Garansi Bagi Kreditur Terhadap Wanprestasi Debitur Pada Pelaksanaan Perjanjian Kerja Konstruksi. *Krisna Law*, 3(2), 1–11. <https://doi.org/10.28932/di.v7i2.718>
- Anisah, Desi. (2022). Pengembangan Sektor Pariwisata Di Indonesia:(Di Tinjau Perpektif Hukum Berdasarkan Dari Undang-Undang Nomor 10 Tahun 2009 Tentang Kepariwisataaan). *Jurnal Pariwisata Darussalam*, 1(2).
- Chandra, Muhammad A. (2023). *Garansi Bank Sebagai Pengalihan Kewajiban Jika Terjadinya Wanprestasi Oleh Nasabah Perseroan Terbatas Bank 9 Jambi Dan Perusahaan Pemborong*. Universitas Batanghari Jambi.
- Dariwu, Denish David. (2016). Bank Garansi Sebagai Pengalihan Kewajiban Apabila Terjadi Wanprestasi Oleh Nasabah Menurut Kitab Undang-Undang Hukum Perdata Pasal 1831 & 1832. *Lex Crimen*, 5(7).
- Darmawan, Stephanie Priscilla. (2023). Bank Garansi Sebagai Pengalihan Kewajiban Jika Terjadi Wanprestasi Oleh Nasabah (Studi di Bank BRI Cabang Kelapa Gading). *Journal on Education*, 5(4), 16810–16820.
- Habsy, B. All. (2017). Seni memahami penelitian kuliitatif dalam bimbingan dan konseling: studi literatur. *Jurnal Konseling Andi Matappa*, 1(2), 90–100.
- Harahap, M. Yadi. (2017). Perbandingan Hukum Perdata Dan Fatwa DSN-MUI Tentang Bank Garansi Sebagai Jaminaaan Dalam Sistem Perbankan Di Indonesia. *Jurnal Al-Muqaranah: Jurnal Perbandingan Hukum Dan Mazhab*, 5(1).
- Ibrahim, Johannes, Octora, Rahel, & Sirait, Yohanes Hermanto. (2016). Peranan Bank Penerbit Bank Garansi Sebagai Penjamin Pelaksanaan Pekerjaan Konstruksi Pembangunan Rumah Susun Dalam Meningkatkan Perlindungan Hak Konsumen. *Dialogia Iuridica*, 7(2), 88–117.
- Majid, M. Arif. (2023). Problematika Pendidikan di Indonesia sebagai Negara Berkembang. *Salimiya: Jurnal Studi Ilmu Keagamaan Islam*, 4(1), 58–69.
- Mandagi, Y. (2020). Pelaksanaan Bank Garansi Sebagai Suatu Jaminan Proyek Pada Pembiayaan Proyek Pemerintah Di Provinsi Riau. *Journal Equitable*, 5(1), 68–88.
- Pujayanti, Putu Novi, & Bagiastra, I. Nyoman. (2014). Kedudukan Bank Dalam Pemberian Bank Garansi. *Journal Ilmu Hukum Kerta Semaya Universitas Udayana*, 2.
- Siswanto, Ade Hari. (2017). Karakteristik Hukum dan Pelaksanaan Bank Garansi Dalam Jaminan Kontrak Jasa Konstruksi. *Lex Jurnalica*, 14(1), 147344.
- Suri, Desi R. (2021). *Upaya Pemerintah Dalam Meningkatkan Kesejahteraan Lanjut Usia Di Desa Tanjung Inten Kecamatan Purbolinggo Kabupaten Lampung Timur*.

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Widyorini, Sri Retno Widyorini Sri Retno. (2020). Bank Garansi Sebagai Jaminan Bagi Pihak Ketiga. *Serat Acitya*, 2(1), 84.