

Legal Consequences If A Debtor Using A Permanent Employee Appointment Decree As Collateral Resigns From Their Workplace

Nandhina Ayu Saraswati^{1*}, Hernawan Hadi²

¹ Master of Notary Student, Faculty of Law, Sebelas Maret University, Indonesia

² Master of Notary Lecturer, Faculty of Law, Sebelas Maret University, Indonesia

* Corresponding author:

Email: nandhinaayu@gmail.com

Abstract

This study aims to analyze the legal consequences if the debtor who uses the guarantee of the Decree of Permanent Employee Appointment resigns from their workplace. This study is normative prescriptive, with a legal approach based on regulations (statute approach) and a conceptual approach. The types and sources of data used are laws and regulations, books on law, scientific journals, scientific articles, and interviews. Data collection through literature studies and the analysis used is description, construction, argumentation, and systematization. The results of this study indicate that debtors who use the guarantee of the Decree of Permanent Employee Appointment resign from their workplace, which results in the guarantee no longer being valid, then online and on-site collection will be conducted until blacklisting in the Financial Services Authority system.

Keywords: Legal consequences, Decree on Appointment of Permanent Employees and credit agreement.

I. INTRODUCTION

Banking institutions play an important role in a country's economy and significantly impact economic growth. It is an intermediary between individuals with excess funds and those needing funds. In addition, banks also function as financial intermediary institutions, which means that banks collect funds from the public in the form of savings and then allocate them to the public in the form of credit or financing (Wiwoho, 2014). According to the Republic of Indonesia Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) Article 1 number (2), "A bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of the people." Meanwhile, based on Article 4 of the Banking Law, "Indonesian banking aims to support the implementation of national development to improve equality, economic growth, and national stability towards improving the welfare of the people." Therefore, almost all individuals have considered borrowing and lending activities very important to support personal economic development and improve their quality of life. From the economic development perspective, the role of credit activities and provision is very significant at the national and international levels.

Various financial institutions, especially conventional banks, have played a major role in facilitating the need for funds for economic activities by providing loans, including bank credit, which has been widely utilized by members of the public who need funds (Bahsan, 2007). Banks providing credit are often required to submit credit guarantees by the debtor to the creditor. Credit guarantees are in the form of material and/or credit guarantee promises, so they are personal guarantees. Material guarantees provide property rights to the collateral holder (Bahsan, 2007). The debtor's obligation to submit credit guarantees is closely related to the agreement between the parties making the credit. In general, creditors require credit guarantees before providing credit to the debtor. Meanwhile, the requirement to submit credit guarantees is often regulated and required by the creditor's internal regulations and/or applicable laws and regulations (Bahsan, 2007). The Permanent Employee Appointment Decree does not qualify as a bank credit guarantee according to the guarantee law in Indonesia. It is because it does not fulfill the nature of the guarantee as a credit settlement, does not fulfill the elements of an object, and is not a valuable document whose ownership can be transferred.

The Decree is not included in the guarantee of property or personal guarantee but is included as a special right according to Article 1134 of the Civil Code: "Something that is given by law to a creditor so that their level is higher than that of other creditors, solely based on the nature of their credit." Gaining loans with

a Decree guarantee is based on trust and caution towards debtors who can pay off their debts. Efforts to resolve bad debts with a Decree guarantee are valid because they have met the legal requirements of an agreement as regulated in Article 1320 of the Civil Code. However, the agreement does not provide legal certainty because the Decree does not meet one of the requirements for collateral assets: it can be valued in money and is easily sold to pay off the credit. However, in reality, the Permanent Employee Appointment Decree is considered to have the same value as collateral in the form of physical assets. Suppose the Permanent Employee Appointment Decree is considered as tangible collateral. In that case, problems will arise because the Permanent Employee Appointment Decree cannot be traded or transferred, so the bank will have difficulty carrying out the execution process if a bad debt occurs.

II. METHODS

The type of research chosen is normative legal research, which focuses on studies using library methods and examines more secondary legal materials according to the research topic. This research is often called doctrinal research, where law is often conceptualized as what is written in laws and regulations. The primary legal materials used are Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking and Law Number 13 of 2003 concerning Manpower, along with secondary legal materials. This study uses various techniques to collect legal materials, including literature studies of various legal materials. These sources are selected based on their relevance to the research problem. Legal materials will be analyzed through an analytical approach, which is important to provide a picture or explanation of the state or position of the legal or non-legal propositions involved.

III. RESULTS AND DISCUSSION

Based on Law No. 13 of 2003 concerning Manpower (further abbreviated as MLL/Major Labor Laws), an employment relationship is a correlation between an employer and an employee based on an employment agreement involving elements of work, wages, and orders. This definition shows that an employment relationship can be formed through an employment agreement, either in writing or verbally. Article 1 number 14 of the MLL explains that an employment agreement is an agreement between an employee and an employer or employer that includes the terms of employment and the rights and obligations of both parties. For an agreement to be declared valid, the agreement must fulfill the requirements stipulated in the Employment Law. Article 52, paragraph (1) of the MLL, mentions four bases for employment agreements, namely:

1. Agreement between both parties;
2. The ability or capacity to perform legal acts;
3. The existence of the promised work;
4. The work promised does not conflict with public order, morality, or applicable laws and regulations.

According to Article 1 Number 25 of the MLL, termination of employment is the termination of the employment relationship for certain reasons and results in the end of the rights and obligations between the employee and the employer. Although resigning is the right of every employee, for the good of both parties, resignation procedures must comply with applicable regulations. Employees who decide to resign on their initiative are not entitled to receive severance pay or long service award money but only receive compensation for rights (Yulianto, 2011). Based on the Letter of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: B.600/MEN/Sj-Hk/VIII/-2005 dated 31 August 2005 concerning compensation for rights, including compensation for housing and medical and nursing care, it is stated that in point 4 of the letter it is clearly stated that employees who resign are not entitled to severance pay and long service award money, so they are also not entitled to compensation for housing and medical and nursing care according to the provisions in Article 156 point 4 (Yulianto, 2011). Article 154 letter b of the MLL states that resignation must be submitted in writing of one's own free will without any indication of pressure or intimidation from the employer, and the termination of the employment relationship following

the fixed-term employment agreement for the first time." According to Article 162, paragraph 3 of the MLL, workers/laborers who resign must meet the following requirements:

1. Submit a written resignation application no later than 30 (thirty) days before the start date of resignation;
2. Not bound by a service bond;
3. Continue to conduct their obligations until the date of resignation.

In employment law, there are several types of termination of employment, namely:

1. Termination by employer/businessman. Termination of employment by an employer or businessman is the most common, either due to employee error or company conditions. Termination by employers often has negative impacts, especially on employees and their families, in maintaining survival. Given the impact caused by this layoff, this kind of layoff should be avoided in the era of national development that aims to achieve a just and prosperous society evenly, both materially and spiritually.
2. Termination by employees. Employees can terminate their employment relationship with the employer's consent. Employees also have the right to terminate their employment relationship unilaterally without the employer's consent.
3. Dismissal by law. Dismissal by law occurs automatically when the term of the agreement between the employer and employee ends.
4. Termination by the court (PPHI). Each party in the employment agreement can ask the district court to terminate the employment relationship based on important reasons. Termination by the court can occur for the following reasons/causes:
 - a. Termination of employment due to the company being declared bankrupt based on Article 165 of the Commercial Court Decision;
 - b. Termination of employment of children who do not meet the requirements for work, which is sued through the PPHI institution based on Article 68 of the Commercial Court Decision;
 - c. Termination of employment due to the end of the employment agreement based on Article 154 letter b in the second sentence) (Nikodemus, 2015).

Eight reasons can lead to layoffs, namely based on:

1. Constitution,
2. Company wishes,
3. Employee wishes,
4. Pension,
5. End of employment contract,
6. Employee health,
7. Died,
8. The company was liquidated (Soepomo, 1983).

According to Abdul Khakim, layoffs by employees are caused by two things (Khakim, 2003):

1. Due to a request for resignation (Article 162 in MLL)
2. Due to the application for layoffs to the Industrial Relations Court (Article 169 in MLL) if the entrepreneur takes the following actions:
 - a. Abusing, rudely insulting or threatening employees.
 - b. Persuading or ordering employees to conduct actions that violate laws and regulations.
 - c. Failure to pay wages on time for three or more consecutive times.
 - d. Failure to fulfill obligations promised to employees.
 - e. Ordering employees to do work outside of what was agreed upon.
 - f. Providing work that endangers the life, safety, health and morality of employees that is not stated in the employment agreement.

The mechanism for resignation or termination of employment of employees is regulated together with the rights and obligations that both parties must fulfill. Companies, such as Banks, will continue to provide rights and obligations to employees who resign, although they may need to follow the provisions of

the law fully. However, the rights the company grants may differ from those received by employees who resign according to company regulations. Distributing funds or providing financing is a big advantage for banks, but it has the potential risk of loss if the customer is unable to return the funds that have been borrowed. To anticipate this risk, banks generally ask for collateral in the form of goods of economic value from customers. The collateralized goods will be held by the bank and used as collateral if the customer cannot pay off their debt according to the schedule. Non-performing loans burden banks because they can cause losses and reduce profits or gains. Part of the profit is usually used to pay employee salaries, bank operations, and provide interest to depositors or customers. If the number of non-performing loans increases, this can threaten the bank's existence. Therefore, the level of non-performing loans is an important indicator in assessing the performance and work ethic of the bank.

Failure to fulfill obligations in an agreement can be caused by two things, namely (Meliala, 2007):

1. Due to the debtor's mistake, either intentionally or negligently, such as not doing what they promised to do; conducting what they promised but not as promised; doing what they promised but late; and doing something that, according to the agreement they was not allowed to do (Subekti, 1991).
2. Due to compelling circumstances (overmacht/force majeure).

How to warn the debtor so that if he does not comply with the warning, he can be said to be negligent is given instructions by Article 1238 of the Civil Code: "The debtor is negligent if he is declared negligent by a letter of order or by a similar deed, or for the sake of their obligation if this stipulates that the debtor will be considered negligent by the lapse of the specified time" (Subekti, 1991).

Consequences for negligent debtors (Subekti, 1991):

1. Pay for losses suffered by creditors (compensation);
2. Cancellation of the agreement, also called breaking the agreement;
3. Risk transfer, and
4. Pay court costs if the case is brought before a judge.

According to Article 1267 of the Civil Code, "A party who feels that the agreement has not been fulfilled may choose whether, if it can still be done, they will force the other party to fulfill the agreement, or they will demand the cancellation of the agreement along with compensation for costs, losses, and interest."

According to the article above, it can be said that creditors can choose between the following demands (Subekti, 1991):

1. Fulfillment of the agreement;
2. Fulfillment of the agreement with compensation;
3. Compensation only;
4. Cancellation of the agreement; and
5. Cancellation with compensation.

Sometimes, in special situations, a statement of negligence is no longer necessary to prove that the debtor has defaulted. These situations include the existence of a very important time limit for the fulfillment of the performance; refusal by the debtor to fulfill his obligations; recognition of his negligence by the debtor; the impossibility of fulfillment of the performance (beyond power); fulfillment that no longer has meaning; and the debtor performs the performance not by the standards that should be (Sinaga, 2020). Credit rescue efforts are conducted through a sociological approach to build cooperation in resolving problematic credit problems. This approach aims for debtors to understand the situation and conditions of the bank and all the consequences that may occur if they cannot fulfill their obligations. Problematic credit or default is a problem in banking activities as occurs in a credit agreement with a guarantee of a Bank Permanent Employee Appointment Decree. In general, there are several reasons for employees to resign, namely:

1. There are personal reasons; for example, it does not align with the employee's beliefs.
2. There was a violation of internal office regulations.
3. If you are still working elsewhere after the five-year service bond period has finished, a fine must be paid if you are still in the service bond.

If, during the credit period, the debtor concerned is fired or resigns, all forms of allowances and old-age benefits received after not working at the bank will be suspended and used to pay off the loan. If this still cannot pay off the loan, a collection will be conducted on each due date via email, SMS, WhatsApp, telephone, and on-site, namely a visit to the house or address stated in the credit application form. Suppose the above efforts do not produce results. In that case, the last effort from the bank as a creditor is to be blacklisted in the Financial Services Authority system, thereby affecting the credit collectibility of the employee concerned.

IV. CONCLUSION

The legal consequences of a debtor who resigns from their workplace, where the debtor has credit at the Bank and is also an employee at the Bank with a guarantee of the Bank's Permanent Employee Appointment Decree, are that all forms of allowances and old-age benefits received after not working at the bank will be suspended and used to pay off the loan and if this still cannot pay off the loan, a collection will be conducted on each due date online such as email, SMS, WhatsApp, and telephone and on-site, namely a visit to the house or address stated in the credit application form. Suppose the above efforts do not produce results. In that case, the last effort of the bank as a creditor is to be blacklisted in the Financial Services Authority system, thereby affecting the credit collectibility of the employee concerned.

V. ACKNOWLEDGEMENT

The researcher would like to express his gratitude to the parties who have supported and assisted in completing this article.

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