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Legal Protection for Creditor under Cross Default and Cross Collateral Clause in a Credit Agreement

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Abstract

The business developments initiated by businessmen often require large amounts of financing, hence a third party interference is needed. For this purpose, businessmen generally apply for loans or credits from financial institutions, including banks. The legal relationship between a businessman as a debtor and a bank as a creditor is stated in a credit agreement. An issue arises when there is only one creditor with more than one debtor upon one single credit agreement. In such condition, cross default and cross collateral clauses are known. This research will discuss whether the cross default and cross collateral clauses can provide legal protection for a creditor in its credit agreement with the debtors. In conclusion, cross default and cross collateral clauses are not the only factors that provide legal protection for a credit agreement between one creditor and more than one debtors. The guarantee value in the guarantee agreement made must also be adjusted to the total debt value of all related debtors.

Keywords
guarantee law; credit agreement; cross collateral; cross default

I. Introduction

Indonesian banking is one of the means that has a strategic role in increasing equitable development, economic growth and national stability in order to improve the standard of living of the Indonesian people. This is because the main function of a bank is to collect and distribute public funds or also known as financial intermediaries. A bank functions to collect funds from savers (lenders) or surplus unit and also distribute or transfer funds to borrowers (borrowers) or deficit units.[1] This is regulated and stated in Article 1 Number 2 Law Number 10 Year 1998 concerning Amendments to Law Number 7 Year 1992 concerning Banking (hereinafter referred to as Law Number 10 Year 1998) which defines a bank as a business entity that collects funds from society in the form of savings and distributing it to the public in the form of credit and or other forms in the framework of improving the standard of living of the people at large.

The main function of a bank as a distributor and collector of public funds is highly dependent on the existence of trust in the relationship between a bank and the public as a customers. Without trust, the public as customers will not save their funds in a bank, so automatically the bank cannot distribute these funds back to the public. There is a demand to maintain trust between a bank and customers, hence in carrying out the main function of a bank which are implemented in various businesses that can be carried out by a bank as stipulated in Article 6 Law Number 7 Year 1992 concerning Banking (hereinafter referred

[1]Johannes Ibrahim, *Cross Default & Cross Collateral sebagai Upaya Penyelesaian Kredit Bermasalah*, Refika Aditama, Bandung, 2004, h.1.

to as Law Number 7 Year 1992) must always pay attention to and prioritize the prudential principle. In addition to maintaining trust between a bank and customers, the prudential principle is also needed to maintain the health of the bank itself, given that the bank saves and manages public funds, therefore the risks arising from the bank's carelessness in running its business can influence and affect the security of the public funds.

One form of business that can be carried out by a bank in carrying out its functions is providing credit. The credit defined in Article 1 Number 11 of Law Number 10 Year 1998 is the provision of money or equivalent bills, based on an agreement or loan agreement between a bank and another party which requires the borrower to pay off its debt after a certain period of time by giving interest. Credit is a term that is more commonly known for lending and borrowing money[2]. In providing credit by the bank, usually a credit agreement is created as a mechanism to stipulate the credit terms and agreements between a bank and a borrower. According to Remy Sjahdeini, the Credit Agreement is:[3]

An agreement between a bank as a creditor and a customer as a debtor concerning the provision of money or equivalent bills which requires debtors to pay off their debts after a certain period of time with the amount of interest, compensation or profit sharing.

A credit agreement plays an important role in the credit relationship between a bank and a debtor. According to Ch. Gatot Wardoyo, a credit agreement has several functions, namely:

1. A credit agreement functions as a principal agreement, meaning that a credit agreement is something that determines whether the following agreements are cancelled or not;
2. A credit agreement serves as an evidence stipulating the limits of the rights and obligations between a creditor and a debtor;
3. A credit agreement serves as a tool to monitor credit.

Until now, there has been no specific arrangement prescribing the form and content of a credit agreement, so it is usually left to the agreement of the parties to determine. Usually in making a credit agreement with a bank it will adjust to the funding facilities that can be provided by the bank, which, if it is in accordance with the needs of the debtor, will provide full benefits. In practice, usually a bank has prepared a credit agreement form that contains the clauses and conditions that must be agreed upon by the debtor, without the discretion and freedom to negotiate the clauses and conditions stipulated by the bank. Such an agreement is known as a standard agreement or a basic agreement or an adhesion agreement.[4]

A credit agreement contains various terms and clauses in an effort to maintain the credit relationship between a bank and a debtor, thereby minimizing the possibility of loss for one party and/or both parties which could lead to a dispute. The arrangement of the clauses in this credit agreement is a form of implementation of the Bank's prudential principle. One of the clauses that can be included in a credit agreement based on the agreement between a bank as a creditor and debtor is the cross default and cross collateral clause.

Cross default is a condition when a debtor is declared negligent if there has been a negligent situation where one credit facility is based on more than one credit agreement with the same creditor[5], while cross collateral is a guarantee submitted by the debtor which has been tied according to the nature of the guarantee which will bind to several credit

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[2]*Ibid.*, h.2.
[3]Salim H.S., *Perkembangan Teori Dalam Ilmu Hukum*, Rajawali Pers, Jakarta, 2010, h. 78.
[4]Johannes Ibrahim, Op. Cit., h.30.
[5]*Ibid.*, h.64-65.

agreements, either on behalf of one or several debtors at the same bank or creditors[6]. A cross collateral clause exists because in extending credit to a debtor there must be a guarantee, in the form of a movable or immovable object. With a guarantee, if the debtor is unable to settle the loan, the bank can sell the collateral object to pay off the debtor's debt with preference rights, namely the right to repayment precedence over other creditors (concurrent creditors).

The existence of cross default and cross collateral clauses, in the event of a default by one of the debtors, the bank has the authority to execute the collateral object because the other debtors are automatically declared in default. The problem that arises then is whether the existence of cross default and cross collateral clauses can provide legal protection to creditors.

If it is constructed in a problem, it is as follows. A and B as debtors had credit or debt loans to Bank X as a creditor. The two debtors applied for a loan with the same collateral, namely a plot of land owned by A. The value of A's debt to Bank X was IDR 200,000,000 (two hundred million rupiah). The amount of B's debt to Bank X was IDR 250,000,000 (two hundred fifty million rupiah). The actual value of the collateral object was IDR 1,000,000,000 (one billion rupiah). However, the guarantee value as stated in the Deed of Granting Mortgage Rights (hereinafter referred to as APHT) was only IDR 300,000,000 (three hundred million rupiah).

One day it turned out that B was in default with the condition that the debt paid by B was only IDR 20,000,000 (twenty million rupiah) so that there was still a shortage of IDR 230,000,000 (two hundred thirty million rupiah). Meanwhile, A who has just paid his obligations of IDR 25,000,000 (twenty five million rupiah) was also deemed to be in default, because of the cross default and cross collateral clauses. The problem arose because the guarantee value in APHT was only IDR 300,000,000, while the remaining receivables from Bank X to A and B were still IDR 405,000,000 (four hundred five million rupiah) out of a total of IDR 450,000,000 (four hundred fifty million rupiah). There were still remaining receivables from Bank X to A and B amounting to IDR 105,000,000 (one hundred five million rupiah) which were not included in the guarantee value in APHT. This research will further elaborate the legal protection to the bank for the value of the receivables that are not included in the guarantee value in the APHT, which in this context is the receivable of Bank X to A and B amounting to IDR 105,000,000 (one hundred five million rupiah). Furthermore, whether the cross default and cross collateral clauses in the credit agreement between A and B and Bank X can provide legal protection for Bank X.

II. Research Methods

The research method carried out uses what is called a normative juridical method, which analyzes problems that have been formulated. According to Johnny Ibrahim, the normative juridical method focuses on studying the application of the rules or norms in positive law.[7] Ronny Soemitro also (1988, page 13) argues that, "This conception views law as a normative system that is independent, closed and detached from the real life of society."[8].

[6]*Ibid*., h.107.

[7] Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2006, h. 95.

[8] Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1988, h. 13.

The legal materials used in this study are primary and secondary legal materials, in the form of statutory regulations and other literature such as books and scientific journals. These legal materials are used as references or sources to seek answers and opinions from experts in relation to issues related to credit agreements, guarantee agreements, as well as cross default and cross collateral clauses.

In this research, a statute approach, a conceptual approach, and a case approach are used. The statute approach is carried out by studying certain regulations related to the issues being discussed or the research object. The conceptual approach is carried out by studying general concepts known as law, as well as the scholars' opinions. Meanwhile, the case approach uses certain concrete cases as triggers or references for the formulation of the problem.

III. Results and Discussion

Agreements in Indonesia are generally regulated by the Civil Code (hereinafter referred to as the Civil Code) which is the main legal basis for regulating matters in the field of civil law or in the private sphere. Article 1233 of the Civil Code explains that an engagement can be born because of consent, or because of law. Article 1313 of the Civil Code regulates that consent is an act of binding oneself between one or more people to other one or more people. This means that the agreement referred to in Article 1233 of the Civil Code is the same as an agreement. Subekti itself defines an agreement as an event when someone promises to another person and both promise to do something.[9]

The agreement of the parties to bind themselves will give birth to a legal relationship between the parties themselves. Whether it is as a seller and a buyer, a grantor and a grantee, or other forms of legal relationships depends on the type of agreement made. The legal relationship will provide legal consequences for the parties in the form of rights and obligations that cannot be violated by one another and must be implemented. For example in a sale and purchase agreement, it is certain that the seller has an obligation to deliver the goods being sold and is entitled to a certain amount of payment from the buyer. Likewise, the buyer has the right to receive the goods as agreed upon, and is obliged to pay a sum of money to the seller. Failure to carry out the obligations by one of the parties equals to a violation of the rights of the other party and a violation of the agreement will give rise to further legal consequences. For violation of the terms and conditions of an agreement, sanctions are generally subject to various forms, either a fine or up to the termination of the agreement.

Agreement basically has three elements, namely essential, natural, and accidental elements[10]. An essential element as the name implies, is the most essential or important part of an agreement. This element is the main element of an agreement. R. Soeroso even emphasized the importance of this element by saying that without an essential element, there would be no agreement[11]. This element is the formulation of the provisions or the meaning of the various terms used in the agreement.

Natural elements are things that are innate (natuur) and have attached themselves to the agreement. This element is inherent in itself because it has been regulated in the prevailing

[9]Subekti, *Pokok-Pokok Hukum Perdata*, Intermasa, Jakarta, 2001, h. 36.

[10]Kartini Muljadi dan Gunawan Widjaja, *Perikatan yang Lahir dari Perjanjian*, Raja Grafindo Persada, Jakarta, h. 85.

[11]R. Soeroso, *Perjanjian di Bawah Tangan: Pedoman Praktis Pembuatan dan Aplikasi Hukum*, Sinar Grafika, Jakarta, 2011, h. 16.

laws and regulations, so that it cannot be violated by the parties. Herlien Budiono explains that this one element has the character of regulating the legislation for each named agreement[12].

Accidental elements are elements that are specifically agreed upon by the parties and are not regulated in law, so there is no prescribed forms regarding how these matters should be regulated. For example, related to the language and law used in the agreement, dispute resolution authority, and so on.

The Civil Code has provided specific arrangements for certain agreements which are known in the Civil Code. For example, a sale and purchase agreement regulated in Article 1457 to Article 1540 of the Civil Code. The Article 1541 to Article 1546 of the Civil Code regulate exchange agreements. The issue of leasing is regulated in Article 1547 to Article 1600. Likewise thereafter, it regulates on work agreements, grants, safekeeping of goods, lending and borrowing, chance agreements, power granting agreements, and guarantees. All agreements that are mentioned are known as named agreements. It is because the Civil Code itself provides the names of the agreements in question.

The Civil Code also determines certain guidelines and rules for an agreement. In accordance with Article 1320 of the Civil Code, there are conditions that must be met in order for a valid agreement to occur. These terms are the consent between the parties making the agreement, the parties' skills, a certain thing or object, and a cause that is not prohibited. The first two conditions are subjective as they relate to the subject or the parties to the agreement. The last two conditions are objective because they relate to the object of the agreement. Failure to fulfill the subjective conditions has legal consequences in the form of cancellation of the agreement by a request from one of the parties. Meanwhile, failure to fulfill the objective conditions results in the agreement being null and void, which means that the agreement is deemed to have never existed.

Not only Article 1320 of the Civil Code, but legal principles are also guidelines used in the process of drafting an agreement, the process of fulfilling the agreement can even become the basis for a lawsuit in the event of a default. One of the legal principles in the formation of an agreement is the principle of freedom of contract. The principle of freedom of contract was born because of the open nature of Book III of the Civil Code (*aanvullend recht*), so that each party has the freedom to make agreements, according to their needs and consent. However, drafting an agreement is still obliged to pay attention to Article 1320 of the Civil Code and legal principles. The application of the principle of freedom of contract can be seen from the formulation of Article 1338 paragraph (1) of the Civil Code which shows that the parties making the agreement are allowed to make their own provisions as long as they do not violate public order and morals. The principle of freedom of contract covers the following scope:[13]

1. Freedom to create or not create an agreement;
2. Freedom to choose the party with whom an agreement is created;
3. Freedom to determine or choose the basis of an agreement that will be made;
4. Freedom to determine the object of an agreement;
5. Freedom to determine the form of an agreement;
6. Freedom to accept or deviate from statutory provisions which are optional in nature.

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[12] Herlien Budiono, *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenoariatan*, Citra Aditya Bakti, Bandung, 2011, h. 21.

[13] Sutan Remi Sjahdeni, *Kebebasan Berkontrak dan Perlindungan yang Seimbang bagi Para Pihak dalam Perjanjian Kredit Bank di Indonesia*, Jakarta, Institut Bankir Indonesia, 1993, h. 47.

After an agreement has been made, the principle of binding strength applies. This principle can be seen in Article 1338 paragraph (1) of the Civil Code: "All agreements made legally are valid as law for those who make them." This principle is further stipulated in Article 1339 of the Civil Code: "An agreement is not only binding on things that are expressly stated in it, but also for everything that is, according to the nature of the agreement, required by propriety, custom or law." Therefore, each party is given the freedom to make their own agreement with the guidelines of Article 1320 of the Civil Code and existing legal principles. However, after the agreement is agreed and signed by the parties, it will be binding on the parties to carry out the deed that have been agreed upon. This binding strength is commonly known as the principle of *pact sunt servanda*.

Bank is one type of financial institution. Article 57 of Law Number 7 Year 1992 concerning Banking as amended by Law Number 10 Year 1998 concerning Amendments to Law Number 7 Year 1992 concerning Banking (hereinafter referred to as the Banking Law) states that there is a second type of financial institution, namely financial institutions, which are not banks. According to Article 1 Number 2 of the Banking Law, a bank is a business entity that collects funds in the form of savings and distributes funds back to the public in the form of credit (or other forms). The Banking Law recognizes two types of banks, namely Commercial Banks and Rural Banks. Both based on Article 6 letter b and Article 13 letter b of the Banking Law, one of their business fields is providing credit. The provision of credit is set forth in the form of a credit agreement between a bank as the credit provider or creditor and a customer as the credit recipient or debtor.

In the Civil Code, the term credit agreement will not be found. The thirteenth chapter of Book III of the Civil Code recognizes the term lending and borrowing. This lending and borrowing agreement is known today as a credit agreement. This lending and borrowing matters are regulated in Article 1754 to Article 1769 of the Civil Code. Based on Article 1754 of the Civil Code, lending and borrowing is an agreement between a party that gives the other party an amount of goods that have been used up due to use, on condition that the borrowing party returns the same amount of the same type and condition. This agreement can be made by and between anyone/all subjects of civil law, both human (*natuurlijk persoon*) and legal entity (*recht persoon*). In practice, credit agreements are generally made by businessmen, both natuurlijk persoon and recht persoon, and financial institutions, such as banks.

The Banking Law has regulated certain matters as guidelines for the provision of credit by banks. Article 2 of the Banking Law stipulates that Indonesian banking is based on economic democracy and is guided by the principle of prudential. Article 8 paragraph (1) of the Banking Law stipulates that in extending credit, commercial banks are required to have confidence based on an in-depth analysis of the debtor's intention, ability and capability to pay off debts. The elucidation of the article further states that a bank's assessment must be made based on the character, capacity, capital, collateral and condition of economy of a debtor. These elements are known as The Five C's Principle of Credit Analysis (character, capacity, capital, collateral, and conditions of economy)[14]. A credit agreement does not necessarily require a guarantee. However, as it is known in the 5C principle, collateral or guarantee is one of the elements that must be considered. This is solely for the sake of reducing the risk of lending by banks to their customers. In accordance with the meaning in Article 1 number 6 of Bank Indonesia Regulation Number 11/25/PBI/2009 dated 1 July 2009,

[14]Ashofatul Lailiyah, *Urgensi Analisa 5C Pada Pemberian Kredit Perbankan Untuk Meminimalisir Risiko*, Jurnal Yuridika, Vol. XXIX No. 2, 2014, h. 224-225.

that credit risk is the failure of debtors and/or other parties in fulfilling its obligations to a bank.

Credit risk can be in the form of non-performing loans (NPL) or even bad credit, which is a condition when a debtor is unable to meet its obligation or is no longer able to repay the loan. This will always be the concern of a bank by requiring a debtor to provide certain objects as collateral to mitigate the risk. If later the debtor is found to be in default or unable to repay the loan, the bank can take repayment of the debtor's debt by selling the collateral in question. A collateral can be in the form of movable or fixed object which can be valued in money, of high quality, and easy to cash out or sell, with a minimum value equal to the amount owed by a debtor[15].

Guarantee is a means of protection for creditor's security, namely certainty on the repayment of debtor's debt or the fulfillment of debtor's obligations by the debtor or by the debtor's guarantor. According to the Civil Code, the guarantee is divided into two, namely:[16]

1. General Guarantee

as stipulated in Article 1131 of the Civil Code that "all objects of the debtor, both movable and immovable, whether the objects already exist or will exist in the future, will be borne by all individual engagements."

This guarantee is a guarantee that has been stipulated by law which, without being agreed upon, automatically binds the parties.

2. Special Guarantee

As stipulated in Article 1820 to Article 1850 of the Civil Code, this guarantee is borne because it is agreed upon by the parties in the form of both a material guarantee and an individual guarantee.

Collateral is one of the aspects of a bank's prudential principle because if a debtor defaults, what will protect the interests of a bank is the guarantee. Guarantee is the last alternative if a debtor is unable to repay a loan as promised at the beginning of a credit agreement. On that basis, guarantees must be assessed and calculated carefully to prevent losses for the bank if a debtor defaults. In assessing the guarantee, at least the Bank must consider two factors:[17]

3. Secured

Which means that the credit guarantee can be bonded in a formal juridical manner, in accordance with the provisions of law and legislation. If in the future there is a default from a debtor, then the bank has the juridical power to carry out the action of execution.

4. Marketable,

Means that if a guarantee is to be executed, it can be immediately sold or cashed to pay off all debtor's obligations.

The arrangement regarding a guarantee does not automatically apply when making a credit agreement by and between the parties, nor can it be regulated in a credit agreement, but must be agreed upon in a separate agreement. A guarantee agreement is made by and between the parties. The guarantee agreement is an *accessoir* agreement or a follow-up agreement, which is in addition to a credit agreement as the principal agreement. If one day the credit agreement as the principal agreement ends, which means that the debtor's debt has been paid

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[15]Haposan Dwi Pamungkas Saragih, Abdurrahman Konoras, Merry. E. Kalalo, *Analisis Hukum Pemberian Kredit Dengan Klausul Cross Default Dan Cross Collateral Terhadap Jaminan Hak Tanggungan*, Lex Administratum, Vol. IX, No.1, 2021, h.42.

[16]Gentur Cahyo Setiono, *Jaminan Kebendaan Dalam Proses Perjanjian Kredit Perbankan (Tinjauan Yuridis Terhadap Jaminan Benda Bergerak Tidak Berwujud)*, Jurnal Transparansi Hukum, Vol. I, No.1, 2018, h.5.

[17] Johannes Ibrahim, *op.cit.,* h. 71.

off, at the same time the guarantee agreement will also end considering its nature is only an *accessoir* agreement. However, the end of a loan agreement does not necessarily lead to the end of a principal agreement. First it must be determine whether the debtor's debt to the creditor has been paid off.

In practice, several collateral institutions for a debt are known as follows:[18]

1. Mortgage Right, which is regulated in Law Number 4 Year 1996 concerning Mortgage Right on land and objects related to land;
2. Mortgage, which is regulated in Article 1162 to Article 1232 of the Civil Code;
3. Pawn (*Pand*), which is regulated in Article 1150 to Article 1160 of the Civil Code.

The object of collateral that is often and commonly used in a credit agreement is land right. This is because land prices tend to rise, so it is safer to use as collateral. The guarantee institution used for objects in the form of land right is Mortgage Right. Article 1 number 1 of Law Number 4 Year 1996 concerning Mortgage Right (hereinafter referred to as UU HT) provides a definition:

"Mortgage is a security right that is imposed on land right, including or not including other objects which are an integral part of the land, for the settlement of certain debts which give priority to certain creditors over other creditors."

Mortgage right over land may or may not includes other objects related to the land. The mortgage will later be stated in a Deed of Granting Mortgage Right (APHT).

In a credit agreement, there is an Ingkar Janji clause or also known as an event of default, which is a condition that give a bank the right to terminate a credit agreement because the debtor is no longer in performance as demanded by the bank according to the initial agreement.[19] This event of default is a condition for terminating an agreement or contract, that is, if a certain event is fulfilled, it can result in the party concerned being negligent and giving the other party the right to claim damages for negligence (default) made.

A cross-default clause or *ingkar janji silang* is a form of event of default, which is always stated in a credit agreement. This cross default clause is formulated because a debtor is bound in two contractual relationships or two debtors who have the same interests with one another are bound in the concept of one obligor system. A cross-default clause in a credit agreement itself aims to:[20]

a. minimize credit risk due to the debtor's negligence in fulfilling the various obligations required by the bank from various contractual relationships based on credit agreements signed by the debtor;
b. to allocate credit risk in the handling of one obligor system so that banks can monitor effectively;
c. wholly settle debtor's liabilities and not be done partially;
d. foster mutual trust between banks and debtors as partners in business.

The formulation of a cross-default clause included in a credit agreement can be written as follows:[21]

"The parties hereby consent and agree to enforce all provisions set forth in the terms and conditions of the credit agreement for the credit agreement, therefore the terms and conditions of the credit agreement bind the debtor to the bank and form a unity that cannot be

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[18] Gentur Cahyo Setiono, *op.cit*.

[19] Johannes Ibrahim, *op.cit.*, h.62.

[20] Danny Robertus Hidayat, *Perlindungan Hukum bagi Kreditur Dengan Jaminan Atas Objek Jaminan Hak Tangungan Yang Sama*, DiH Jurnal Ilmu Hukum, Vol. XIV, No.27, 2018, h.10.

[21] *Ibid*, h.11.

separated by a credit agreement. The debtor and the bank agree that the debtor will be declared negligent of the credit facility based on this deed; if there has been a negligence from the debtor either based on this deed or based on the deed of credit agreement number ..... dated ..... Likewise vice versa".

For a cross collateral clause, it is a clause related to the guarantee provided by a debtor to a bank. Based on Article 5 of the UUHT, a land object can be the guarantee of more than one mortgage to warrant more than one debt. Each of these Mortgage Right must be stated in each Deed of Granting Mortgage Right separately. This means an object of a Mortgage Right which warrants more than one Mortgage Right, to guarantee more than one different debt.

Often a collateral that has been submitted by a debtor to a creditor to guarantee the repayment of certain loans is also used as a collateral for repayment of other loans. This guarantee is known as the Cross Collateral. Provisions with cross collateral in nature are contained in Article 3 paragraph (2) of the UUHT, namely "Mortgage right can be granted for a debt originating from one legal relationship or one or more debt originating from several legal relationships".

The cross collateral principle is a condition when a debtor binds the same collateral in two or more credit facilities. The application of this principle makes it easy for debtors who have sufficient collateral value to obtain two or more credit facilities from creditors.[22]

The ratio legis of a cross default clause in a credit agreement involving the same collateral object is because the bank needs to execute the mortgage right in case of default on the agreement between the bank and the debtor. For example, if the first debtor defaults on the bank, the collateral must be auctioned off. But the problem is, the credit agreement between the second debtor and the bank is not default, so it means that the credit agreement runs without any collateral because the collateral has been auctioned off due to default from the first debtor. The fund arose from the auction can only be taken by the bank as much as the amount of the loan that should have been paid off by the first debtor as agreed in the credit agreement. Meanwhile, the credit agreement between the bank and the second debtor is still in progress and the fulfillment cannot be executed through the proceeds from the auction sale. Therefore, if there is no cross default clause binding the same collateral object, the bank's bargaining position will be very weak. The legal consequence of this clause is that if one of the debtors is in default, the other debtors will also be in default even though they are not bound by the same credit agreement.

Meanwhile, regarding the case study example described at the beginning of the study, it should be noted that cross default and cross collateral clauses are not the only things that must be set out correctly in a credit agreement. Other clauses are also important to pay attention to. For banks as creditors, The Five C's Principle of Credit Analysis must be the main guideline that should not be missed in the least. In a quo issue, the guarantee value in the APHT does not cover the total debt. From the start, the creditor should try to anticipate undesirable conditions by really taking into account and paying attention to the comparison of the guarantee value with the total debt of the two debtors. This means that from a quo issue, it can be concluded that the creditor must pay attention to the guarantee value, as it is also a factor or other important aspect in drafting credit agreement and guarantee agreement. The clauses of the two agreements must be able to support each other and not weaken the legal position of the creditors before the debtors.

Isnaeni explains that based on the source, legal protection in the private sphere can be divided into two types, namely external legal protection and internal legal protection[23].

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[22] Haposan Dwi Pamungkas Saragih, Abdurrahman Konoras, Merry. E. Kalalo, *op.cit.*, h.42.

External legal protection is a form of legal protection from the authorities through statutory regulations. External legal protection is an instrument that has been prepared by the legislators to prevent harm to one of the parties. The importance of an external legal protection is a series of efforts to ensure that the private order in society continues to move in a proper and just manner. External legal protection is prepared to anticipate exploitation that may be carried out by one of the parties who has a higher bargaining position. Meanwhile, internal legal protection is made by each party on the basis of consent and embodied in an agreement. This legal protection is in order to provide a better legal protection than the external legal protection because it is made by the parties so that in essence it accommodates the interests of the parties.

When connected with a quo issue, internal legal protection is very relevant. Cross default and cross collateral clauses become a necessity in a guarantee agreement between one creditor and more than one debtors. The parties must compile and pay attention to every provision in credit agreement and guarantee agreement made so that neither party is harmed in the future. In the sense that there is no disregard for each other's rights and obligations. Likewise, the guarantee value stated in a guarantee agreement must be calculated in detail and precision so that the creditor is not harmed if the debtor is unable to settle the remaining obligations.

IV. Conclusion

Cross default and cross collateral clauses are indeed mandatory in a credit agreement and a guarantee agreement made by and between one creditor and more than one debtors. The two clauses become a concrete legal protection, especially for the creditor, so that in the future if the debtors are unable to carry out the performance agreed upon the credit agreement, there will be no loss to the creditor. Isnaeni defines the legal protection as internal legal protection, namely legal protection made and agreed by each party in an agreement. However, it must be acknowledged that cross default and cross collateral are not the only factors or aspects that must be considered by the parties when drafting and signing an agreement. The guarantee value in the guarantee agreement is a provision that cannot be ignored at all, especially by creditors. The creditors' negligence on failing to set a provision specifying the guarantee value has the potential to harm the creditor in the future if the debtors are unable to carry out the performance as agreed by and between the parties.

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[23] Moch. Isnaeni, *Seberkas Diorama Hukum Kontrak*. Revka Petra Media, Surabaya, 2018.

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