Legal Protection of Creditors Against Letters of Undertaking as Additional Agreements

Pascal Raja Ilham Siregar[1], I Made Kanthika[2], Markoni[3], Achmad Edi Subiyanto[4]
[1,2,3,4]Universitas Esa Unggul, Jakarta, Indonesia
Email: pascalcephas@yahoo.com

Abstract

This research aims to learn about the Legal Protection of Creditors Against Letters of Undertaking as Additional Agreements. The research method is normative juridical, using deductive thinking and library data collection. One of them is using the Legal Protection Theory to examine problems in LoUs between debtors and creditors so that debtors commit themselves to fulfilling obligations so that they get their rights by bank rules and applicable laws and regulations in the event of payment failure or default with the conclusion of preventive and repressive measures. This research found that a Letter of Undertaking (LoU) is part of an additional agreement or accessory and an alternative third-party guarantee in the form of a statement of the promissory note to fulfil an obligation made by the Debtor. In this modern and rapidly developing era, LoUs are born as credit guarantees or financing in various fields of construction projects, infrastructure projects, and tender bonds, which are used to facilitate business to help smooth national and international trade transactions.

Keywords: *Legal Protection of Creditors, Letter of Undertaking, Additional Agreement.*

A. INTRODUCTION

A Letter of Undertaking or Statement of Undertaking is a letter issued by a third party, either an individual or a corporation, explaining that it undertakes to take over obligations from the Debtor for various risks arising from the Debtor's actions related to the Debtor's actions in the case of a project, tender or contract (Jelisejevs, 2021). Businesses that request financing from creditors experience default or broken promises. LoU in Indonesia's economic landscape, especially the business world, which continues to develop and globalize, the need to respond to significant working capital quickly and precisely in the industrial, infrastructure, construction, and commercial sectors requires huge business capital and credit payments (Ginting et al., 2020).

The large amount of credit, limited liquidity, and the desire to finance customers' businesses led to the birth of LoUs. Through LoUs provided by creditors, banking can provide opportunities for the business world to obtain funds in large amounts and for a period that can be arranged by both parties in addition to LoUs. As the basis for the loan used by the Debtor, in this context, the letter functions as a guarantee promise, where the borrower guarantees that the lender will repay the loan according to the agreed terms, and the LoU also functions as a letter that has a binding promise in business transactions. This assures the recipient that payment will be made as agreed (Al Maamari & Al Ghuwairi, 2021; Liesyowati & Darwati, 2023).

Banks, as creditors, act as financial intermediaries for critical supporting infrastructure that supports the functioning of the economy when transferring funds (loanable funds) from depositors or excess shares (lenders) to borrowers or deficit units. Banks, which are creditors, provide support in the form of disbursement of credit facilities and guarantees; in this case, it is an essential factor in arranging credit or bank financing because it has many functions to guarantee credit against future risks and as a tool to the lender to take back the rights to receivables and the Debtor's obligation to pay all debts that are his obligations (Dumitru, 2020; Liesyowati & Darwati, 2023).

To support the policies of government projects or private projects on a large scale, a unique phenomenon has emerged in its development, namely the birth of intangible or intangible guarantees in the form of a Statement of Undertaking or LoU which is an additional contract or additional agreement (accessoir) which useful as the Debtor's commitment to the Creditor as LoU issuer and credit guarantor for large-scale financing, whether in the form of state strategic projects, infrastructure projects, construction projects or toll road development projects (Anggriawan et al., 2022; Wang & DiMatteo, 2023).

Let us look at the concept of using a LoU. If we look at the laws and regulations in force in the Republic of Indonesia as part of positive law, they have yet to be expressly regulated. However, if we read Article 1820 of the Civil Code, Chapter 17 of Debt Guarantee, Part 1 concerning the Nature of Guarantee, it says: "Guarantee is an agreement. in the interest of the Creditor, a third party binds himself to fulfill the Debtor's obligations if the Debtor does not." Moreover, Article 1821 of the Civil Code states: "There is a guarantee if there is no main agreement that is valid according to law. However, people can make guarantees in an agreement, even though the agreement can be canceled by objection regarding the Debtor's personality, for example, in the case of not being old enough."

So we can conclude implicitly that Article 1820 and Article 1821 of the Civil Code explain that a LoU is a guarantee, which is an agreement made by a third party for the Creditor in binding himself to fulfill the needs and interests of the Debtor if he breaks his promise to his obligations or default.

LoUs are often found today and are used as collateral in funding practices. The use of LoUs is motivated by the need to accelerate banking credit. With the nature of a friendly covenant that can accommodate debtor conditions, especially for corporate debtors and small-medium business debtors, LoUs are considered a form of win-win solution in terms of collateral, both by banks in providing credit funding and with debtors or customers. In the Debtor's view, if the Lou is used as a condition, it will be straightforward compared with the Guarantee of an ownership certificate in the form of land so that it can be used as a mortgage. In terms of licensing a certificate of ownership in the form of land, which will be used as a mortgage, it will face heavy bureaucratic challenges, Compared with corporate guarantees (CG) and personal guarantees (PG) (Hardman, 2021; Poljanec & Horak, 2020).

Debtors see the LoU as more flexible because it is only undertaking its implementation. At the same time, CG and PG are guarantees, which means they are conditional obligations from the company/other party as guarantors, the LoU is the best effort because it is only an undertaking with the conditions stated by the LoU giver (Bahar et al., 2023; Deschamps, 2022). LoUs are used in terms of guarantees, especially for company financing, considering that if a corporation guarantees a subsidiary through CG or a cash deficit guarantee (CDG), it must be implemented in a notarial manner, which then has legal and financial implications, both for closed corporations and even more so for corporations. Apart from having legal and financial implications, CG and PG can be seen as reducing the value of a corporation. Ideally, the use of LoUs as financing collateral also takes into account the risk rating of the Debtor. In the legal system in Indonesia, LoUs are regulated by Article 1317 of the Civil Code.

One of the essential things that needs to be considered is how to apply legal protection to creditors when using the LoU, where this LoU is an additional or accessory agreement and follows the main agreement, namely the credit agreement (Barry & Brooks, 2021; Hidayana et al., 2021). The main concern is how to get debtors to commit themselves to fulfilling obligations according to bank regulations, as well as for banks as creditors to recover their rights from debtors because a Letter of Undertaking (LoU) is only a statement of commitment, and the problem that often occurs is if The purpose of the LoU is to guarantee repayment, so the LoU should state the exact amount and commitment. The LoU as an additional agreement is part of the credit agreement, mitigating the risk of default or default as well as legal risks for the recipient of the LoU guarantee, namely the Creditor, and there is also a high possibility of creating a default with the potential for bad credit to occur at the bank as the Creditor.

The legal obstacles and problems here are what form of legal protection can be given to creditors as recipients of a Letter of Undertaking (LoU) if there is a default by the Debtor resulting in lousy credit (nonperforming loan) as well as what is the legal strength of the Letter of Undertaking (LoU) for creditors to commit themselves to fulfilling their obligations so that they obtain their rights by bank rules and applicable laws and regulations in the event of default or default?

Given these problems, the researcher chose the title for this Journal, "Legal Protection of Creditors Against Letters of Undertaking as Additional Agreements." So the central legal issue in this Journal is how to provide legal protection for Creditors, namely Banks and Customers, namely Debtors who use Letters of Undertaking (LoU) where the LoU is an additional agreement or (Accesoir) in a credit agreement as the main agreement (Arora, 2022; Sun, 2021).

The type of research used in this legal Journal aims to discuss 2 (two) issues that will be discussed, namely what form of legal protection can be given to creditors as recipients of a Letter of Undertaking (LoU) if there is a default by the Debtor resulting in lousy credit (nonperforming loan) and what is the legal force of a Letter of Undertaking (LoU) for creditors to bind themselves to fulfill obligations so that they obtain their rights by bank rules and applicable laws and regulations in the event of default or default.

B. LITERATURE REVIEW

The theoretical basis for a Letter of Undertaking as a guarantee for bank credit in Banking Theory means that you must first know the meaning of a bank, namely, "a bank is a financial intermediary institution that brings together parties who have excess funds (surplus units) with parties who lack funds (deficit units). As a financial intermediary institution, banks will always be careful in managing public funds because errors in managing sources and allocating funds will decrease public trust in banks (Akolokwu, 2022; Simaremare et al., 2021). Banks are companies that operate in the service business, where public trust will play a huge part in maintaining the bank's survival because bank survival is largely determined by public trust. "People's trust in banks must be maintained carefully, one of which is distributing funds to parties who need funds."

According to Ross Cranston, he stated, "Internationally, the legal definition of banks and banking has different forms. At one end of the spectrum is the approach that defines a bank as one that is recognized by anyone as such by a governmental authority and with no indication of the criteria required to gain such recognition; this approach provides too much latitude for countries to be in one place or another. Along the spectrum is the second approach, which contains a list of activities covered by banking" (Anele, 2020; Leonard et al., n.d.).

According to the Credit Agreement Theory, it is part of the main agreement, and the LoU is implied as a unique guarantee as an additional agreement; in this case, the LoU will be valid for use by the parties if the conditions for a valid agreement in the agreement refer to Article 1320. In order for a valid agreement to occur, four conditions need to be fulfilled: a) the agreement of those who bind themselves; b) the ability to create an agreement; c) a particular subject matter; and d) a cause that is not prohibited (Sumardika & Styawati, 2021; Zulfikar, 2023);

Article 1320 of the Civil Code theoretically concludes that an agreement can be considered valid if it meets the following 4 (four) conditions:

a. Agreement of the Parties
   An agreement that binds the parties to the agreement is the main prerequisite. This means that the parties involved in the agreement must agree or agree regarding the main points of the agreement being made. An agreement is considered invalid if it is given due to mistake, coercion, or fraud.
b. Engagement Making Skills
   The ability to create an agreement is the second requirement. People considered competent are adults of sound mind and are not prohibited by laws and

regulations from carrying out specific actions. In this case, people considered immature are those not yet 21 years old or have never had a legal marriage. Besides, someone is considered incompetent under supervision, such as being stupid, crazy, dark-eyed, or a spendthrift. Prohibited people are those who do not meet the requirements set by law, for example, people who have been declared bankrupt by the court.

c. Provisions Regarding Agreement
One of the third conditions is that certain things are apparent in the agreement. This is intended so that the rights and obligations of the parties can be determined.

d. Halal reasons
The fourth condition is that the agreement must be based on a lawful cause or permitted by law. Because what is halal must comply with the provisions of law, morality, and public order.

The conditions in points a and b are subjective because they relate to the subject who agreed. Conditions c and d are called objective conditions because they relate to the object promised in the agreement. If the subjective requirements are not met, a judge can cancel the agreement at the request of the Party, who is incompetent or has agreed freely.

The agreement remains binding on the parties as long as it is not cancelled. Meanwhile, if the objective conditions are not met, then the agreement is null and void, meaning that it is considered to have never existed in the first place, so there is no basis for suing each other before a judge (court). The above shows that if the Creditor agrees on the LoU as a unique guarantee from the Debtor, then the use of the LoU in a credit agreement becomes valid because it meets the conditions explained above, then the agreement is recognized and binding on the parties who made it so that the Credit Agreement is the main agreement and uses the LoU as The Guarantee becomes valid even though it is an accessory or additional agreement, of course it will have legal impacts once it is signed and agreed upon by the parties (Jančíková & Pásztorová, 2021; NATAŠA BABIĆ & Indžić, n.d.).

This means that if a third party issues a statement of commitment or LoU requested by the Debtor to the Creditor, it is recognized by the Creditor. The credit agreement is legally valid and binding on the parties. In Indonesia, as part of the Civil Law order or Civil Law referring to the Civil Code, it can be said that a credit agreement is a loan agreement that is part of and regulated in Article 1754 and Article 1769 of the Civil Code.

According to Article 1754 of the Civil Code: "Lending and borrowing is an agreement by which one Party gives another a certain amount of goods that have expired due to use, on the condition that the latter Party will return the same amount of the same kind and condition. also." According to Article 1769 of the Civil Code: "Evidence stating payment of the principal loan without mentioning anything about interest payments gives the presumption that the interest has been paid and the borrower is released from the obligation to pay it."

Credit Agreements refer to the main agreement, so in theory, Legal Protection can be carried out in the LoU by including guarantees from third parties and debtors so that the legal norms are attached to the law of the agreement, going back to Article 1320 of the Civil Code as a valid agreement, so if the Creditor wants to get protection According to the law, the Creditor must ask the third Party issuing the LoU and the Debtor to place collateral which is part of the main agreement so that if there is a default or failure to pay, it can be quickly executed (Lupton, 2022; Marney et al., 2021). To protect the Creditor's interests, the Letter of Undertaking should be used only as accompanying collateral for financing.

What can be the basis for a material agreement can be divided into two types, namely, the main agreement and additional agreements (accessories). The principal agreement is to obtain credit from a banking institution or non-bank financial institution (debt and receivable agreement). J. Satrio adapted from Rotten's opinion: "Main agreements are agreements which, to exist, have an independent basis."

This fundamental agreement is contained in bank credit agreements. Suppose we refer to Article 1 Number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. In that case, we find the definition of credit: "A supply of money or claims can be identified with it, based on loan contracts or agreements between banks and other parties which oblige borrowers to pay back their loans after a certain period with interest."

According to Munir Fuady, an additional or accessory agreement is "an agreement that cannot stand alone but is subject to other agreements that form the main agreement." In the opinion of Gunawan Widjaya and Ahmad Yani, an existing agreement is "a form of agreement or commitment with conditions, the implementation or cancellation of this agreement depends on the implementation or non-implementation of a provision, term or provision." The underlying agreement', which is the basis for its formation".

An evaluation agreement cannot stand alone. Although this is not entirely true, in many cases, transferring the underlying right to enforce the contract from the Creditor to a third party will give rise to the legal consequences of the contract transfer from the appraiser to the Third Party. Transfer of rights based on a contract underlying an agreement. Sub-agreements are additional agreements and are bound by the main agreement. This mortgage agreement is contained in collateral agreements, such as mortgage agreements, mortgage agreements, fiduciary agreements, mortgage agreements, personal guarantee agreements, and mortgage agreements (Warren et al., 2020).

Accessoir Agreement According to Jansen JA: "In the case of an additional contract, such as a guarantee or additional agreement reflected in a check, he thinks that the cause and effect can be found in the underlying agreement or principal obligation, so that if the agreement or principal obligation fails, then the contract addition also failed. However, this outcome is likely to occur only if the parties have the same intention to link the main agreement and the additional agreement in this way".

According to Dr. Dwi Tatak Subagiyo, S.H., M.Hum.,: "Until now, banking institutions are still dominant as a source of investment financing by providing credit and to get bank credit, they must first enter into a credit agreement as a principal agreement which a guarantee agreement as an accessoir agreement will follow or an additional agreement, which requires collateral required in Law Number 10 of 1998 which is called collateral, the explanation of collateral is contained in Article 1131 of the Civil Code which is called collateral, namely: "All movable and immovable goods belonging to the debtor, whether existing or future ones, serve as collateral for the debtor's obligations."

In the book Guarantee Law in the Perspective of the Fiduciary Guarantee Law (An Introduction), it is said that according to a method of transferring property rights from the owner (Debtor), based on the existence of a principal agreement (debts and receivables agreement) to the Creditor, if only the rights are transferred, " yuridische levering." It is only owned by the Creditor in trust (as collateral for the Debtor's debt). All debt guarantee agreements are considered accessoir agreements.

The LoU used here is a statement of capability from a third party to the Debtor as the applicant in the credit agreement, which, if approved, funds will be disbursed by the bank, namely the Creditor. Credit Agreements often use a Letter of Understanding (LoU) in business tenders or large-scale mega projects. In loan contracts, a letter of understanding (LoU) is often used as particular collateral to guarantee a loan from the Debtor by the bank as a Creditor (Ginting et al., 2020; Jelisejevs, 2021).

The above shows that if the Creditor agrees on the LoU as a unique guarantee from the Debtor, then the use of the LoU in a credit agreement becomes valid because it meets the conditions explained above, then the agreement is recognized and binding on the parties who made it so that the Credit Agreement is the main agreement and uses the LoU as The Guarantee becomes valid even though it is an accessory or additional agreement, of course it will have legal impacts once it is signed and agreed upon by the parties.

According to Juswito Satrio, "From the formulation in Article 1134 of the Civil Code, it appears that special rights are granted by law, meaning certain receivables mentioned by law automatically have a priority position. This privilege right is an accessory and cannot stand alone." This means that Article 1134 of the Civil Code explains that if it is linked and studied, the LoU guarantee seen from the perspective of Article 1134 will conclude that it has special rights granted by law, meaning that specific bills automatically have a priority position and has an important role. The increasingly widespread development of financing needs demands efforts and actions to create a new financing system; the LoU Guarantee based on Article 1134 of the Civil Code gives banks a higher status as creditors than others.

According to Eric Bishop, a “Letter of Undertaking" is a type of deferred payment. This type of credit is increasingly used when the exporter's fiscal authority insists that stamp duty be paid on a money order. This can be expensive, so deferred payment credit does not have a money order. However, instead, after the submission of documents deemed in order by the negotiating bank or issuer, the beneficiary will be given a letter of agreement in which the bank agrees to pay a certain amount of money. Fixed date in the future. The weakness of this type of credit is that the letter of undertaking is not a negotiable instrument; it cannot be transferred through an endorsement to give good ownership rights to a power of attorney".

This LoU is an official letter that functions as a written commitment from a third party that is issued and given to the Debtor or a letter of commitment that is officially given by one Party to another party that guarantees and undertakes all legal risks and consequences if problems arise due to the actions taken. By the Debtor, a LoU is usually used in business transactions to outline the terms and conditions of an agreement between a vendor and a buyer. The importance of this document lies in its ability to provide legal protection and clarity to both parties involved, the entire document consists of several sections covering various aspects of the transaction (Al Maamari & Al Ghuwairi, 2021; Ginting et al., 2020).

In this case, referring to Article 1824 of the Civil Code, the guarantor's responsibility cannot be assumed, meaning it must be stated concretely, firmly, and clearly. This means that if the guarantor's obligations are strictly determined, the bank can carry out voluntary execution on the guarantor, or if it is done through court, then it can be executed based on a decision according to the amount stated in the LoU.

According to the Journal of the Strength of Execution of Letters of Undertaking Guarantees in Banking Financing, "LoU comes from the Anglo-Saxon legal system which is applied in banking practice in Indonesia, so in this case the LoU cannot fulfill the elements of special guarantees or general guarantees contained in the Civil Code. The LoU is a special guarantee, even though it does not meet the special guarantee requirements as regulated in the Civil Code. LoU in banking financing is interpreted as a form of Guarantee from a third party as guarantor of the financing proposed by the debtor customer. Liability in the LoU will arise immediately when the debtor customer cannot fulfill the obligations agreed to by the Creditor. It is regulated regarding the absolute value that is the guarantor's responsibility. However, the guarantor remains responsible for the obligations made by the debtor customer if the debtor customer does not fulfill his obligations. "In financing practices in Common Law countries, LoUs are only used as supporting collateral because the collateral value from debtor customers has met the security coverage ratio."

Wirdjono Prodjodikoro defines "an agreement as a legal relationship regarding property between two parties, in which one party promises or is deemed to have promised to do something, while the other party has the right to demand the implementation of that promise."

If you look at the theory above, the Letter of Undertaking is only a letter of commitment that contractually binds the parties, namely the bank creditor and the customer's Debtor, so if there is a default or lousy credit, then it is only an agreement. In principle, LoU is a guarantee known in Article 1820 and Article 1821 of the Civil Code, namely an agreement made by a third party for the benefit of the Creditor to commit himself to fulfilling the Debtor's needs when the Debtor does not carry out his performance. Concern regarding the characteristics of LoU guarantees is because, in practice, LoUs need a standard form and refer only to best-effort accountability.

A letter of a promissory note or LoU is different from a guarantee agreement; the existence of a letter of undertaking as a form of commitment letter is not explicitly regulated, so what is the legal force to bind the Debtor who accepts the LoU issuance, and what are the provisions for legal protection for the Debtor breaking his promise to fulfil his obligations? Who received a letter of undertaking from a third party that guarantees it to the Creditor, which is still doubtful because there is no natural form of collateral in the LoU.

Using a Letter of Undertaking (LoU) in a business contract acts as a unique guarantee incorporated in an additional agreement (accessoir), showing high flexibility compared to other types of guarantee. The LoU can be considered collateral by referring to the Financial Services Authority (OJK) regulation Number 24/SEOJK.03/2021 concerning Calculation of Risk-Weighted Assets for Credit Risk with a Standard Approach for Commercial Banks. This guide covers the calculation of the Risk Weighted Assets (RWA) Credit Risk-Standard Approach involving asset exposure and commitment liabilities in Administrative Account Transactions (TRA). The calculation involves various aspects, such as exposure that gives rise to Credit Risk due to counterparty failure, exposure to sales or purchase transactions of financial instruments that fail to settle, and securitization exposure. Banks can recognize collateral, guarantees, or credit insurance as Credit Risk Mitigation (MRK) in calculating the Credit Risk RWA-Standard Approach. These instructions are the basis for creditors' considerations in approving LoU applications issued by third parties. A complete guide to calculating RWA for Credit Risk - Standard Approach can be found in the attachment to the OJK Circular Letter.

C. METHOD

This research applies a normative juridical approach with deductive thinking and uses literature study as a data collection method. The research focuses on Letters of Undertaking (LoU) as a form of credit guarantee issued by third parties to debtors. Using Legal Protection Theory, this research examines legal protection for creditors in the context of LoUs when debtors default. The research results highlight preventive and repressive measures that can be taken to protect creditors' interests in these situations. This method provides an in-depth understanding of the legal aspects of using LoUs in various project fields to facilitate smooth national and international trade transactions.

D. RESULT AND DISCUSSION

1. Legal Position of Letter of Undertaking

However, the problem with this Letter of Undertaking is that it is not regulated in clear substance in the legislation, so the legal position in Indonesian guarantee law does not have legal certainty. Legal certainty regarding the Letter of Undertaking is critical because if there is no standard form in the legislation, it will potentially harm both parties, especially creditors, in executorial matters (Anggriawan et al., 2022; Dumitru, 2020).

The explanation stated in Article 1824 of the Civil Code reads: "Debt guarantees are not suspected, but must be made with a clear statement: it is not permissible to expand the guarantee beyond the provisions that were the conditions when holding it." This means explaining that the responsibility of the LoU issuer cannot be assumed or suspected but must be stated clearly and firmly.

2. Legal Responsibilities of Debt Guarantor at Bank with Letter of Undertaking Guarantee

Legal problems in the banking world often occur in Indonesia, where most parties suffer the most losses and are debtors. However, banks that are creditors can also experience losses due to this problem if viewed from the use of the LoU as a statement of the promissory note; then, if there is a default or broken promise, it will be a legal problem.

Suppose the author looks at this from the perspective of using the LoU as a letter of obligation. In that case, the main thing that must be considered is that the number of margin funds that support credit from the Debtor as a customer, whether a personal or legal entity, may be higher or lower than the amount of credit required, so the issuance This LoU depends on the relationship between the bank and the customer and the commitment that can be seen from the past or track record as a bank customer.

A LoU is a promise written on paper, a formal agreement in which a person, a company representative, or a group agrees to do something for another person, a project, or a company representative who holds company shares. This letter is used in many situations, such as a promise to pay money (affidavit for payment), for business in syndicated credit, or a loan (affidavit for loan).

This LoU is an essential piece of paper that shows the Debtor, namely a person or legal entity, has promised to do something and is a straightforward legal document that functions as a formal promise or letter of commitment by the Debtor, namely a person or legal entity, to fulfill certain obligations. A LoU is a formal document used in various fields such as business, construction projects, and finance, which is a binding promise or letter of commitment in which one Party guarantees another party to fulfill certain obligations. This document is a legal guarantee and can have many applications, depending on the context.

Using LoUs as financing collateral harms the bank's position as a creditor because legal certainty for collateral holders is very low. In addition, using loans as collateral, mainly if used as a single financial guarantee, is detrimental to the bank's position as a creditor because the Guarantee given by the Debtor or customer is not unconditional (only based on business). In contrast, the financing the customer receives is absolute (has absolute value).

According to Roger Jones and Gabriel A. Moens: "A demand guarantee, or a performance bond, as it is also known, is a relatively recent innovation in international trade. However, it has quickly become the prevailing type of payment mechanism. Demand guarantees are commonly used in building contracts as security for the due performance of a construction project or as security in lieu of retention money. They may also act as a loan or advance repayment security and as a purchase price payment. Thus, a demand guarantee serves as a means of payment when the obligations of the other Party are not performed. In a typical demand guarantee, the bank (issuer) promises to pay upon demand to the buyer (beneficiary) an agreed sum of money if the builder (account party) defaults under its contract with the buyer; it has become entrenched in international trade law that demand guarantees are agreements independent of the underlying contracts between the account party and the beneficiary "which can be interpreted as "Demand guarantee, or what is also known with performance bonds, a relative innovation in international trade, but quickly becoming a common type of payment mechanism. Demand deposits are usually used in building contracts as security for implementing a construction project or as security instead of retention money. They can also be a loan or security for prepayment and purchase price payments. Thus, a demand guarantee functions as a means of payment when the other Party's obligations are not carried out.

In a typical demand bond, the bank (issuer) promises to pay an agreed amount of money to the buyer (beneficiary) upon demand if the builder (responsible Party) defaults under its contract with the buyer. It is ingrained in international trade law that a demand guarantee is an agreement independent of the underlying contract between the responsible Party and the beneficiary.

"Claim A demand for money or property, the assertion that one is entitled to, or the perceived or actual, suitable to receive, money or property, The totality of facts that give rise to a right to receive money or property that is enforceable in court, In some states and the federal courts, the same as claim for relief when translated to mean a claim is a claim for money or property, an assertion that a person has a right, or a perceived or actual right, to receive, money or property, the entire facts giving rise to a right to receive money or property that can be enforced in court, In some states and federal courts, the same applies to claims for relief.

This means that the LoU in the statement of intent must have the essential legal value of Claim and Demand, which has a guarantee and which means that in evaluating the granting of the LoU by the bank as a creditor, it includes a guarantee which is like a claim on demand which has confirmation that there is a perceived or actual right to receive the money or property so that there are all the facts which give rise to the right to receive money or property which can be executed directly and can be enforced by the court in the event of failure to pay for essential reasons because the bank as a creditor requires collateral with an absolute return value, considering the receivables The bank is absolute. The number of the Debtor's obligations must also be absolute.

Meanwhile, Geraldine Mary Andrews, QC LLB, LLM, and Richard Millett, QC BA, said: "Who produced an illuminating analysis of the nature of a continuing guarantee and the function of a demand in the context of such a guarantee. He distinguished two ways in which the open-ended nature of a continuing guarantee can be ended. The first is by including a provision that enables the surety to give notice of termination of the guarantee contract so that the Creditor is given a period within which he may, if he chooses to make a demand upon the surety, if he does not do so, the contract then comes to an end" Which can be interpreted for those who produce legal analysis as enlightening the nature of continuous guarantees and the function of demand in the context of such guarantees. He distinguishes two different ways that the open-ended nature of a continuing guarantee can be terminated. The first is to include a provision allowing the guarantor to notify the end of the guarantee contract so that the Creditor is given a period within which he can choose whether to file a claim against the guarantor; if he does not perform, the contract will

A violation of rights committed by the Debtor, in this case, the customer, from the perspective of the bank or Creditor, can be resolved using legal channels. However, when reminded of the values of the rule of law, namely Pancasila and the 1945 Constitution, which prioritize and focus on the principle of deliberation, a mediation forum is also essential.

The opinion of a legal expert in India which adheres to the Common Law system, namely K.C. Mishra in his opinion said that:

"Lou is a "letter of commitment enforced if the mortgagee is joint, there is no legal relationship between the mortgagee and the guarantor except as the owner's assignee, and there is no legal relationship with the insurance broker. To protect its security, the mortgagee will want enforceable rights against the insurance broker, hull, and engine policies and against the mutual insurance association (or club) if the vessel is included in the agreement. Club for risks of war or protection and indemnity, which would therefore require the insurance broker and club to issue a letter of intent, which would constitute a separate contract with the mortgagee, under which the broker and club would undertake (among other things) to hold the policy according to the order of the beneficiary mortgage. The form of the letter of intent has evolved over the decades, with a tendency for brokers and clubs to tighten their terms to reduce their exposure to mortgagees. Formal standardization of the wording of brokerage agreements dates back to at least 1977, with forms published by the Lloyd's Insurance Brokers Association. The current form was published in 2008 by the London Market Insurance Brokers' Committee (LMBC) (formerly Lloyd's Insurance Brokers'

Association (LIBA) and now London & International Insurance Brokers' Association (LIIBA)). If it has war risks, the letter of commitment or undertaking from the club is usually similar. In contrast, in the form of the letter of undertaking, there is an agreement from the P&I Club which will be different, which reflects the different types of insurance related to insurance coverage in the letter of undertaking coverage*".*

3. Legal Protection Against the Use of Letters of Undertaking as Collateral for Debtors to Creditors

Lou is related to the provision of credit, a statement letter with economic value in a financial transaction process, according to Rachmadi Usman. This credit process, which does not require collateral, has many advantages and benefits, namely:

a. It gives the bank the right and power to obtain repayment of the collateral if the Debtor breaks his promise, namely to pay back the debt at the time specified in the agreement.
b. Guarantee that the Debtor participates in transactions to finance his business so that the possibility of abandoning his business or project to the detriment of himself or his company can be prevented or at least the possibility of doing so can be minimized;
c. It encourages debtors to fulfill their promises, especially regarding refinancing with agreed terms, so that debtors and third parties who participate in guarantees do not lose assets pledged to the bank.

The legal basis for providing credit without collateral can be seen in Law Number 7 of 1992 concerning Banking as Amended by Law Number 10 of 1998, which in Article 8 paragraph 1 explains the definition and understanding that "In providing credit or financing based on the Principle Sharia, Commercial Banks are required to have confidence based on an in-depth analysis of the debtor customer's intentions and ability and ability to pay off their debt or return the financing by what was agreed."

According to the provisions of POJK Copy number 33/POJK.03/2018, 3 ways can be done to save problematic loans, which can be done or implemented, namely referring to "Chapter 4 Credit Restructuring Article 21 Paragraph (2) Credit Restructuring as referred to in paragraph (1) carried out through a) Rescheduling; b) Reconditioning (Reconditioning); and c) Restructuring.

To resolve problem credit, two methods or strategies can be taken, namely credit rescue and credit settlement. What is meant by credit rescue is a step in resolving problematic credit through renegotiation between the bank as a Creditor and the borrower customer as a Debtor, while credit settlement is a step in resolving problematic credit through legal institutions.

According to R. Subekti, the principle of good faith refers to Article 1338 of the Civil Code (KUHPer), which explains the principle of good faith, which means that when agreeing, it means that the honesty of the parties must be shown. The parties have good faith and put complete trust in the parties or other parties or opposing parties, who are considered honest and have nothing to hide or hide anything wrong which at one time or in the future could cause difficulties or problems.

The formulation or concoction or systematic clause in the letter of undertaking has legal content and responsibilities like a proposed underwriting agreement, which, in this case, aims to equalize the content of the clauses in the underwriting agreement. This aims to ensure important clauses are included in—the guarantee agreement.

With the formulation and regulations expected to be issued by the financial services authority, it is hoped that banks will avoid losses in the event of problem loans. Losses to creditors or banks in letters of undertaking must be avoided. It is to maintain public trust, especially debtors as customers who save funds, because, without trust from the public, banks, or creditors, carrying out their business sourced from a collection of public funds will be challenging.

The principle of consensus is that consensus comes from the Latin word consensus, which means agreement. Agreement means that the parties reach an agreement of will, meaning that what one Party wants is also what the other Party wants. Agreements arise because an agreement is made; in other words, it is valid if it is agreed upon in principle and does not require formalities.

The principle of deliberation and consensus is regulated in Article 1320 paragraph (1) which requires an agreement between the parties entering into an agreement (Toot de bestaanbaarheid der overeenkomsten worden vier voorwaarden vereischt: de toestemming van degenen die zich veriden). This principle is the spirit of an agreement, which is concluded with the parties' agreement. However, in some cases, some agreements do not reflect the actual existence of an agreement because will (wilgebreke), misdirection (dwaling), fraud (bedrog) or coercion (dwang) influence the birth of the agreement.

With consensus theory, it is said that a contract is formed if there has been an agreement or unity of will between the parties. Contractual obligations are the basis that allows the parties to determine the contents of the contract and all its legal consequences. The occurrence of this legal act is determined based on consensus deliberation. With the principle of freedom of contract, the parties are free to choose the applicable law, the contract's contents, and the contract's form for the parties concerned. Other banking services are banking activities, which are the third banking activity. The aim of providing these banking services is to support and facilitate activities to collect funds and distribute funds. The more complete the bank services provided, the better.

The use of the LoU is for both the Creditor as the issuer of the Letter of Undertaking and the Debtor as the Party stating its commitment, which is positively aimed at carrying out an excellent financial transaction even though there may still be broken promises regarding the fulfillment of achievements from various parties. In the banking sector, a LoU is a direct legal document that functions as a formal promise or letter of commitment by a person or organization to fulfill certain obligations. This can range from a letter of agreement for payment for the delivery of credit to more specific uses, such as a letter of agreement in the banking sector or the purpose of a credit agreement.

LoUs make it possible to utilize short-term or long-term temporary financing from foreign or domestically-based banks that function in the country that issues them. LoUs as official letters are examples of payments for debtors as exporters based on specific terms and conditions to ensure fast-track import foreign exchange transactions. -Export is easier to use for creditors.

So, in this case, the characteristic of the LoU is that it is a relatively profitable guarantee for the Debtor because it does not regulate the absolute value, which is the guarantor's responsibility. However, even if the Debtor and customer go bankrupt, the guarantor can still maintain the obligations borne by the Debtor and customer and is responsible for them. In terms of application, it is also very flexible because the LoU only guarantees an official letter of commitment or LoU issued by a third party to the Debtor so that if the Debtor requests the letter from the Creditor in the credit agreement and it is accepted, he does not directly need any collateral.

E. CONCLUSION

Efforts that can be taken as preventive measures by the bank as Creditor when a debtor requests a credit agreement using an LoU are first checking the third Party issuing the LoU and the Debtor receiving the LoU using legal, due diligence activities intended to assess asset potential and economic potential of transactions to be carried out by the Debtor. Legal, due diligence activities are carried out by collecting, analyzing con, including, and providing recommendations regarding the continuation of the transaction." When the publisher states undertaking (letter of undertaking), it must obtain accurate information and data used in legal, due diligence by the comprehensive facts with truth value. Creditors can repressively file a lawsuit based on default to the District Court for conventional banks or to the Religious Court for Sharia banks and request confiscation of collateral for assets owned by the Debtor.

REFERENCES

1. Akolokwu, G. O. (2022). The Challenges of Advancing Credit for Real Property Development in Nigeria: Interrogating the Role of the Banking Sector. *Journal of Private and Property Law*, *18*(1).
2. Al Maamari, A. A., & Al Ghuwairi, A. H. (2021). *Availability of Compliance Status in the Documentary Credit Opening Contract: A Study on the Jordanian Legislations*.
3. Anele, K. K. (2020). A Comparative Analysis of the Arrest of Ship Procedures in Nigeria and Korea: The Need for a Paradigm Change. *J. Korean L.*, *19*, 191.
4. Anggriawan, T. P., Kagramanto, L. B., Usanti, T. P., & Sunarsono, R. J. (2022). Consumer Legal Protection Principles of Billing Mechanism by Digital Financial Service Provider: a Prescriptive Fintech Law Study in Indonesia. *Ymer*, *21*(1), 148–170.

5. Arora, Y. (2022). What Went Wrong with Wrongful Trading? *Business Law Review*, *43*(4).
6. Bahar, T. M. A., Kamello, T., Suhadi, S., Saidin, S., & Trihasworo, R. H. B. (2023). Contractual Obligations in Financing with Fiduciary Security in Indonesia in the Context of Justice. *Lex Scientia Law Review*, *7*(1), 215–248.
7. Barry, J., & Brooks, J. (2021). Who's My Client? The Importance of Engagement Letters. *American Bankruptcy Institute Journal*, *40*(6), 16–57.
8. Deschamps, M. (2022). Letters of Credit: The Autonomy Principle and the Fraud Exception. *Banking & Finance Law Review*, *38*, 245–IX.
9. Dumitru, M. (2020). Hardship in the Context of Law no. 52/2020 for Amending and Supplementing the Law no. 77/2016 on the Giving in Payment of Immovable Assets to Discharge Obligations Undertaken by Credit. *European Journal of Law and Public Administration*, *7*(1), 80–88.
10. Ginting, L., Kamello, T., Yamin, M., & Saidin, O. K. (2020). Building Without Accompanied by Land Right as Fiduciary Collateral Object. *PalArch's Journal of Archaeology of Egypt/Egyptology*, *17*(4), 1729–1743.
11. Hardman, J. (2021). The law and economics of lockdown mitigation: Bankruptcy errors in the United Kingdom. *International Insolvency Review*, *30*(3), 344–360.
12. Hidayana, M. I., Ismail, I., & Muazzin, M. (2021). Attempt of Lawsuit by The Debtor to Delay the Implementation of The Auction of the Object of Liability. *Syiah Kuala Law Journal*, *5*(3), 357–366.
13. Jančíková, E., & Pásztorová, J. (2021). Legal Aspect of Letters of Credit. *Perspectives of Law and Public Administration*, *10*, 18–31.
14. Jelisejevs, A. (2021). Crucial issues with legal protection of consumers human rights when banks unilaterally close accounts. *Athens JL*, *7*, 617.
15. Leonard, T., Pakpahan, E. F., Heriyanti, H., & Azharuddin, A. (n.d.). Legal Protection Against a Bond Investor According to the Dignified Justice. *Yustisia Jurnal Hukum*, *9*(1), 152–167.
16. Liesyowati, S. W., & Darwati, D. (2023). Liquidator Liabilities in Doing Management and Settlement of the Company's Assets. *3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)*, 572–580.
17. Lupton, C. S. (2022). A critical evaluation of the use of sanctions clauses in letters of credit. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, *25*(1).
18. Marney, R., Stubbs, T., Marney, R., & Stubbs, T. (2021). Legal Issues in Restructurings. *Corporate Debt Restructuring in Emerging Markets: A Practical Post-Pandemic Guide*, 253–324.
19. NATAŠA BABIĆ, F. N., & Indžić, A. (n.d.). Legal Nature of Documentary Letter of Credit And Bank Guarantee in International Business Law. *Studenti u Susret Nauci–StES 2022*, 179.

20. Poljanec, K., & Horak, H. (2020). Solvency Test as Yardstick for Prudent Dividend Distribution: A Croatian Outlook. *InterEULawEast: Journal for the International and European Law, Economics and Market Integrations*, *7*(2), 17–52.
21. Simaremare, S. P., Nasution, B., & Sunarmic, E. Y. (2021). Reviewing the Comparison of the Legal Bankruptcy System Between Indonesia and the Netherlands. *Turkish Journal of Computer and Mathematics Education (TURCOMAT)*, *12*(6), 2290–2296.
22. Sumardika, I. N., & Styawati, N. K. A. (2021). Parate Execution of Mortgage Right of Non-Agreement in the Deed of Mortgage. *2nd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2021)*, 211–213.
23. Sun, X. (2021). Jilin Jinhe Real Estate Development Co., Ltd. v. Sichuan Longhai Huifeng Industry Co., Ltd. (Dispute over Pooling Contract): Judicial Determination of the Establishment of Apparent Agency. *Selected Cases from the Supreme People's Court of the People's Republic of China: Volume 2*, 255–264.
24. Wang, J., & DiMatteo, L. A. (2023). Comparative Analysis of American and Chinese Letter of Credit Law: To Mitigate or Not to Mitigate That Is the Question. *J. Int'l Bus. & L.*, *22*, 1.
25. Warren, E., Westbrook, J. L., Porter, K., & Pottow, J. (2020). *The law of debtors and creditors: text, cases, and problems*. Aspen Publishing.
26. Zulfikar, M. (2023). Postponement of Debt Payment Obligations as an Effort to Save Concurrent Creditors' Rights to Debtors Engaged in Investment. *Devotion Journal of Community Service*, *4*(6), 1261–1269.