OBLIGATION ANALYSIS THAT CANNOT BE DIVIDED AND CAN BE DIVIDED IN THE CREDIT AGREEMENT WITH MATERIAL COLLATERAL

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ABSTRACT

The purpose of this article is to analyze the obligation that cannot be divided and can be divided in the mortgage collateral agreement. An obligation that is born because of the agreement in this article is a guarantee agreement, where the principle is that it cannot be divided, but there are also exceptions that can be divided for guarantees of security rights (as regulated in Article 2 paragraph 2 of Law Number 4 of 1996 concerning Rights Dependents), to pay off a debt. What is the legal consequence, from whether or not there is an agreement that is born from the agreement for both the debtor and the creditor, while the collateral material is so numerous and growing, so it is hoped that the results of the analysis of the obligation that cannot be divided into and can be divided into a credit agreement with material guarantees can contribute to the renewal of the engagement law, especially in the ninth part of Book III concerning the Obligation of the Civil Code which can be divided and cannot be divided.

Keywords: An obligation that cannot be divided and can be divided; credit agreement; material guarantee

INTRODUCTION

The business world needs an agreement that provides legal protection for the smooth running of its business. The current development of the engagement opens opportunities for business actors to start their businesses, both nationally and internationally. According to Subekti,[1]To provide the definition of an engagement is a legal relationship between two people or two parties based on which one party is entitled to claim a right from the other party and the other party is obliged to fulfill that demand. The engagement as regulated in Article 1233 of the Civil Code is a legal relationship that originates from agreements and laws. An engagement originating from an agreement regulated in Article 1313 of the Civil Code is an act whereby one or more people bind themselves to one or more other people. Various forms of agreements currently characterize business activities as a form of legal protection for the parties who have agreed to hold them.

In developing their business, business actors need capital obtained through credit facilities by providing collateral. A guarantee agreement that begins with a credit agreement made between the parties, namely the debtor and creditor who has agreed to impose their material rights as the object of guarantee. The current development of guarantee law in Indonesia follows the needs of the community, especially for business actors. The collateral object owned by the debtor/business actor will follow the form or type of collateral that will be charged to the object object he owns. Guarantee lawis an additional agreement (*accessoir*) of the credit agreement. As stated in Article 1 paragraph (11) of Law Number 10 of 1998 concerning Banking, what is meant by credit is:

> Provision of funds or equivalent claims, based on a loan agreement between the bank and another party, which requires the borrower to pay off its debt after a certain period of time with interest.

The development of guarantee law in Indonesia to date cannot be separated from the validity of the legacy guarantee law of the Dutch government as a positive law. Guarantee law arrangements are scattered in various laws and regulations, because currently, Indonesia does not have a legal instrument regulating the Material Law and the National Guarantee Law as a substitute for Book II of the Civil Code.[2]

In banking practice, the terms main guarantee and complementary guarantee are known.[3]The main guarantee is the only object of collateral in a credit agreement, while the complementary guarantee is the object of more than one collateral in one credit agreement. It is possible that there is a main and complementary guarantee depending on the agreement of each party as stipulated in Article 1338 of the Civil Code regarding the principle of freedom of contract. There are various kinds of principles in the guarantee agreement, including the principle that it cannot be divided in order to pay off debts. The principle of indivisibility in the guarantee agreement can be deviated as regulated in Article 2 paragraph 2 of Law Number 4 of 1996 concerning Mortgage Rights.

Based on this rule it can be interpreted, that in a credit agreement can be burdened with more than one object of collateral such as collateral., so that if there is a debt repayment, it can be done by installments equal to the value of each guarantee which is part of the collateral object, which will be exempted from the guarantee, so that then the guarantee only burdens the remainder of the collateral object to guarantee the remaining debt that has not been paid. , as agreed in the credit agreement deed. Juridically, the guarantee function provides legal certainty for repayment of debts in a credit agreement or in accounts payable or certainty of the

[1] Subekti, Agreement Law, imprint XI, PT.Intermasa, 1980, p. 1
[2] Rachmadi Usman, 2008, Civil Assurance Law, Jakarta: Sinar Grafika, p. 24
[3] Interview with Legal Manager of PT BNI (Persero) Tbk, Central Jakarta, on January 24, 2012 in a dissertation, Sri Mulyani, Building the Concept of Intellectual Property Rights in the Trademark as Intangible Asset In the Fiduisa Guarantee Legal System in Indonesia, Undip, 2013, p. 84

realization of an achievement in an agreement, whereas economically, the guarantee function is to provide credit repayment security, as a motivation for debtors to support the implementation of banking regulations. and has market value (marketable).[4]

The purpose of this article will be to analyze the obligation that cannot be divided and can be divided in the mortgage collateral agreement. An obligation that is born because of the agreement in this article is a guarantee agreement, where the principle is that it cannot be divided, but there are also exceptions that can be divided for guarantees of security rights (as regulated in Article 2 paragraph 2 of Law Number 4 of 1996 concerning Rights Dependents), to pay off a debt. What is the legal consequence, from whether or not there is an agreement that is born from the agreement for both the debtor and for the creditor, while the collateral is so many and growing, that it is expected that the results of the analysis of the engagement cannot be divided into and can be divided into the agreement? credit with material guarantees can contribute to the renewal of the engagement law, especially in the ninth part of Book III concerning agreements that can be divided and cannot be divided.

DISCUSSION

Obligation Analysis that can be divided and an Obligation cannot be divided and its legal consequences

a) An Obligation can be divided and an Obligation cannot be divided

The concept of an engagement according to Subekti is a legal relationship between two people or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill that demand.[5] Based on the Civil Code, in the Third Book of Engagement in Chapter I Part IX, it is regulated that the agreements that can be divided and the engagements that cannot be divided (Articles 1296 to 1303 of the Civil Code).

According to Article 1296 that an agreement can be divided or cannot be divided simply, the agreement is concerning an item whose delivery is or an act whose performance can be divided, either in real time or in calculation. This obligation concerns the object (achievement) that was promised. Examples of objects (achievements) that can be divided are a number of collaterals, both movable and immovable, tangible or intangible. Conversely, objects (achievements) that cannot be divided, for example the obligation to surrender an animal because the animal cannot be divided, or the obligation to pay off a debt where one of the heirs does not or has not paid the heir's debt, so that the object which is the object of collateral cannot return.

An obligation is said to be able and cannot be divided, if the objects that are the object of the engagement can or cannot be divided according to balance. This part of the material must not reduce the essence of the achievement, so that the divisible and indivisible properties are based on the nature of the object which is the object of the obligation, besides the purpose of the obligation whether it is divisible or not. The matter can or cannot be divided has meaning, if in the obligation there are more than one debtor or creditor, or even more than one object of guarantee. If there is only one creditor in the obligation, then the obligation is deemed as indivisible even though the performance can be shared.

This division is divisible and indivisible, in its very broad development. In Article 1296 of the Civil Code, it can be exemplified, if an object is burdened with more than one mortgage and there is no agreement between the holders of the mortgage regarding the clearing, the buyer can submit a request to the head of the District Court whose jurisdiction covers the object of the security right to determine cleaning and at the same time determining the provisions regarding the distribution of the proceeds from the auction sale among debtors and their rank according to the applicable regulations. Mortgage has the nature that cannot be divided into, unless agreed upon in the deed of assignment of mortgage rights, if the security rights are imposed on several land rights, It can be agreed that the deed of granting the security right concerned that the repayment of the guaranteed debt can be made by installments of the same amount as the value of each land right which is part of the object of the mortgage to be freed from said security right, so that the mortgage is only a burden the remainder of the object of the mortgage to guarantee the remaining outstanding debt, known as roya partial (to write off a partial mortgage). A partial roya can be done if it is stated in the deed of granting mortgages In practice, this clause is often overlooked by PPAT which results in a weak position of creditors (banks) in conducting partial roya, especially in corporate financing such as housing and flats. A partial roya can be done if it is stated in the deed of granting mortgages In practice, such clauses are often overlooked by PPAT which results in a weak position of creditors (banks) in making a partial roya, especially in corporate financing such as housing and flats. A partial roya can be done if it is stated in the deed of granting mortgage rights. In practice, such clauses are often overlooked by PPAT which results in a weak position of creditors (banks) in making a partial roya, especially in corporate financing such as housing and flats.[6]

According to article 1390 of the Civil Code, no debtor forces the creditor to accept payment of his debt partly by part, even though the debt can be divided. An agreement can and cannot be divided can occur, if one of the parties dies, so that the problem arises whether the achievement can be shared or not shared by the heirs. This depends on the object which is the object of the obligation, which can be shared or implemented, either in real or calculated way (article 1296 KUHPer). Legal issues arise regarding the object (achievement) of the agreement which can and cannot be shared if the debtor or creditor is a national or even international company. This study is important to become input in reforming the national obligation law.

[4] ELIPS, Guarantee Institute, ELIPS Project Cooperation Program & Faculty of Law: University of Indonesia, 1998, p. 68
[5] Subekti, Agreement Law, in Hardijan Rusli, 1993, Indonesian Agreement Law and Common Law, Pustaka Sinar Harapan, Jakarta, p.26
[6] Try Widiyono, 2009, Credit Collateral in Financial Engeering A Guide to Credit and Banking Analysis, Ghalia Indonesia, Jakarta, pp. 156-157

b) Because of law

A credit agreement with a material guarantee, begins with an agreement between the two parties that are bound in the credit agreement by granting the object of guarantee. The agreement that has been made between the parties has legal consequences. For example, if there is repayment, the debtor is unable to pay, the collateral object that has been charged as collateral will be executed. A legal event occurs, the heir leaves the property that is due to be paid by the heirs, but one of the heirs does not have the ability to jointly repay, so the object of collateral cannot be returned.

The legal consequence of the sharing of an obligation is that if the obligation cannot be shared, then each creditor has the right to claim all of his achievements from each debtor, while each debtor is required to fulfil the entire achievement, with the understanding that the fulfilment of the agreement cannot be fulfilled. was sued more than once. Meanwhile, if the agreement can be divided, each creditor is only entitled to claim a share in proportion to the achievement, while each debtor is also only required to fulfil his share.

An agreement can be divided and cannot be divided solely regarding the event, whether it can be divided or not. For example, an example classified as an obligation can be divided, namely the handing over of a number of items such as crops, while an indivisible obligation, for example, is the handing over of an animal.

Regarding whether or not it can be divided into an obligation, then it has meaning if the obligation consists of more than one debtor. Therefore, if an agreement consists of only one debtor, then the agreement must be deemed indivisible, even though the achievements can be divided. No debtor can force his creditor to accept partial payment of his debt, even though the debt can be divided (article 1390 Civil Code).

Whereas in principle Article 1299 of the Civil Code is an obligation with all objects, except those regulated in Article 1300 of the Civil Code, namely: The principles stipulated in the previous article are exempted from:

a. if the debt relates to a mortgage;
b. if the debt consists of certain goods;
c. if the debt relates to various debts to choose from, it is up to the creditor, while one of the goods cannot be divided;
d. if according to the agreement only one of the heirs is obliged to perform the obligation;
e. if it is clear, either because of the nature of the obligation, or because of the nature of the goods which are the subject of the obligation, or because of the stated purpose of the agreement, that the intention of both parties is that the debt is not repayable. In the first three cases, the heir who controls the goods that must be delivered or the goods that are subject to a mortgage, can be required to pay the entire debt, which payment can be made for the goods to be delivered or for goods that are subject to mortgage coverage, without reducing his right to sue reimbursement of expenses to other heirs. The heirs who are burdened with debt in the fourth case, and each heir in the fifth case, can also be sued for the entire debt, without prejudice to their right to claim compensation from the other heirs.

Credit Agreement Concept

Bond is a translation of verbintenis. The obligation is regulated in Book III of the Civil Code. In Article 1233 of the Civil Code, it is explained that the obligation comes from agreements and laws. An agreement that originates from the agreement, in this paper is a credit agreement with a material guarantee. A credit agreement is essentially a loan and loan agreement as stipulated in Article 1754 of the Civil Code (KUHPerdata). The provisions concerning the lending and borrowing agreement are regulated from Article 1754 to Article 1758 of the Civil Code.

Article 1754 of the Civil Code states that the agreement by which one party grants the other party a certain amount of goods which have been used up due to use, provided that the latter party will return the same amount of the same kind and condition. Several elements in the loan and replace agreement, namely the loan and loan agreement for goods in general (including money).[7]Borrowing and borrowing agreements often occur in the community and even in banking. As regulated in Article 1756 (paragraph 1) of the Civil Code, the debt incurred, because borrowing money only consists of the amount of money stated in the agreement. Furthermore, the provisions of Article 1756 (paragraph 2), if before the time of repayment, there is an increase or decrease in price or there is a change in the validity of the currency, then the refund of the borrowed amount must be made in the currency in effect at the time of settlement, calculated according to the price in effect at at that time.

The provisions of Article 1754 of the Civil Code are interpreted as an agreement of a real nature, that is, a new agreement occurs when the goods which are the subject of the agreement have been delivered, namely money which is the object of the agreement between the Debtor and Creditors. In the development of the business world, credit agreements are not only between debtors and creditors, but can be more than one from both debtors and creditors (known as syndicated credit agreements), as well as third parties, namely applications from fintech. Fintech is a financial application that provides investment facilities and also lending money through online access, which is known as financial technology (fintech).[8]

[7] R Subekti and R Tjitrosudibio, Civil Code, Jakarta: PT Pradnya Paramita, 1985, p. 399
[8] Kannya, Purnamahatty Prawirasra, Finacial Technologi in Indonesia: Disruptive or Collaborative, Journal of Report on Economic and Finance, Vol.4 Number 2 (2018), p. 83 in Prisca Oktaviani Samosir, Legal Renewal of Credit Agreement Based on Fiancial Technology, Proceeding of APHK IV Formulation of Academic Paper on the Engagement Law Bill, Jakarta, October 30 2018, p.221.

The lending system of fintech is based on electronic lending and borrowing services, with a peer-to-peer lending system through the website platform of the peer lending company. The agreement made by the parties in this online credit agreement, the fintech party will verify whether the borrower is eligible to be funded along with the repayment of money that has been loaned in accordance with the agreement through the company website.[9]

The purpose of providing credit facilities varies, not only for the purpose of fulfilling working capital or investment, but already following a very varied pattern, so the provision of credit can vary, such as credit for consumptive purposes, credit with working capital financing (KMK). or investment credit patterns, and so forth.[10]Analysis of the feasibility of providing credit for debtors is also a consideration in determining whether credit is acceptable or not, in anticipation of bad credit. Likewise, applications that offer peer to peer lending services from fintech make standard contracts of credit agreements which will lead to legal relationships for borrowing and borrowing. However, the Civil Code does not regulate peer-to-peer lending from fintech.[11] Legal relationships that occur, due to credit agreements, whether syndicated loans, online credit offered through fintech, are of various types, when viewed from the type of guarantee.

The importance of input on the Revision of the Third Book on Obligation in Chapter I Part IX regulates agreements that can be divided and obligations that cannot be divided (Articles 1296 s/d 1303 of the Civil Code), related to online credit agreements. line, what if there is bad credit? The debtor is a foreign citizen and there are more than one creditor.

Basic Concepts of Material Guarantee Law

Conceptually, the legal term guarantees is a translation of the terms security of law, zekerheidstellling or zekerheidsrechten.[12] According to J. Satrio,[13] the concept of security law is the law that regulates collateral for a person's receivables, while Salim HS[14]providing a legal concept of guarantee is the whole legal rules governing the relationship between the guarantor and the recipient of the guarantee in relation to the imposition of collateral to obtain credit facilities. Based on the thoughts of J. Satrio and Salim HS, it can be added that the legal concept of guarantee is the legal relationship between the debtor and creditor in the loan and loan agreement as the principal agreement and the existence of the collateral object as an acessoir agreement (additional agreement). The concept of guarantee is to guarantee the fulfillment of obligations that can be valued in money arising from a legal obligation.[15]

Guarantee lawin Indonesian civil law it is generally regulated in Article 1131 of the Civil Code. If all debtor's assets are unable to fulfill their debt obligations to the creditor, the debtor's property will be sold to the public and the proceeds from the sale of the said objects will be divided among the creditors in proportion to the amount of each receivable in accordance with Article 1132 of the Civil Code.

In the decision of the Guarantee Law Seminar organized by the National Law Development Agency of the Ministry of Justice in collaboration with the Faculty of Law, Gadjah Mada University from 9 to 11 October 1978 in Yogyakarta, it was concluded that the term "guarantee law" includes the meaning of both material and individual guarantees.[16] A similar concept was also put forward by Sri Soedewi Masjchun Sofwan who stated that broadly speaking, the guarantee law is divided into 2 (two) groups, namely the property guarantee law (*zakelijke zekerheidsrecht*), and the individual guarantee law (*personnlijke zekerheidsrecht*).[17] Guarantee law Material is a sub-system of property law which contains a number of real right principles, while individual security law is a sub-system of contract law that contains personal rights.[18]

The concept of a credit agreement with a material guarantee contains a number of principles.The legal principle put forward by legal experts implies that first, the principle is a thought, consideration, broad or general cause, and is abstract; second, principles are the things that underlie legal norms.[19] A good system of guarantee law is guarantee law which regulates legal principles and norms that do not overlap with each other.[20]Legal principles are basic thoughts that are general in nature and underlie or are contained in or behind concrete legal regulations. Legal principles are implied in legal regulations, such as the principle of worthiness, the principle of good faith. According to Scholten, the principle of law is a tendency established by morals in law.[21]Law

[9] Titik Wijayanti, Implementation of Information Technology-Based Credit by Fintech to SMEs (Ojk Supervision Study, Surakarta, p.5 in Prisca… .. ibid.p.223.
[10]Tri Widiyono, 2009, Collateral Credit …… Op.cit, p. 29
[11]Prisca Oktaviani Samosir, Law Renewal… Ibid. p. 223
[12] Rachmadi Usman, 2008, Guarantee Law …… Op.cit, p. 1
[13] J. Satrio, Guarantee Law, Fiduciary Property Guarantee Rights, Bandung: Citra Aditya Bakti, 2002, page 3
[14] Salim HS, Development of Guarantee Law in Indonesia, Jakarta: Grafindo Persada, 2004, p. 6
[15] Subekti, Principles of Civil Law, Jakarta: Internusa, 1980, p. 88
[16] Rachmadi Usman, Guarantee Law ....., Op.cit, 2008, p. 1
[17] Sri Soedewi Masjchun Sofwan, 1980, Guarantee Law in Indonesia The Principles of Personal Guarantee and Guarantee Law, Liberty: Yogyakarta, p. 43,
[18] Mariam Darus Badrulzaman,, Various Business Law, Alumni, Bandung, 1994, pp. 79-80.
[19]Tan Kamelo, Law of Fiduciary Guarantee A coveted need: History, Development, and Implementation in Banking and Court Practices, Bandung, Alumi, 2006, p.158 in Eva Andari Ramadhina, Ambar Budhisulistyawati, Application of Fiduciary Guarantee Principles in Agreement on Fiduciary Security Registration In Consumer Financing (Study of Bandung High Court Decision Number: 102 / PDT / 2015 / PT.BDG, Journal of "Privat Law", UNS, Vol.V.No.1 January -June 2017
[20]Ibid, p. 12-13
[21] Sudikno Mertokusumo, Legal Theory, Atmajaya Yogyakarta, 2011, p. 46.

science is practical-concrete and contains values and is normative in nature.[22] General norms in the guarantee law, both fiduciary and mortgage, form a set of norms that are aimed at providing legal certainty and protection for interested parties.

The security law system whose objects consist of objects is a sub-system of the property law system which contains a number of material law principles. The term object is often defined as wealth, in business practice it is commonly called "property" or commodity. The term noun is a translation of the word zaak (Dutch). Some legal experts give the definition of objects, that objects are everything that can be owned with property rights or everything that can become objects of property rights. The concept of objects contained in Article 499 of the Civil Code is every object and right that can be an object of property rights. Objects in the sense of legal knowledge are anything that can become an object of law.[23]

Subekti divides the meaning of objects into four, namely:[24]Objects in a broad sense are (1) everything that a person can want; (2) (3) Objects in the narrow sense are things that are visible only and (4) Objects are legal objects. In the Western civil law system (BW) that applies in Indonesia, the definition of objects as legal objects does not only include tangible objects that are captured with the senses, but also intangible objects, namely the rights as regulated in Article 499 of Civil Registry.

Until now the National Property Law system has not yet been formed, plans to issue a Law on Objects to create the Unification of Property Law are still stuck, on the other hand in the object law system there is still dualism of property law, namely Property Law according to Customary Law, Civil Law based on the Civil Code and statutory regulations. other invitations.[25]In the customary law system, the meaning of intangible objects is not known, even though what is called BW is an intangible object, not an object that does not exist at all in customary law. The difference is that in the view of customary law the right to an object is not imagined apart from tangible objects, whereas in the view of Western civil law, the right to an object seems to be independent of the object. As if it were a separate object.[26]This difference is due to differences in the way of thinking of the indigenous Indonesians and the Western nations. The way of thinking of indigenous Indonesians tends to be mere reality (conkreet denken), while the way of thinking of Western people tends to things that are only in mind (abstract denken).[27]

Guarantee law whose object consists of objects is a sub-system of the legal system of objects, which contains a number of principles as follows:[28]First, the principle of material (real right). The nature of the law of matter is absolute, meaning that this right can be maintained by everyone. Property rights holders have the right to sue anyone who interferes with their rights. Another characteristic of material rights is the droit de suite, which means that the material rights follow their objects in the hands of whoever he is. This character embodies the principle of old rights precedence over younger rights (droit de preference). If several objects are placed on an object, it means that the power of that right is determined by the sequence of time.

In addition, the nature of material rights is to give strong authority to their owners, these rights can be enjoyed, transferred, guaranteed, leased. Second, the acessoir principle means that this guarantee right is not an independent right (zelfstandigrecht), but the existence and removal of it depends (accessorium) on the main agreement. Third, priority right means that the guarantee right is a right that takes precedence over other receivables. Fourth, the object is an immovable, registered or unregistered object. Fifth, the principle of assessment, namely the attachment between objects on the ground and their ground sites. Sixth, the principle of horizontal separation, which means that objects on the ground can be separated from the ground on which they are located. Seventh, the principle of openness means that there is publication as an announcement, so that people know that there is a burden placed on an object. Ninth, the principle of specification / description of the collateral object. Tenth, the principle of not being divided and the principle of being easily executed.

According to Article 1234 of the Civil Code, each obligation is to give something, to do something or not to do something. Article 1235 paragraph (1) of the Civil Code states that in every obligation to give something, the debt obligations of the debtor to surrender the object concerned and to care for him as a good household father until the time of delivery. This provision is as implied in the obligations of the pledge holder as regulated in Article 1157 of the Criminal Code in providing credit with pledge guarantees.

Guarantees can be classified into two categories, namely material guarantees and personal guarantees. Material guarantees can be classified into 5 types, namely:

1. Pawn (pand), which is regulated in Chapter 20 Book II of the Civil Code;
2. Mortgage, which is regulated in Chapter 21 Book II of the Civil Code;
3. *Credietverband*, which is regulated in Stb. 1908 Number 542.
4. Mortgage Rights, as regulated in Law Number 4 of 1996;
5. Fiduciary Guarantee, as regulated in Law Number 42 of 1999.

[22] Ibid, p. 8.
[23] Pitlo-Bolweg H, Het Zakenrecht naar het Nederlands Burgerlijkwetboek de druk, HD.Tjeenk Willink Groningen, 1972, p. 20, in Mariam Darus Badrulzaman, Searching for the National Property Law System, Alumni, Bandung, 1997, p. 35.
[24] Subekti, Principles of Civil Law, Internusa, Jakarta, 1980, p.60
[25] Martin Roestamy, Creditors Legal Protection Against Unregistered Objects as Bank Collateral According to Law Number 42 of 1999 concerning Fiduciary Guarantee, Thesis of the Post-Graduate Program of Master of Law at Krisnadwipayana University, 2005, p.44
[26] Ridwan Syahrani, Summary of the essence of law science, Citra Aditya Bakti, Bandung, 1999, cet.2, p. 155
[27] Wirjono Prodjodikoro in Ridwan Syahrani, Details and Principles of Civil Law, Alumni, Bandung, 1992, p.108.
[28] Mariam Darus Balzaman, Indonesian Guarantee Legal Framework, ELIPS Project in collaboration with the Faculty of Law, University of Indonesia, 2008 p.3

Included in the personal guarantee are:

1. Liability, which is similar to joint responsibility; and
2. Warranty agreement

Of the several types of guarantees that have been mentioned above, the ones that are still valid are:

1. Pawn;
2. Mortgage right;
3. Fiduciary Guarantee;
4. Mortgage on ships and aircraft;
5. *Borg*;
6. Liability; and
7. Warranty agreement.

The imposition of land rights using mortgage institutions and credietverband is no longer valid, because it has been revoked by Law Number 4 of 1996 concerning Mortgage Rights, while the imposition of collateral for ships and aircraft still uses mortgage institutions.

The importance of input on the Revision of the Third Book on Obligation in Chapter I Part IX regulates agreements that can be divided and obligations that cannot be divided (Articles 1296 to 1303 of the Civil Code), related to credit agreements with guarantees. material, material can be tangible and intangible what if there is bad credit, if the object is guaranteed intellectual property rights.

Scope of the Obligation Law Reform Act

Principles and norms

The scope of the renewal of the obligation law as regulated in Book III of the Civil Code, must be considered at least to include three basic things, namely renewal of philosophical, juridical (normative) and sociological content. The renewal of philosophical content is intended to review the relevance of basic concepts and principles of civil law (obligation). the new laws and regulations are not challenged by the public. Civil law reform requires the formulation of civil law principles in accordance with the philosophy of life of the Indonesian people. With the existence of these principles of national civil law,[29]

Legal reform in the field of obligation is a legal relationship in the field of assets between two or more people, each of whom has rights and obligations. The legal relationship gives rise to legal consequences from the obligation.[30]Based on the Civil Code, in the Third Book of Obligation in Chapter I Part IX, it is regulated that the agreements that can be divided and the obligations that cannot be divided (Articles 1296 to 1303 of the Civil Code). The substance of an agreement that can be divided and cannot be divided as regulated in Articles 1296 to 1303 of the Civil Code, requires legal reform, in order to provide legal protection for the parties involved in the agreement.

Table 1: The substance of Articles 1296 to 1303 of the Civil Code:An obligation that can be divided and that cannot be divided

Substance	Article	Description / Content	Renewal Law of Obligations
The principle of divisibility and indivisibility applies to the delivery of goods both in real and calculated terms	Article 1296	*An obligation can be divided or cannot be divided simply as an agreement concerning an item whose delivery or an act whose performance can be shared, either in actual fact or in a calculation.*	*The definition of broad material, Article 499 of the Civil Code: is every item and right (movable object that is not tangible), further regulated how the delivery of an agreement that can be divided and cannot be divided for movable objects, both tangible and intangible. .*
The principle of delivery of goods may not be partially delivered	*Article 1297*	*An obligation is indivisible, even though the goods or actions intended because of their nature can be divided, if the said goods or actions according to the purpose of the obligation may not be delivered or performed part by part.*	*It is clear*

[29] Budiman Ginting, Development of Civil Law in Indonesia Reform of Civil Law in Indonesia, in *https://mkn.usu.ac.id/images/4.pdf, downloaded on December 8, 2020*

[30] Wilopo Cahyo Figure Satrio, Sukirno, Adya Paramita Prabandari, Principles of Engagement in Sharia-Based Sale and Purchase Agreements, Journal of Notarius Vol.13 No.1, 2020, FH UNDIP, p. 295

An agreement of responsibility does not mean that the obligation cannot be divided	*Article 1298*	*An obligation is an obligation that bears no meaning that it is an obligation that cannot be divided.*	*An agreement of liability can occur because an agreement between D and K which is more than one for the settlement of debts from one of the debtors will free the other debtors.*
The agreement can be divided according to the agreement between the Debtor and Creditor, also if there are heirs	*Article 1299*	*An agreement that can be divided must be performed between the debtor and the debtor as if the agreement cannot be shared; the thing that can be divided up only applies to the heirs of both parties who are unable to collect the debt or are not obliged to pay their debts other than for their respective shares as heirs or people who represent the debtor or the debtor.*	*It is clear*
The object of the collateral for immovable objects is guaranteed with a security right, then according to the agreement it can be divided by installments	*Article 1300 (1)*	*The principle stipulated in the previous article, is exempted from the heirs of the debtor:* *1. In the case of debt, it is a mortgage debt;* *2. When the debt consists of a certain item.* *3. Against a debt where the debtor may choose between various items, while one of these items cannot be divided;* *4. If according to his agreement only one of the heirs is obliged to carry out the obligation;* *5. If either because of the nature of the obligation or the nature of the goods which are the subject of the obligation, or because of the implied purpose of the agreement, it turns out clearly that both parties mean that the debt will not be repayable.*	*It is clear*
The principle cannot be divided so that the heirs are required to pay all debts	*Article 1300: 3*	*In the fourth case the heirs who themselves are required to pay off the debt and in this fifth case also each heir can be required to pay all debts, without prejudice to their right to ask for replacement from the other heirs.*	*It is clear*
The principle of responsibility together bears a debt, even though the agreement is not made in a responsible manner	*Article 1301*	*each of them who jointly bear a debt that cannot be divided is responsible for the whole, even though the commitment is not made responsibly.*	*It is clear*
The principle of the heir shall bear all debts of the heir	*Article 1302*	*The same applies to the heirs of persons who are obliged to fulfill such an agreement.*	*It is clear*
Principle Each creditor heir can demand the implementation of an agreement that cannot be divided in its entirety, except for the calculation of the share of the heirs who have granted exemption from debt.	*Article 1303*	*Each creditor heir can demand the performance of an agreement that cannot be shared as a whole. Neither of them is allowed alone to give exemption from all debts or accept the price in exchange for goods. If only one of the heirs gives relief from the debt in question, or accepts the price of the goods concerned, then the other heirs cannot claim the indivisible goods, except by taking into account the share of the heirs who have granted relief from the debt. or who has received the price of the item.*	*It is clear*

Source : extracted from Article 1296 s/d 1303 Civil Code

Book III Chapter 6 that has been analyzed

Based on table 1 as mentioned above, the agreement equation can be divided and cannot be divided by a liability agreement (even though performance can be divided), that is, each creditor has the right to demand from each debtor to meet all his debts. The difference is that the agreement cannot be divided regarding the matter of performance itself, whereas in the responsibility agreement regarding the people who are in debt or are owed.

In an indivisible obligation, the inheritance of one of the debtors is obliged to fulfil the entire achievement, whereas in a liability agreement this is not the case. In this case, all the heirs together as a substitute for the debtor who owes responsibility are obliged to fulfil the achievements of the deceased, but each only amounts to his share. In an indivisible agreement, if the achievement has been replaced with compensation payments, the debtors are no longer obliged to fulfil all achievements (changes in performance have consequences). On the other hand, in a liability agreement, if there is a change in performance as previously mentioned, each debtor is obliged to fulfil all the achievements.

Currently, banking institutions in the process of providing credit facilities are mostly carried out with underhand credit agreements which are then legalized or registered by a notary in accordance with the provisions of Article 1338 paragraph (1) BW that 'All agreements made legally apply as laws for those who make it ”except in the case of a guarantee binding, the services of a notary are required. In the future renewal of civil law from the study of agreements that can be divided and cannot be divided, it is necessary to clarify the provisions governing the delivery of the goods, if the object of collateral and the creditors are more than one, there are also types of objects that are intangible.

The importance of input on the Revision of the Third Book on Obligation in Chapter I Part IX regulates agreements that can be divided and obligations that cannot be divided (Articles 1296 s/d 1303 of the Civil Code), related to performance, the parties both debtors and creditors, third parties, and heirs.

CONCLUSION

An agreement that cannot be divided and which can be divided is more focused on the delivery of goods (achievement). In a credit agreement with the provision of material guarantees where the principle is that it cannot be divided at the time of repayment. However, the principle of indivisibility is divided into this in an agreement that guarantees mortgage rights can be deviated, if the object (performance) of the object, namely the immovable object (land) is more than one plane. In accordance with the agreement set forth in the deed of imposition of mortgage rights, a partial write-off will be carried out known as partial roya or partial write-off as regulated in Article 2 paragraph 2 of the Mortgage Rights Law.

In the future, it needs to be further regulated in the reform of civil law, especially Book III on Obligation, that the achievements (material objects) of the obligation which can be divided and cannot be divided experience development not only tangible but also intangible objects in this case. Intellectual Property. What will happen in the future when the Intellectual Property is used as an object of guarantee as part of the achievement that must be submitted in connection with an agreement that can be divided or that cannot be divided.

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