

Ensuring Legal Certainty: The Disbursement of Bank Guarantees

Rihantoro Bayuaji¹, Suwarno Abadi² Dwi Elok Indriastuty³

¹ Universitas Wijaya Putra, Indonesia

² Universitas Wijaya Putra, Indonesia

³ Universitas Wijaya Putra, Indonesia

*Corresponding Author: bayuaji@uwp.ac.id

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Abstract

The precautionary principle, commonly associated with lending, extends beyond credit transactions to include other banking services such as bank guarantees. Bank guarantees serve as a form of debt guarantee provided by banks to their customers. This article addresses concerns related to the disbursement of bank guarantees during disputes and emphasizes the importance of customer protection in this context. The method employed is a normative juridical approach, incorporating conceptual, statute, and philosophical considerations. The findings reveal that the application of the Precautionary Principle in the Financial Services Authority Regulation (POJK) Number 18/2016 is evident through the inclusion of "Risk Management" provisions. In line with the Precautionary Principle, banks are advised to postpone disbursement when a legal dispute arises between the beneficiary of the bank guarantee and the customer who applied for it. To prevent controversies arising from bank guarantee disbursements, it is recommended that Bank Indonesia or the Financial Services Authority (OJK) establishes regulations specifically addressing the disbursement process for bank guarantees. This regulatory framework would contribute to the effective implementation of the Precautionary Principle in the context of bank guarantees.

1. Introduction

As a legal framework, banking law encompasses regulations governing various aspects of banks, including their organization, business operations, and management procedures. Banks, as financial institutions, play a crucial role in collecting and distributing society's funds. The foundation of banking operations relies on establishing and maintaining a trust relationship between the bank and its customers.¹ The trust placed in banks by the public is fundamental, given that banks utilize funds deposited by individuals and businesses based on this trust. The act of saving money in a bank is rooted in the belief that the bank will safeguard these funds, allowing customers to withdraw them at their convenience or within agreed-upon terms, often with interest. The preservation of societal trust is essential for the well-being and stability of banks. When trust in a bank diminishes, there is a risk of a run on deposits, where customers may hastily withdraw their savings. This emphasizes the critical role of maintaining and enhancing public trust in the banking sector. Legal frameworks, including banking laws, aim to provide guidelines and regulations that contribute to the sound functioning of banks and the protection of customers' interests, thereby upholding the trust upon which the banking system relies.²

¹ Djoni S. Gazali and Rachmadi Usman, *Hukum Perbankan* (Jakarta: Sinar Grafika, 2020).

² Fatimah Chalim, "Legal Relations Between Banks And Depositors According to Banking Law," *Lex Et Societatis* 5, no. 9 (2017).

To ensure the safety of customers' trust in banks, the distribution of society's funds must adhere to the "Precautionary Principle" or Prudential Banking Principle. This principle aims to prevent, reduce, or neutralize the risks associated with banking, including crises that may erode customers' trust in a bank. One significant risk is the occurrence of bad credit, and banks should conduct a thorough analysis before providing loans to mitigate this risk³. In anticipating the possibility of bad credit, credit analysis should align with the manifestation of the Precautionary Principle, which includes adhering to the 5C's of Credit Principles (5Cs Principles). These principles encompass various factors that contribute to a comprehensive credit analysis: condition, collateral, character, capacity, capital. These Precautionary Principles are not limited to credit transactions but also extend to other banking activities, such as transactions related to bank guarantees. By applying these principles, banks aim to maintain a prudent and cautious approach in their operations, ultimately ensuring the stability of the banking system and fostering continued trust from customers.

Certainly, one of the essential services offered by banking organizations to support business activities is the provision of bank guarantees. The issuance of bank guarantees is a valuable service that banks provide to facilitate the smooth operation of businesses. The term "guarantee" implies assurance or warranty, and in Dutch, it is referred to as '*borgtocht*,' signifying a guarantee or bail for debt. Bank guarantees represent a specific form of banking service offered to customers. In this arrangement, a bank commits itself to safeguarding the interests of individuals by acting as a guarantor or insurer for its customers. Consequently, a bank guarantee is fundamentally an agreement for debt guarantee, and the provisions related to '*borgtocht*' as outlined in the Code of Civil Law are applicable to bank guarantees. Considering the characteristics inherent in bank guarantees, the banking sector, in its role as the issuer of bank guarantees, should adhere to the Precautionary Principles during the disbursement process. This ensures that the disbursement of bank guarantees provides legal certainty to all involved parties, including the guaranteed customer and recipient. This cautious approach aligns with the principles of prudence and risk management in banking operations, contributing to the overall stability and integrity of the banking industry.

The issues addressed in this article encompass two main aspects. Firstly, it delves into the conceptualization of the Precautionary Principle in the context of banking within the framework of Indonesian law. This involves an exploration of how the principles of prudence and risk management are interpreted and applied in the specific context of banking operations in Indonesia. Secondly, the article aims to elucidate the correlation between the Precautionary Principles in banking and the process of disbursement of bank guarantees. This entails examining how the principles of caution and careful risk assessment are relevant and influential in the specific context of disbursing bank guarantees. The correlation between these precautionary principles and the disbursement of bank guarantees is crucial for ensuring legal certainty and integrity in the banking sector, benefiting both the guaranteed customer and the recipient of the bank guarantee.

This new article contributes novelty to the existing literature on bank guarantees, differentiating itself from previous works such as "*Bank Garansi sebagai Jaminan bagi Pihak*

³ Chalim.

Ketiga" by Sri Retno Widyorini, which primarily focused on the procedures and requirements of bank guarantees⁴. Another example, "*Peranan Bank Garansi dalam Kontrak Konstruksi antara Pemerintah dengan Kontraktor*" by Diman Ade Mulada, concentrated on the disbursement of bank guarantees in cases of breach of contract by contractors working with the government.⁵ Additionally, "*Peranan Penerbit Bank Garansi sebagai Penjamin Pelaksanaan Pekerjaan Konstruksi Pembangunan Rumah Susun dalam Meningkatkan Perlindungan Hak Konsumen*" by Johannes Ibrahim, Rahel Octora, Yohanes Hermanto Sirait, explored the relationship between bank guarantees and flats.⁶ This new article, in contrast, delves specifically into the precautionary principle within the context of bank guarantees. It aims to provide insights into how these principles contribute to legal certainty for guaranteed customers. The article critically examines the adequacy of existing laws, encompassing both banking laws and financial services authority regulations. This unique focus on the precautionary principle in bank guarantees, coupled with an evaluation of legal frameworks, adds a distinct perspective to the body of literature on this subject.

2. Methods

The research conducted in this article follows the normative juridical approach, which relies on primary and secondary legal materials. Primary legal materials are authoritative sources such as legislation, official records or minutes related to the creation of legislation, and judicial decisions⁷. On the other hand, secondary legal materials encompass non-official legal publications, including textbooks, law dictionaries, and commentaries on court decisions. Normative juridical research places emphasis on the study of positive law, encompassing legal dogmatics, legal theory, and the philosophy of law. This research approach is centered on the examination of legal materials, with a particular focus on positive law. The collection of legal materials for this research involves gathering relevant legislation in the banking and bank guarantee sectors, along with reference books discussing banking and bank guarantee laws.

3. Results and Discussion

3.1 Banking and Risk Mitigation: An Examination of Precautionary Principles

The banking business is inherently conservative, and this conservative nature necessitates careful attention in its operations. The conservative trait is driven by the significant role banks play in the macroeconomic and overall economic development. Given that society's funds, including deposits, current accounts, and savings, are entrusted to banks, and considering the nature of banking that requires a balance between received and distributed funds, a control mechanism is in place to minimize speculative elements. In essence, the risk associated with a bank typically pertains to how funds are managed and distributed within the institution.⁸

⁴ Sri Retno Widyorini, "Bank Garansi Sebagai Jaminan Bagi Pihak Ketiga," *Serat Acitya* 1, no. 1 (2020).

⁵ D A Mulada, "Peranan Bank Garansi Dalam Kontrak Konstruksi Antara Pemerintah Dengan Kontraktor," *Jurnal IUS Kajian Hukum Dan Keadilan*, 2013.

⁶ Johannes Ibrahim, Rahel Octora, and Yohanes Hermanto Sirait, "Peranan Bank Penerbit Bank Garansi Sebagai Penjamin Pelaksanaan Pekerjaan Konstruksi Pembangunan Rumah Susun Dalam Meningkatkan Perlindungan Hak Konsumen," *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 7, no. 2 (2017), <https://doi.org/10.28932/di.v7i2.718>.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenadamedia Group, 2016).

⁸ Munir Fuady, *Hukum Bisnis : Dalam Teori Dan Praktek* (Bandung: Citra Aditya Bakti, 1996).

Therefore, banks offering credit services should conduct thorough analyses when granting credit to ensure that the loans provided do not easily turn into bad debts. In accordance with the precautionary principles, as normatively regulated in Article 8 of Law Number 7 of 1992 on Banking, as amended by Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 on Banking (hereinafter referred to as the Law No. 10/1998), it is stipulated:

- (1) When providing credit or funding based on Sharia Principles, Commercial Banks are obligated to have faith based on a thorough analysis of the borrower's intention and the ability and capability of the debtor to repay the debt or return the financing as agreed.
- (2) Commercial banks are obligated to have and implement credit and financing guidelines based on Sharia Principles, following the provisions stipulated by Bank Indonesia.

Article 8 of Law No. 10/1998 reflects the Precautionary Principles concerning credit granting. In the development, the Prudential Banking Principle is also regulated in the technical regulation, Financial Service Authority (OJK) Regulation Number 18/POJK.03/2016, about The Implementation of Risks Management for Commercial Banks (hereinafter referred to as POJK Nomor: 18/2016). One of the manifestations of the Precautionary Principle in POJK Nomor: 18/2016 is the presence of the "Risk Management" provision. The concept of "Risk Management" is defined in Article 1 Section (3) POJK Number: 18/2016, stating: "Risk Management is a series of methodologies and procedures used to identify, measure, monitor, and control the risks arising from the entire activity of the bank's business."

The precautionary principle was further emphasized by the enactment of Law Number 4 Year 2023 on the Development and Strengthening of the Financial Sector. In Article 14 number 19, it was mentioned that two articles were inserted between Article 20 and Article 21 in Law Number 7 of 1992, namely Article 20A and Article 20B. Article 20A section (1) states that banks are obligated to apply prudential principles, including risk management, in conducting business activities. Furthermore, section (2) states that the bank is obligated to prepare internal procedures regarding the implementation of the precautionary principle as referred to in section (1).

The explanation of that article emphasizes that the implementation of the precautionary principle includes conducting business activities such as providing credit or financing based on Sharia principles. In this context, the bank is required to have confidence based on in-depth analysis of the character, ability, and capability of the debtor client to repay their debts in accordance with the agreement. Since credit or financing based on Sharia principles carries inherent risks, the bank must adhere to sound credit principles. To mitigate these risks, having confidence in the debtor client's ability and capability to fulfill their obligations in line with the agreement is crucial. Therefore, before providing credit or financing based on Sharia principles, the bank is obligated to conduct a comprehensive assessment of the debtor client's character, ability, capital, collateral, and business prospects.

3.2 Legal Framework: Understanding the Characteristics of Bank Guarantee Law

In the context of bank guarantees, the term "guarantee" or "guaranty" refers to a form of assurance or warranty. The Dutch term "*borgtog*" is also associated with guarantees. While granting a guarantee can be viewed as a commitment to fulfill a debt or obligation, it is often a form of payment, meaning that it is a guarantee to cover unpaid or unfulfilled obligations. As regulated in Article 1820 of the Code of Civil Law, bank guarantees play a crucial role in providing assurance and security in various transactions.⁹

In a guarantee agreement, the term "guarantee" or "warranty" signifies an act by the guarantor to provide assurance that if the party obligated under the agreement fails to fulfill their obligations, such as not paying a debt, the guarantor will step in and fulfill or take over that obligation¹⁰. When a bank acts as the guarantor, it commits to executing or taking over the obligation, often involving compensation payments. While providing various banking services to customers, banks can offer services like bank guarantees as long as they comply with relevant laws, including Bank Indonesia Regulations. Offering bank guarantees is a fee-based service for banks, and it has become a routine business for them. Banks earn fees, typically calculated as a certain percentage of the guaranteed amount, making it one of their sources of fee-based income.¹¹

Normatively, the definition of a bank guarantee is outlined in Article 1 paragraph (3) of the Decree of the Board of Directors of Bank Indonesia Number: 23/88/Kep/Dir. This definition includes:

- a. Guarantee in the form of letter scrip by bank which caused the obligation to pay the recipient of guarantee if the guaranteed party breaches the contract;
- b. Guarantee in the form of second and subsequent signings of securities, such as avals and endorsements with regres rights that can cause the obligation for the bank to pay if the guaranteed breaches the contract;
- c. Other guarantees happen because of a conditional agreement that can raise the banks' financial responsibility.

The conclusion drawn from the norms of the bank guarantee is that it is a general warranty in a credit agreement. Consequently, a bank guarantee is created through an agreement that establishes an obligation to provide a guarantee. This aligns with the provision of Article 1131 of the Code of Civil Law, which states that all of the debtor's assets, both movable and immovable, whether existing or to be acquired in the future, will serve as collateral for all obligations. In practical terms, a new bank guarantee can only be disbursed when the applicant customer breaches the contract against the beneficiary of the bank guarantee in relation to the implementation of the master agreement followed by the "bank guarantee." This underscores the conditionality of the bank guarantee, typically triggered by a specific event, such as a breach of contract by the customer.

⁹ Daeng Naja, "Hukum Kredit Dan Bank Garansi," *Journal of Chemical Information and Modeling* 53, no. 9 (2017).

¹⁰ Munir Fuady, *Jaminan Fidusia* (Bandung: Citra Aditya Bakti, 2000).

¹¹ Fuady.

3.3 Upholding Legal Certainty: Principles Governing the Disbursement of Bank Guarantees

Examining the characteristics elucidated in the preceding sub-discussion regarding bank guarantees, it becomes imperative to undertake a juridical analysis of the legal safeguards afforded to the applicant customer in the event of a bank guarantee disbursement requested by the beneficiary. Ensuring that the disbursement of the bank guarantee does not adversely affect any party engaged in the transaction, particularly the applicant customers, is paramount. In the realm of legal protection, various theories merit consideration, as outlined below:

- a. Legal Protection Theory, as articulated by Satjipto Rahardjo, posits that in safeguarding individuals from rights violations perpetrated by others, such protection is extended to society to ensure the enjoyment of all rights conferred by law.;
- b. According to Muktie A. Fadjar, the Legal Protection Theory involves the delineation of protection, specifically pertaining to legal protection. This form of protection is intricately linked to the recognition of rights and responsibilities possessed by individuals, who, as legal subjects, hold the prerogative and obligation to undertake legal recourse in their interactions with fellow individuals and the environment.¹²

The significance of legal protection for customers stems from the fact that banking institutions heavily rely on societal trust. Preserving this trust is paramount for the government in order to shield society from unwarranted actions by institutions or bank employees that could erode the foundations of societal trust. A decline in societal trust towards banking institutions can lead to severe economic repercussions for a country, and restoring such trust is a complex undertaking.¹³ Efforts to protect customers extend beyond the purview of civil law, which relies on sanctions and mechanisms for compensation claims. Legal provisions encompassing criminal law and state administrative law also offer interim regulations that can safeguard customers. However, careful consideration is essential in determining responsibility for any negligence or errors in the management or administration of a bank, resulting in losses experienced by customers.¹⁴

In the implementation of precautionary principles concerning legal protection for customers, normatively, it is outlined in Financial Service Authority Regulations Number: 18/POJK.03/2016 regarding the Implementation of Risk Management for Commercial Banks (hereinafter referred to as POJK Number: 18/2016). Implicitly, the legal protection of a customer is delineated in Article 1 Section (3) of POJK Number: 18/2016, which stipulates: "Risk Management is a series of methodologies and procedures used to identify, measure, supervise, and control the risks arising from the entire activities of bank business."

The concept of risk management entails the principle that all forms of risks arising from the entire activities of the bank business should be controlled. As per POJK Number: 18/2016, the risks that must be controlled include:

¹² Glosarium, "Pengertian Perlindungan Hukum Menurut Para Ahli," 2014, <https://tesishukum.com/pengertian-perlindungan-hukum-menurut-para-ahli/>.

¹³ Muhammad Djumhana, *Hukum Perbankan Di Indonesia* (Bandung: Citra Aditya Bakti, 2018).

¹⁴ Djumhana.

- a. Legal risks;
- b. Reputation risks; and
- c. Obligation risks.

Legal risk is the risk arising from a lawsuit and/or weaknesses in the juridical aspect, reputation risk is a risk stemming from a decrease in stakeholders' trust resulting from negative perceptions toward the bank, and compliance risk is a risk arising when the bank fails to follow and/or implement legislation and provisions.¹⁵ The disbursement of a bank guarantee is closely related to the act of breach of contract committed by the applicant customer of the bank guarantee in the master agreement. Breach of Contract is defined as the failure to properly fulfill an obligation imposed by the contract.¹⁶ According to M. Yahya Harahap, "Breach of Contract is the implementation of an obligation that is not done on time or appropriately." Moreover, M. Yahya Harahap opines that "a debtor is mentioned in Breach of Contract if he or she, in implementing performance monitoring, has been negligent, resulting in being late from the specified schedule."¹⁷

Breach of Contract, as regulated in Article 1238 Code of Civil Law, is a condition where the debtor is deemed negligent by a writ, by a similar deed, or based on the power of that agreement; that is, if this agreement has caused the debtor to be considered negligent as the specified time has passed. Furthermore, concerning the elements of Breach of Contract, Subekti, in the legal agreement, defines four elements of Breach of Contract, namely:

- a) Not to do what was agreed or not to do what was promised;
- b) To do what was agreed but not to do it as promised; and
- c) To do what was promised but late; and
- d) To do something that is based on the agreement is prohibited.¹⁸

Referring to the conditions of Breach of Contract above, when one of the parties, especially the applicant customer of the bank guarantee, is declared to be in Breach of Contract by another party, that party can initiate the disbursement of the bank guarantee from the bank

However, if a Breach of Contract statement from one of the parties, specifically the beneficiary of the bank guarantee, to the customer who has applied for a bank guarantee in a master agreement – such as a work contracting agreement – results in a Breach of Contract Lawsuit in court, a crucial legal issue arises: whether the bank guarantee disbursement should solely be based on the Breach of Contract statement from the job owner (*bouwheer*) in the work contracting agreement. In addressing this legal matter, the bank is accountable for disbursing or postponing the disbursement. It is obligated to adhere to the "Precautionary Principles" implied contextually in Banking Law and POJK Number: 18/2016, whereby a bank must safeguard its customers by implementing precautionary principles attached to the bank to protect customers. Prudential banking principles are also grounded in the trust principle,

¹⁵ Lukman Santoso Az, *Hukum Perikatan (Teori Hukum Dan Teknis Pembuatan Kontrak, Kerja Sama, Dan Bisnis)* (Malang: Setara Press, 2016).

¹⁶ Sudjana Sudjana, "AKIBAT HUKUM WANPRESTASI DAN TANGGUNG JAWAB PARA PIHAK DALAM TRANSAKSI ANJAK PIUTANG," *Veritas et Justitia* 5, no. 2 (2019), <https://doi.org/10.25123/vej.3173>.

¹⁷ Adjie Habib and Saputro Emmy Haryono, "Perlindungan Hukum Bagi Pemilikobjek Gadai Atas Pelelanganobjek Gadai," *Jurnal Hukum Bisnis* 1 (2015).

¹⁸ (Hukum Online 2022)

which must be preserved to ensure that society always has faith that the bank can be trusted to safeguard the customer's rights.

In reference to the Precautionary Principle outlined in Article 2 of Law Number 7 Year 1992, as amended by Law Number 10 Year 1998 on Banking, stating, "Risk Management is a series of methodologies and procedures used to identify, measure, supervise, and control the risks that arise from the entire activities of banking business, so that the act of refusing the disbursement of a bank guarantee claim by the bank guarantor can be legally justified,"¹⁹ and in Article 14 Number 19 of Law No. 4 of 2023 on Development and Strengthening of the Financial Sector, which inserted Articles 20A and 20B into Law Number 7 Year 1992. Apart from the Precautionary Principle regulated in the Banking Law, banks must also consider the three risks stipulated in POJK Number: 18/2016, namely Legal, Reputation, and Obligation risks. This is emphasized by the legal rules in the Decision of the Supreme Court of the Republic of Indonesia Number: 238PK/Pdt/2014, wherein, if there is still a debate or dispute regarding a Breach of Contract in a master agreement accompanied by an accessory agreement in the form of the Bank Guarantee, the accessory agreement in the form of a bank guarantee becomes an inseparable unit from the master agreement. The Bank, as the guarantor of the bank guarantee, cannot disburse the bank guarantee before there is a court decision that has permanent legal force (*Inkracht*) regarding the dispute in that master agreement.

In the context of bank guarantees, both unconditional and conditional bank guarantees are derived from the master agreement, forming an inseparable bond with the bank guarantee as an accessory agreement. This connection triggers the obligation to disburse the bank guarantee to the relevant bank, in a specific amount, if the guaranteed party breaches the contract. Similar to the Letter of Credit (L/C), establishing a Breach of Contract requires proof through a judicial institution's decision with permanent legal force. When the bank, as the issuer of the bank guarantee, faces disagreement or dispute between the parties without a definitive judicial decision on the party in Breach of Contract, the bank must adhere to the precautionary principle. In this regard, the bank should refrain from disbursing the bank guarantee until a judicial decision with permanent legal force is reached (*inkracht ven gewijsde*).²⁰

In practical terms, the disbursement of the bank guarantee is typically triggered by a legal warning letter from the beneficiary of the bank guarantee or the party that entered into the master agreement with the applicant customer of the bank guarantee. The master agreement in question may encompass various types of agreements, such as cooperation or working contracts. However, it is common for agreements utilizing the bank guarantee pattern to be working contract agreements. These working contract agreements often include clauses specifically addressing the disbursement provisions of the bank guarantee.

Unfortunately, the working contract agreement sometimes lacks detailed regulations regarding the technical requirements for bank guarantee disbursement. When seeking

¹⁹ Toni Butarbutar, "Analisis Hukum Penolakan Pencairan Bank Garansi Oleh Bank Syariah Bukopin Cabang Kelapa Gading (Studi Kasus PT Berkah Kawasan Manyar Sejahtera Sebagai Penerima Bank Garansi Dengan PT Berkah Tiga Usaha Sebagai Terjamin," *Pakuan Law Review* 6, no. 2 (2020), <https://doi.org/10.33751/palar.v6i2.2403>.

²⁰ Okgaransi, "Pengertian Dan Dasar Hukum Bank Garansi," 2016, <https://www.okgaransi.com/artikel/dasar-hukum-bank-garansi>.

disbursement of the bank guarantee, the beneficiary typically submits a sommation letter, which includes a statement of breach of contract, addressed to the customer, with a copy sent to the bank that issued the guarantee. The legal foundation for the sommation letter containing the statement of breach of contract is defined in Article 1238 of the Civil Code, which states: "A debtor is declared negligent by a written notice, or by a similar deed, or based on the power of that agreement, that is if this agreement caused the debtor to be considered as neglecting as the specified time has passed."

The requirements for bank guarantees imposed by banks are not standardized. Each bank has its own regulations regarding the disbursement of bank guarantees. For example: "The bank will make payment to the beneficiary of the bank guarantee within - working days after receiving a written invoice and a statement from the beneficiary stating that the customer, for whom the guarantee was issued, has failed to fulfill their obligation or is in breach of contract."

Based on the quoted requirement for the disbursement of the bank guarantee, it appears that the bank issuer does not explicitly regulate the requirements when the guaranteed party (customer) refuses to disburse the guarantee, citing reasons such as ongoing litigation against the beneficiary of the bank guarantee. While neither the Bank Indonesia Regulation nor the Financial Service Authority (OJK) regulation explicitly addresses this issue, there is a Judicial Review Decision from the Supreme Court of the Republic of Indonesia, Number: 102 PK/Pdt.Sus-Pailit/2016, that includes the following provision:

"Whereas, from the facts of the trial, it was not proven that there was any unlawful act committed by the Judicial Review Respondents regarding the non-liquidation of the bank guarantee or the marginal deposit of the bank guarantee in a quo case both to the Co-Respondent and the Respondent, since it was done based on the prudential banking principle and by considering the inexistence of legal certainty due to the simultaneous applications in which each of them stated its right to the funds."

Based on the legal considerations in the Judicial Review Decision of the Supreme Court of the Republic of Indonesia, Number 102 PK/Pdt.Sus-Pailit/2016, a rule can be inferred: as long as there is no legal certainty due to an ongoing lawsuit, the bank cannot disburse the guarantee. Therefore, when the guaranteed party rejects the Breach of Contract statement from the beneficiary of the bank guarantee, verification should be sought through legal proceedings, and the bank must await the court decision regarding the Breach of Contract condition for the guarantee.

4. Conclusions

The precautionary principles in Indonesia are normatively regulated in Article 8 of Law Number 7 Year 1992 about Banking, as amended by Law Number 10 of 1998. The "Risks Management" provision in POJK Nomor: 18/2016 is one manifestation of the precautionary principle. The disbursement of a bank guarantee must adhere to these principles, ensuring it does not harm the interests of the guaranteed customers. The Precautionary Principles include not only the 5Cs Principles but also those outlined in Article 1(3) of POJK Number 18/2016 and Article 14 Number 19 of Law No. 4 of 2023. The correlation between the Precautionary Principles in banking and the disbursement of the bank guarantee lies in prioritizing these principles. Legally, the issuing bank must provide legal certainty and protection for both the

recipient of the bank guarantee and the guaranteed customers. The Precautionary Principles form the basis for the bank's responsibility in disbursing or postponing the guarantee.

A suggestion for the future is that to ensure legal certainty for the recipients of bank guarantees and to continue providing legal protection for guaranteed customers, the Financial Service Authority (OJK) should establish detailed regulations controlling the bank guarantee disbursement procedure, especially in situations involving lawsuits between guaranteed customers and recipients of bank guarantees regarding the implementation of agreements in the master agreement.

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