

The Bank's Authority in Determining the Value of the Collateral Post Implementation of the Minister of Finance Regulation Number 228/Pmk.01/2019 Concerning the Second Amendment to the Regulation of the Minister of Finance Number 101/Pmk.01/2014 Concerning Public Appraisal

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ABSTRACT

Assessing collateral as an important aspect in providing credit, the fact is that the majority of internal banking appraisers are not required to fulfill the definition of competency as intended in Minister of Finance Regulation Number 228/PMK.01/2019, namely having a certification exam and further professional education. Another fact that is a fact is the obstacles in banking, especially in areas where there are no independent appraisal branches. The formulation of the problem raised in this research is what is the authority of collateral appraisers in carrying out collateral assessments after the issuance of changes to Minister of Finance Regulation Number 228/PMK.01/2019 and what obstacles are faced, especially by banks, after the issuance of Minister of Finance Regulation Number 228/PMK.01/2019. This type of research is Normative legal research. This research uses a statutory approach. From this research, there is a lack of clarity regarding the implementation of Minister of Finance Regulation Number 228/PMK.01/2019 with Bank Indonesia Regulation Number 18/16/PBI/2016 so that there are still many collateral appraisers who do not meet the competency requirements in question who still carry out collateral appraisal as a basis for the credit analysis process. banking, and this will be very risky for the results of the collateral assessment both in terms of quality and also in terms of legal legality. Another thing is that banks in several regions are hampered in the credit process because there is no Public Appraisal Service Office branch which is mandatory.

Keywords: Bank, Certification, Public Appraiser

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1. INTRODUCTION

Economic development is part of national development which is one of the efforts to achieve a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

To mobilize the economy in society to support this economic development, large funds are needed. One source of these funds is credit, both credit through banks and non-bank institutions (financing/leasing institutions) as fund

providers. When providing credit by banks, the 5 C principles are always taken into account, namely Character, Capacity, Capital, Conditions of Economy and Collateral. With respect to Collateral (Guarantee/Guarantee) the Bank gives special consideration to realizing a credit to the debtor, the aim is to guarantee the existence of the debtor's credit against a possible risk of the credit defaulting. Guarantee is a priority in addition to other requirements, so banks often request or even require collateral for providing credit to debtors. Banks in order to secure their interests, are not prohibited from requesting a guarantee and specifically in applying the precautionary principle in the collateral aspect (Collateral and Collateral Appraisal), regulations are carried out from the Minister of Finance through amendments to Regulation of the Minister of Finance Number 228/PMK.01/2019 concerning the Second Amendment to Regulation of the Minister of Finance Number 101/PMK.01/2014 Regarding Public Appraisers.

Based on the description above, the problem formulation that the author conveys is What is the authority of collateral appraisers in carrying out collateral assessments after the issuance of changes to Minister of Finance Regulation Number 228/PMK.01/2019? and what are the obstacles faced by banks in particular after the issuance of Minister of Finance Regulation Number 228/PMK.01/2019? The aim of this research is to provide knowledge related to guaranteeing banking credit or other financial services and also to ensure the implementation of procedures and other provisions governing guaranteeing banking credit or other financial services, especially regarding collateral assessment as one of the

important aspects in banking credit agreements. The benefits to be achieved in preparing this research are of course in the academic field, especially regarding economics and law related to collateral assessment as one aspect of applying for credit and for the public to understand and better understand the relationship between economics and law and good credit needs in banks or other financial services as well as following developments in regulations that form the basis and legal basis in the field of collateral assessment. Regulations on public appraisers and their role in banking credit agreements following Minister of Finance Regulation Number 228/PMK.01/2019 intend to improve the quality and quality of human resources as public appraisers, this is realized through the requirements that must be fulfilled by public appraisers through ratified certification by the Ministry of Finance of the Republic of Indonesia, regarding this matter, the Indonesian Appraisal Professional Society (MAPPI) as an organizational forum for the Indonesian appraiser community responded positively by holding training and improving appraisal standardization and the Appraisal Code of Ethics. Minister of Finance Regulation (PMK) Number 228/PMK.01/2019 concerning Second Amendment to Minister of Finance Regulation Number 101/PMK.01/2014 concerning Public Appraisers was stipulated and promulgated in Jakarta on 31 December 2019.

The contents of the PMK consist of 80 articles which regulate three areas of appraisal services, namely Property Appraisal, Business Appraisal and Simple Property Appraisal, or abbreviated to P, B and PS respectively. With the Minister of Finance Regulation No.

228/PMK.01/2019, it is hoped that improving the quality of public appraisers will be able to have a positive impact on the world of banking and other financial services by maintaining credit quality through one of the important aspects of credit, namely the collateral aspect which is closely related to good public appraisers. in internal banking and also independent public appraisers in accordance with regulations, standardization of appraisals and codes of ethics in carrying out collateral appraisals.

2. METHODS

The research method used is normative, namely research into the legal principles contained in statutory regulations. The type of approach used is a statutory approach, by reviewing all applicable laws and regulations related to the legal issue regulations being discussed, namely Minister of Finance Regulation Number 228/PMK.01/2019 and in accordance with the KEPPI code of ethics and Assessment Standards (SPI) which applies to collateral appraisers (appraisers), Source of primary legal material, Civil Code (KUHPERDATA), Minister of Finance Regulation 228/PMK.01/2019 concerning concerning the Second Amendment to Minister of Finance Regulation Number 101/PMK.01/2014 concerning Public Appraisers and Bank Indonesia Regulation no18/16/PBI/2016. Secondary Legal Materials

Materials that provide explanations of primary legal materials, such as: books, papers resulting from seminars or scientific meetings, magazines, scientific journals, articles, free articles from the internet, newspapers as long as they contain information relevant to this research,

Tertiary legal materials are supporting legal materials that provide instructions and explanations for primary legal materials and secondary legal materials such as legal dictionaries and encyclopedias. The technique for collecting legal materials used as a reference for this research is from various sources, namely from legal books, written works, the internet and other literature related to the legal issues being studied. Legal Material Analysis Techniques The nature of this research is analytically descriptive by describing facts regarding collateral assessment and systematic by explaining the procedures, authority and conditions for collateral assessment by the appraiser.

3. RESULTS AND DISCUSSION

The Appraiser profession originated in England, around the 15th century or the feudal era, namely Stewards who had wealth in the form of abundant land and fields, and passed it on to their young children. So that these children when they grow up can enjoy and take care of them for further development, the assets must be empowered. Empowerment was understood at that time by means of renting, cooperation and buying and selling. Along with the development of urban areas and the taxation system that applies in England, so that the value of wealth, rental value and value for buying and selling can be obtained maximally and close to fair market price, someone is needed who has special skills to estimate/value these goods, which they call an interpreter. appraiser/appraiser. Appraisal is a way of determining the value of an object through certain methods for a particular interest or purpose. Assessments are basically estimates or opinions even

though they are supported by rational reasons or analysis. Even though the appraisal is based on field data, the assessment is still an opinion. The feasibility of an assessment is influenced by the availability of data and objectivity in the assessment. One indicator of the accuracy of research results is how far the assessment results differ from market data. Valuation cannot be separated from economic principles where supply and demand need to be determined at a midpoint in order to reach an agreement on value. The size of the credit loan is a form of offer made by the bank to meet customer needs. Meanwhile, a credit application by a customer shows that there is a request in the credit process. The assessment will provide a midpoint or match between customer demand and the bank's offer so that it will not harm the customer or the bank as a lender. The credit collateral appraisal method is a way of systematically assessing credit collateral and producing a value that is closest to the truth about the fair market value (economic value, not book value) of the credit collateral in question. The assessment of credit collateral items by the bank is intended to obtain the value of the items that will be tied up as credit collateral. This assessment must be more focused on the application of approach methods that can produce estimates and opinions that are closest to the truth regarding the "Fair Market Value", so that then the "Liquidation Value, Projected Fair Market Value and Projected Liquidation Value" of the goods in question will be obtained. The approach methods that can be used by appraisers in assessing credit collateral are the Market Data Approach Method, Cost Approach Method, and Income Approach Method. The definition of an appraiser

according to Minister of Finance Regulation number 101/PMK.01/2014 concerning a public appraiser is someone who has competence in carrying out appraisal activities, who has at least passed the initial assessment education (i.e. Basic Appraisal Education I and II organized by the appraiser association (MAPPI). Meanwhile, according to KEPI, an appraiser is defined as someone who has the qualifications, ability and experience in carrying out appraisal practice activities to obtain appropriate economic value. with the field of appraisal owned. An appraiser who has obtained permission from the Minister of Finance is called a Public Appraiser. The provisions of article 6 paragraph (4) PMK.101 classify Public Appraiser Permits into 3 (three), namely:

1. Public Appraiser Permit Simple Property Appraisal;
2. Property Appraisal Public Appraiser Permit;
3. Business Appraisal Public Appraiser Permit

The authority to assess collateral in accordance with Minister of Finance Regulation No. 228/PMK.01/2019 must be in accordance with the classification of the public appraiser's license as above, the public appraiser in question has competence in his field and is proven by having a diploma, training certification or certificate from the authorized agency. , as well as the procedures for carrying out the assessment include identifying and understanding the scope of the assignment, collecting selection and analyzing data, applying the assessment approach and compiling an assessment report. Calculation of Credit and collateral value in calculating the LTV Ratio for Commercial Banks is determined as follows:

1. Credit is determined based on the credit ceiling received by the debtor as stated in the credit agreement.

2. The value of the collateral is determined based on the estimated value made by the Bank's internal appraiser or independent appraiser of the Property that is the collateral.

The existence of appraisers in Indonesia has not been regulated in a separate law. The function of the assessor is to increase public trust. The main characteristic that gives the appraisal profession the right to exist is due to recognition from the public that appraisers have special skills with integrity, honesty and objectivity in carrying out their profession, this is in accordance with what is stated in the Preamble to the Indonesian Appraiser Code of Ethics prepared by MAPPI (Society of Appraiser Profession Indonesia). In the banking credit process, apart from involving debtors and creditors, sometimes other parties such as appraisal consultants are also involved. The Public Appraiser's role is to provide an opinion regarding the market value and liquidation value of collateral which is used as collateral for debt repayment or is encumbered with mortgage rights in banking credit. The nature of the opinion given is professional and independent, because the opinion given will determine how much value of collateral will be guaranteed to the bank and will later determine how much credit can be disbursed. If the opinion given is not independent and professional or is influenced by one of the parties, it will jeopardize business development plans and credit, which will ultimately be detrimental to debtors and creditors. In general, banks in their organizational structure of course have a collateral analysis section, this is

intended to implement a careful aspect in providing credit. Within the Bank, a collateral appraiser is known as an Internal Appraisal whose task is to provide an opinion on the fairness of the collateral assessment which will later be used as one of the considerations for credit decisions in providing a loan ceiling to the debtor. The procedures for calculating internal appraisals are of course based on the code of ethics, collateral assessment standards and standard internal procedures of the Bank as well as applicable regulations, in this case Minister of Finance Regulation Number 228/PMK.01/2019 as the latest government regulations regarding collateral appraisal.

Apart from achieving credit quantity, banking will of course maintain the quality of its credit. To support this, human resources are needed in all parts of its organizational structure, both in Marketing as the spearhead in looking for potential customers, the Risk Section which carries out analysis of both financial capacity and analysis of microeconomic conditions and macro, operations that support administration in banking and also the service section that will always provide comfort to customers who make transactions in banking. Collateral appraisers as a part of banking risk are also very important, meaning they are also required to develop the quality of their human resources, so through Minister of Finance regulation Number 228/PMK.01/2019 concerning Public Appraisers, all collateral appraisers are required to have appraiser expertise certification, as well as other requirements in accordance with the code of ethics and assessment standards from MAPPI as well as existing regulations. Banking, which through the Bank Indonesia Circular as the

basis for carrying out banking activities, especially regarding collateral appraisal, initially did not require internal appraisers to have certification in carrying out their collateral appraisal duties so that with the implementation of regulation from the Minister of Finance Number 228/PMK.01/2019 the banking parties were in one. On the other hand, we must be able to continue to serve prospective customers in seeking credit, where one aspect of collateral assessment must be fulfilled and on the other hand, the government requires certification of collateral appraisers, so that here there will be obstacles in assessing collateral, and using independent appraisal will of course be a burden to customers. in terms of costs. In implementing one aspect of the prudential principle in the credit process, in this case the collateral aspect, the Bank must synergize with the latest regulations in assessing collateral, in this case the Minister of Finance Regulation Number 228/PMK.01/2019, which has several obstacles. in internal bank implementation, including:

1. Bank internal appraisers must have appraisal certification, of course this is for banks to prepare human resources for collateral appraisers to follow the procedures for obtaining this certification, whereas so far Bank Indonesia circulars do not require bank internal appraisers to have certification, here obstacles will arise in the form of place, time and costs
2. The independent appraisal party or KJPP has branches in the collateral area that will be assessed. This is an obstacle for banks that do not have a KJPP in their area, so they have to request an assessment from the KJPP to their head office. Here obstacles will also arise in terms of time

and costs which will burden the debtor and also the banks themselves

3. The limited choice of banks and also debtors in choosing independent collateral appraisers is due to the human resource factor which must be certified and also have a branch, so that this limited choice will certainly have a monopoly impact on KJPP which will be detrimental to customers and also banks.

Guarantee is a means of protection for the creditor's security, namely the certainty of repayment of the debtor's debt or the implementation of an achievement by the debtor or by the debtor's guarantor. The existence of collateral is a requirement to minimize the bank's risk in distributing credit. However, in principle, collateral is not the main requirement, banks prioritize the feasibility of the business they finance as the main guarantee for credit repayment according to a mutually agreed schedule. As an anticipatory step in withdrawing funds that have been distributed to debtors, two factors should be considered as collateral, namely:

1. Secured, meaning that credit guarantees can be legally binding, in accordance with legal and statutory provisions. If in the future a default occurs from the debtor, the bank has the juridical power to carry out execution actions;
2. Marketable, meaning that if the guarantee is to be executed, it can be immediately sold or cashed in to pay off all of the debtor's obligations

By considering the two factors above, the guarantee received by the bank in minimizing risk in lending is in accordance with prudential banking principles. Banks often experience situations where the value of the collateral when sold is far from the value of the credit provided, even though a careful review has

been carried out in granting the credit, including objectively assessing the collateral provided by the debtor using the services of a Public Appraiser. In other words, the selling value of the collateral is smaller than the debtor's debt. The selling value of collateral that is too low compared to the credit value and/or the value of the collateral itself at the time of the appraisal will bring its own difficulties for the bank. The bank's preferential right to a credit is limited to the debtor's property which is used as special collateral. So other items belonging to the debtor that are not pledged as collateral to the bank concerned may be items that are not guaranteed at all or may even be items that have been pledged as collateral by other creditors. With the small amount of proceeds from the sale of collateral objects that are not enough to cover the debtor's obligations, the bank can only ask the debtor to be repaid with other objects belonging to the debtor that are not yet bound by special collateral. Next, the bank must seek information and make an inventory of any objects belonging to the debtor that are not yet tied to collateral with other creditors. With respect to other debtor's goods, the bank does not have preferential rights, the bank only acts as a concurrent creditor. In its position as a concurrent creditor, the bank must compete with other creditors to obtain repayment of these objects. If repayment of other objects belonging to the debtor cannot be carried out properly then the only way is to use legal channels to resolve it by filing a lawsuit accompanied by a request for collateral confiscation (conservatoir beslag) then proceeding and waiting until the bank's lawsuit wins and is inkrach or has force. The law remains that then the auction will be held. The auction proceeds are used to pay off the shortfall in

the bank debtor's obligations. The bank will experience difficulties and losses in terms of time, costs and energy if the selling price of the collateral is not sufficient to repay the credit provided. Related to the intentionality of the parties involved in the credit granting process, among others;

1. Providing false information by prospective debtors.
2. Engineering the assessment carried out by an independent appraiser.

Apart from these two things, there is still one more possibility that could occur, namely collaboration between the two. That is, the debtor and the appraiser have indeed established an evil relationship to work together to create reports of collateral values that are not true by means of mark ups. Based on article 45 of the Minister of Finance Regulation, if a bank feels that it has suffered a loss in providing credit because the appraiser did not carry out the assessment properly or deliberately committed malpractice, the bank can ask the appraiser to be responsible. The legal relationship between the Public Appraiser and the Bank in assessing collateral from prospective debtors in accordance with applicable regulations must be made and stated in a written agreement which accommodates the Public Appraiser's obligation to comply with KEPI and SPI in carrying out appraisal activities so that the results of the assessment of collateral objects can produce a report accurate and as good an assessment as possible according to the facts. Thus, if the bank feels that the assessment carried out by the Public Appraiser is not correct, because the Public Appraiser does not fulfill the agreement that has been made, in particular does not implement the KEPI and SPI as guidelines in the assessment, the estimated

value of the collateral submitted in the appraisal report is deemed to be incorrect, resulting in difficulties - If there are difficulties with the credit given to the debtor, including the occurrence of bad credit, the Public Appraiser can be sued using the basis of default.

A lawsuit for default is a lawsuit based on the non-fulfillment of obligations (written in the agreement) by one of the parties. In this case, the Bank as the plaintiff filed a lawsuit because it considered that the Defendant (Appraiser) had not carried out its obligations properly. At the very least, KEPI and SPI are not implemented properly by the appraiser, resulting in incorrect assessment results that are detrimental to the Bank. The appraisal agreement or contract made is between the bank (as the work provider) and the Public Appraisal Services Office (KJPP) as the work recipient. Thus, the lawsuit must be submitted to the Public Appraisal Services Office concerned, not to the individual Public Appraiser who is factually tasked with carrying out the appraisal by the Public Appraisal Services Office. A breach of contract lawsuit was filed to ask for compensation from the defendant because the defendant did not fulfill the clauses that had been agreed. This can be interpreted that in a tort lawsuit the aim is to put the plaintiff in the position if the contract had been fulfilled (put the plaintiff to the position if he would have been in the presence of the contract having been performed). In relation to the criminal responsibility of the appraiser in relation to the appraisal of collateral, if there is deliberate deviation in the appraisal then the relevant criminal articles such as Article 378 of the Criminal Code can be subject to it if it is proven that the appraisal was carried out to benefit oneself or

another person (in this case the most likely is the owner of the collateral being appraised) by creating false conditions in the appraisal report so that it can be used by prospective debtors to obtain credit from the bank.

A lawsuit for default by the Bank against the appraiser is a form of legal protection for the bank as a user of appraisal services which plays a major role in improving the standard of living of many people as mandated in the Banking Law. On the other hand, the Public Appraiser himself must be very careful in carrying out the mandate given by the Bank in appraising collateral, because losses suffered by the Bank due to deliberate errors by the Public Appraiser can legally be charged for compensation to the Public Appraiser concerned. Someone who wants to become a Public Appraiser must first become an Appraiser.

4. CONCLUSIONS

The authority to assess collateral is in accordance with Minister of Finance Regulation No. 228/PMK.01/2019 concerning Second Amendment to Regulation of the Minister of Finance Number 101/PMK.01/2014 Concerning Public Appraisers must be in accordance with the classification of the public appraiser's license held, the public appraiser in question has competence in their field and is proven by having a diploma, training certification or certificate from the authorized agency, and procedures for carrying out assessments include identifying and understanding the scope of the assignment, collecting selection and analyzing data, applying an assessment approach and compiling an assessment report. From the explanation above, the authority and procedures cannot

be fully carried out by internal banking appraisers, where most internal banking appraisers do not have certification as required, this is due to the absence of internal banking rules or regulations from Bank Indonesia which require internal appraisers banking has certification and is a member of the appraisal professional association.

Obstacles to implementing collateral assessment in accordance with Minister of Finance Regulation Number 228/PMK.01/2019 Regarding the Second Amendment to Regulation of the Minister of Finance Number 101/PMK.01/2014 concerning Public Appraisers, there are limited certified public appraisers and a lack of public appraisal service offices in the regions.

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