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Surety guarantee arrangements concerning advance payment bond in the sale and purchase of coal in Indonesian law

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Abstract
Contract agreement between the parties raises legal issues, and sometimes regulations are not sufficient to regulate it so that it becomes a dispute in court. The purpose of this study was to analyze the decision of the Supreme Court of the Republic of Indonesia Number 470 PK / Pdt / 2019 regarding Advance Payment Bond Disbursement Claims issued by PT. Intra Asia Insurance. Research findings; First: Arrangement of Advance Payment Bond in the sale and purchase contracts in Indonesia is regulated in Article 93 paragraph (2) of the Presidential Decree Number 4 of 2015: Implementation Guarantee is disbursed; the goods/services provider must pay the remaining advance payment; Goods/service providers pay late fees, and goods/services providers are included in the blacklist. Second, the Judge's Decision in the Supreme Court of the Republic of Indonesia Number 470 PK / Pdt / 2019 that the disbursement of Advance Payment Bonds can be completed due to Principal.

Keywords: advance payment bond, surety guarantee, Indonesian law

Introduction

Advance Payment Bond is a written statement given by the contractor that he will pay off or pay off advances that have been paid by the owner in connection with the contract [1]. Civil law recognizes guarantees that are material rights and individual rights. Material guarantees are guarantees in the form of absolute rights over something, which has the characteristics: having a direct relationship to particular objects of the debtor, can be maintained against anyone, always follows the object (droit de suite), and can be transferred (for example mortgages, pawns, and others). The individual collateral is a guarantee that creates a direct relationship to specific individuals; it can only be maintained against certain debtors, against the debtors' assets in general (for example, borgtocht) [2] The debt requirement increases the risk of bankruptcy with equity valuation, and the proposed guarantee guarantees, on the other hand, place additional funds on to satisfy creditors' claims if the assets have low realizable value [3].

Apart from the characteristics mentioned above, what distinguishes material rights from individual rights is the priority principle known as material rights and equality in individual rights. This is important in researched, developed countries such as the U.S. It turns out that they are not uniform in making consumer protection and seem careless [4]. Rawl thinks that the priority of freedom cannot be used as a basis for overlapping solutions. It needs to be pushed into a constitutional agreement—political bargaining in society's calculation [5]. In practice, in Indonesia, material rights recognize the principle that older material rights take precedence over material rights that occur later. Meanwhile, individual rights recognize the principle of equality (art. 1131, 1132 of the Civil Code), in the sense that it does not differentiate between receivables that occur earlier and receivables that occur later. All of them have the same position; regardless of the order in which they occur, all have the same position on the debtor's assets [6].

Individual guarantees are guarantees that give rise to a legal relationship between the creditor directly and the guarantor. Regarding collateral for bank loans in Erma Defiana Putriyanti's research on decree hiring, it does not include objects that can be tied with a pledge, fiduciary security, and mortgage, so there is no recruitment decision letter included in personal guarantees and company guarantees [7]. The creditor has the right to demand fulfillment of his debt in addition to the principal debtor. As well as the guarantor if the primary debtor does not fulfill his obligations. Individual guarantee institutions are also widely used by banking, especially in the form of bank guarantees. Here, the guarantor is the Bank as an individual due to its status as a legal entity.

In the Civil Code in general, this kind of agreement is known as borgtocht or guarantee, which is regulated in Book 3 Chapter 17 Part 1, namely an article 1820 which reads: "Guarantor is an agreement with which a third party, for the benefit of the debtor binds himself to fulfill the commitment of the indebted person if this person himself does not fulfill it."

An individual guarantee institution's objective is to assure the creditor that the debtor's obligations in the agreement between creditor and debtor will be fulfilled, meaning that if the debtor does not fulfill his obligations, he will fulfill them. The agreement between creditor and debtor is the main agreement, while the agreement of the party giving the guarantee is an agreement that is bound to the principal agreement. If the main agreement has been fulfilled, the guarantee agreement can no longer be sued, meaning that the guarantee agreement is nullified. Without the main agreement, there is no guarantee agreement [7].

There are many known forms of business in the business world to provide guarantees, both material such as mortgages and premiums or individual ones such as Bank-Guarantee. But now in Indonesia, apart from the guarantees as mentioned above. Another form of guarantee institution

that has been known in developed countries has begun to be recognized, namely Surety-Bond with its types. This Surety Bond is also included in the individual underwriting class as borgtocht. However, the provisions in Book 3, Chapter 17, starting from Article 1820 to Article 1850 of the Civil Code, are regulations regarding guarantee agreements that are individual in general, mainly constituting the main provisions regarding the legal consequences. Since, in practice, the form of a personal guarantee is known in several types, there are special arrangements according to the types.

Suretyship or guarantee is an agreement in which a person binds himself to a creditor responsible for debt or default (default) or not fulfilling obligations by a debtor [7]. Surety Bond Is a form of guarantee where the Insurance Company (Surety Company) guarantees that the Principal (contractor/vendor/supplier/consultant/company) will carry out obligations for an achievement/interest to the Obligee (Bouwheer / Beneficiary) following the contract/agreement between the Principal and the obligee and or the provisions of the applicable laws.

Insurance that guarantees the Principal to carry out his obligations for a job to the obligee following the applicable agreement. Related parties and their relationship in Suretyship are described as follows:

Principal is a job executor who gets a job from the job owner (Obligee) and needs a guarantee from a guarantor (Surety)

1. In a Construction Contract Bond, the Principal is a building constructor
2. In a Supply Contract Bond, the Principal is a dealer of goods/supplier
3. In a Custom Bond, the Principal is an importer who is subject to the obligation to pay Import Duty

Obligee is the owner of the work submits the work's execution to the Principal, which requires a third-party guarantee (Surety Company). Obligees can be in the form of individuals, companies, government agencies, or other institutions. The surety is a general insurance company that issues a surety bond at the request of the Principal to guarantee payment to the obligee if the Principal cannot complete the contract between the Principal and the Obligee (Tripatra, nd).

A surety bond is a form of the written agreement between three parties, in which the surety provides guarantees to the second party (Principal) for the benefit of the third party (obligee). In the agreement it was agreed that if the Principal is negligent or fails to complete his obligations to the obligee for what has been agreed, the surety will replace the Principal's position to complete the work or pay an amount of money (claim) in accordance with the value of the loss based on the agreed agreement [8].

Meanwhile, the Advance Payment Bond is a guarantee that is used when the Principal takes the down payment provided by the obligee to start his work. Contains a Surety guarantee to return the down payment that the Principal has received to carry out the work if the Principal fails to carry out the work and cannot return the advance payment [9].

Insurance in Dutch is known as the word "Verzekering," which means coverage. In Indonesia, insurance is regulated according to Law No. 40 of 2014 concerning insurance. It explains that insurance is an agreement between two parties. Namely, the insurance company and the policyholder, which forms the basis for receiving premiums by the insurance company in return for: a. provide compensation to the insured or policyholder due to loss, damage, costs incurred, loss of profit, or legal liability to a third party that the insured or policyholder may suffer due to an uncertain event; or b. provide payment based on the death of the insured or payment based on the insured's life with benefits of a predetermined amount and based on the results of fund management.

This study saw PT. Asuransi Intra Asia is a company that provides services in dealing with risks of loss of benefits and legal liability to third parties, which arise from uncertain events. PT. Intra Asia Insurance based on the Minister of Finance Decree No. Kep-10 / KM.10 / 2012 is a company registered with the Ministry of Finance as a general insurance company that can market insurance products in the Surety Ship business line, namely in the form of Surety Bonds. In collaboration with state-owned enterprises, this company has the ability, knowledge, and skills to handle suretyship/bonding.

Method

The type of research method used is content analysis. Researchers collect materials from literature, court decisions, and secondary data as the primary material for research. Researchers use regulations and literature related to down payment claims. This method is intended to answer the problem formulation using normative juridical research. Normative juridical research is a type of legal research to determine by comparing the construction of the nature of the law judged by judges in court decisions.

Results

Surety Bonds can be sued at the Dispute Resolution forum agreed upon by the Parties in the issued Surety Bond, and after the Panel of Judges has examined the following evidence:

a. Surety Bond with reference No. MJP / APB / SP / 13/271172 dated April 6, 2012. Exhibit P-11a. following the original;
b. Official Indonesian Translation of Surety Bond with reference No. MJP / APB / SP / 13/271172 dated April 6, 2012. Exhibit P-11b. following the original;
c. Surety Bond with reference No. MJP / APB / SP / 13/271710 dated 9 June 2012. Exhibit P-12a. following the original;
d. Official Indonesian Translation of Surety Bond with reference No. MJP / APB / SP / 13/271710 dated 9 June 2012. Exhibit P-12b. following the original;
e. Surety Bond with reference No. MJP / APB / SP / 13/271708 dated 10 July 2012. Exhibit P-13a. following the original;
f. Official Indonesian Translation of Surety Bond with reference No. MJP / APB / SP / 13/271708 dated 10 July 2012. Exhibit P-13b. following the original.

It turns out that in the evidence, there is no agreement to resolve the dispute in the Arbitration Forum, so it is clear that the Dispute Forum arising from the issuance of Surety Bond is under the authority of the District Court;

They are considering that based on the considerations mentioned above because the Surety Bond disagrees on the settlement of disputes connected with the Surety Bond in the Arbitration Forum. According to the Arbitration Council

Considerations above, the District Court has the authority to resolve disputes in connection with the issued Surety Bond by the defendant. Because the Arbitration Award, which partly granted the Plaintiff's Application, has not been executed, the Plaintiff's Lawsuit, in this case, is not Nebis In Idem with Arbitration Case No. 599 / VI / ARB-BANI / 2014. and exceptions regarding this matter must be rejected;

Considering that in the following Exception, the defendant stated that the Plaintiff was wrong in determining the Legal Basis for the lawsuit because the Plaintiff stated that the quo Lawsuit was a "Default Lawsuit" (vide Title of Lawsuit and Petition of Lawsuit, which demanded that the defendant be declared as having committed "Default"), however in the Posita of their Lawsuit, the Plaintiff always stated that the defendant had committed "Fraud."

Considering that after the Panel of Judges took into account the Posita arguments for the Plaintiff's Lawsuit, it turned out that what Plaintiff argued that the defendant had committed "Fraud" was a description of the defendant's attitude which, according to the Plaintiff did not want to be responsible for the Surety Bond Disbursement Claims issued by the defendant and the Plaintiff describes this as a "Fraud" act.

Considering, that in the opinion of the Panel of Judges, the basis for the Plaintiff's Lawsuit is regarding the Surety Bond disbursement Claims issued by the defendant, and the Surety Bond, which is an agreement between the Surety Company (Guarantor) and the Principal (Contractor / Worker) in which the Surety Company will guarantee the Principal. for the work/responsibility given by the Obligee (Project Owner) to the Principal. In the event of default by the Principal, the Surety Company (Guarantor) will be responsible for completing the Principal's obligations/responsibilities to the Obligee (Project Owner);

Therefore, it is clear that the Plaintiff's Lawsuit, which argues that the defendant tries not to fulfill what has been agreed as contained in the Surety Bond issued by the defendant, is a Lawsuit based on default. So that it is appropriate in determining the legal basis for the lawsuit, and any exceptions regarding this matter must be rejected;

Considering that in his last Exception, the defendant stated that the Plaintiff's Lawsuit was Lack of Parties because the Plaintiff should have also sued Deddy Sugiarto, Soeparman, Rendra Prapantsa, Yudi Irianto, and Singgih Andhika when they committed their actions on behalf of the Defendants and Co-Defendants. Even though they have been asked for personal responsibility through the Criminal Court as stated by the Plaintiff in their Posita Lawsuit on page 11 (eleven), based on Article 1367 of the Civil Code, the company remains responsible for its actions its subordinates. It is the company's responsibility that Plaintiff requests in its lawsuit, so that without withdrawing the Employees of Defendant or Co-Defendant as mentioned above, the Plaintiff's Lawsuit is no less a party. Because Daddy Sugiarto, Soeparman, Rendra Prapantsa, Yudi Irianto, and Singgih Andhika, when doing their actions, had acted on behalf of the Defendants and Co-Defendants, thus the Defendant's Lawsuit was not lacking, and any exceptions regarding this matter had to be rejected;

Considering, whereas based on the considerations mentioned above, the Panel of Judges declared to Reject as bad as the Exception proposed by the defendant;

In the Subject Case

They were considering that after the Panel of Judges carefully examined the Plaintiff's Lawsuit and the Defendant's Response. The Panel of Judges had found the fact that the main problem in this case was the Plaintiff's Claims that requested the defendant cash out the Surety Bonds in order to guarantee the fulfillment of the Cooperation Agreement No. 001 / PRI-DSP / II / 2012 dated February 2, 2012, with the coal supplier company, namely Co-Defendant. Where according to the Plaintiff, the defendant does not want to withdraw the Surety Bond which has been issued, when the Co-Defendant does not fulfill the Cooperation Agreement with the Plaintiff;

Considering, whereas, on the other hand, the defendant argues that the defendant has never entered into an agreement with the Plaintiff and Co-Defendants because the defendant never knew of or was involved in the agreement made by the Plaintiff with the Co-Defendants and the Advance Payment Bond was obtained from one of the Marketing Agents of the Defendant's Surety Bond, namely PT. Mitra Jasa Pratama, where at the time PT. Mitra Jasa Pratama issued and issued the Advance Payment Bond not following the Licensing Procedure and without the knowledge or approval of the defendant;

Considering that the legal basis for proof in a Civil Case is as formulated in Article 163 HIR as follows: "whoever argues has a right or mentions an incident to confirm his or her rights or to deny the rights of others, that person must prove that right. or the occurrence of that incident"

Considering that since the Plaintiff argues has a right, the panel of judges will first consider the evidence presented by the Plaintiff;

Considering, whereas Exhibit P-1 in the form of Arbitration Award No. 599 / VI / ARB-BANI / 2014 dated April 7, 2015, proves that there was indeed a problem with the Co-Defendant in connection with the agreement between the Plaintiff and the Co-Defendant as contained in Exhibit T-2a in the form of The Sales and Purchase Agreement of Steaming Non-Coking Coal No. . 001 / PRI-DSP / II / 2012 dated February 2, 2012 (Coal Sale and Purchase Agreement without Dregs), the translation of which is as shown in Exhibit P-2b which is the Official Indonesian Translation of The Sales and Purchase Agreement of Steaming Non-Coking Coal No. 001 / PRI-DSP / II / 2012 dated February 2, 2012;

Considering that the agreement between Plaintiff and the Co-Defendant is as in Exhibit P-2a. Then amended as contained in Exhibit P-3a in the form of Amendment to The Sales and Purchase Agreement of Steaming Non-Coking Coal No. 004 / PRI-DSP / IV / 2012 dated April 2, 2012, the translation is as shown in Exhibit P-2b in the form of the Official Indonesian Translation of the Amendment to The Sale and Purchase Agreement of Steaming Non-Coking Coal No. 004 / PRI-DSP / IV / 2012 dated April 2, 2012;

Considering, whereas the Plaintiff is a legal entity established according to the prevailing laws in Indonesia, the Plaintiff's legality as a legal entity is stated in Exhibit P-4 in the form of the Articles of Association of PT. Premier Resources Indonesia and Exhibit P-5 in the form of Decree of the Minister of Law and Human Rights of Indonesia No. AHU-53074.AH.01.01.2009 dated November 2, 2009;

Considering, whereas the defendant's position as the competent authority to issue a Surety Ship is contained in Exhibit P-5 in the form of Decree of the Minister of Finance No. Kep-10 / KM.10 / 2012 concerning the list of general insurance companies that can market insurance products in

the Surety Ship business line;
Plaintiff has made the first payment to the Co-Defendant as contained in Exhibit P-7 in the form of proof of transfer amounting to Rp. 5,500,000,000. (Five billion five hundred million rupiah) from Bank Mandiri Sarinah branch to the Co-Defendant's Bank Account with Account Number: 101.00.06787871 dated April 10, 2012, by way of transfer and has been received by the Co-Defendant as contained in Exhibit T-8 in the form of Invoice No.136 / DSP / Inv-PRI / IV / 2012 which is the first bill issued by the Co-Defendant with a nominal value of Rp. 5,500,000,000. (Five billion five hundred million rupiah);
The Co-Defendant has also issued evidence P-9 in the form of a second claim from Co-Defendants No.174 / DSSP / Inv-PRI / IV / 2012 dated April 23, 2012, the Plaintiff has made payments as Exhibit P-10, which is proof of Transfer of Rp. 8,250,000,000 (eight billion two hundred and fifty million rupiahs) from the Sarinah branch of Bank Mandiri to the Bank Account of the Co-Defendant with Account Number: 101.00.06787871 dated April 25, 2012;
Considering, therefore, that the total payments made by the Plaintiff to the Co-Defendants amounted to Rp. 13,750,000,000 (thirteen billion seven hundred and fifty million rupiahs), and to guarantee the payment made by the Plaintiff, following Agreement No. 001 / PRI-DSP / II / 2012 dated February 2, 2012 (vide evidence P-2a). Which was later amended by Agreement No. 004 / PRI-DSP / IV / 2012 dated April 2, 2012 (vide Exhibit P-3a). The defendant also submitted a Surety Bond with reference No. MJP / APB / SP / 13/271172 dated April 6, 2012 (vide Exhibit P-11a and its translation on Exhibit P-11b), which was later extended by Surety Bond with reference No. MJP / APB / SP / 13/271710 dated June 9, 2012 (vide Exhibit P-12a and its translation on Exhibit P-12b), which was later extended by Surety Bond with reference No. MJP / APB / SP / 13/271708 dated 10 July 2012. (vide Exhibit P-13a / Exhibit T-1 and its translation on Exhibit P-13b) worth Rp. 13,750,000,000 (thirteen billion seven hundred and fifty million rupiahs);
Considering, whereas it turns out that the Co-Defendant has committed an Act of Default. Furthermore, even though Plaintiff has made several warnings as contained in the evidence of the letter as follows:

1. Demand Letter from the Plaintiff to Co-Defendant dated November 20, 2012, Exhibit P-14a;
2. Official Indonesian translation of the Demand Letter from the Plaintiff to the Co-Defendants dated November 20, 2012, Exhibit P-14b;
3. Notification of Default (Notice of Default) from the Plaintiff to the Co-Defendants dated September 5, 2012, Exhibit P-15a;
4. Official Indonesian translation of the Notice of Default from the Plaintiff to the Co-Defendants dated September 5, 2012, Exhibit P-15b;

It turned out that the Co-Defendants were still unable to fulfill their performance as agreed so that in the end the Plaintiff canceled the agreement made with the Co-Defendants as contained in the following evidence:

1. Notice of Termination from the Plaintiff to Co-Defendants dated September 21, 2012, Exhibit P-16a.
2. Official Indonesian translation of the Notice of Termination from the Plaintiff to the Co-Defendants dated September 21, 2012, Exhibit P-16b.

Considering that Plaintiff has canceled the agreement with the Co-Defendant. Furthermore, to recover the money belonging to the Plaintiff paid to the Co-Defendants, the Plaintiffs endeavor to cash out the Surety Bond, which is the guarantee for the Plaintiff's Payment to the defendant. However, the defendant rejects the Plaintiff's claim of disbursement, outlining the reasons as contained in Exhibit P-17 in the form of a letter from the Plaintiff to Defendant No. 0615 / KLM-KP / AIA / X / 2012 dated October 25, 2012, regarding Advance Payment Bond No. / APB / SP / 13/271078, and one of the reasons the defendant refused to disburse the claim was because according to the defendant, the Co-Defendant had sent a letter of commitment to settle the Co-Defendant's obligations to the there is an allegation of default by the Co-Defendant;
Considering that when the defendant answered, as shown above. The defendant never informed the Plaintiff that the defendant had received a Statement Letter from the Co-Defendant as evidence P-18 (vide evidence T-5) in the form of a statement from Deddy Sugiarto. as President Director of the Co-Defendant to the defendant dated June 12, 2012, which stated that the defendant would release the defendant from all kinds of Claims by the Plaintiff in the event of default or failure of the Co-Defendant to carry out the agreement with the Plaintiff;
They were considering that the defendant's attorney also covered the existence of evidence P-18 in his letter to the Plaintiff's Attorney as evidence P-19 in the form of letter No. 007 / I & P / I / 2013-AIA, dated January 7, 2013, from AIA's Attorney Imam Supriyono, SH. & Partners, the Defendant's Attorney in his letter, even admitted that on June 9, 2012, Surety (Defendant) had issued a down payment guarantee of Rp. 13,750,000,000 (thirteen billion seven hundred and fifty million rupiah). Although the defendant's attorney stated that the issue of the down payment guarantee had never been guaranteed;
Considering that from the Defendant's Legal Power of Attorney as referred to in the above-mentioned evidence P-19, it is clear that the defendant acknowledges that it has issued a down payment guarantee of Rp. 13,750,000,000 (thirteen billion seven hundred and fifty million rupiah). Regarding the existence of the object of guarantee on the Surety Bond. Of course, it is not the responsibility of Plaintiff as the Insured (Obligee). But the responsibility of the Co-Defendant as Principal with the Defendant as the Surety Company;
Considering, whereas, from the aforementioned P-19 evidence, it can also be revealed that the defendant's statement which states that the defendant was never aware of or involved in the agreement made by the Plaintiff with the Co-Defendant or regarding the Advance Payment Bond issued prior to the existence of the BANI Case No. 599 / VI / ARB-BANI / 2014 is untrue because it turns out that when the P-19 evidence was made, namely on January 7, 2013, it turns out that the Defendant's Attorney had found out. Even long before that, when the evidence P-17 and P-18 were made, namely October 25, 2012, and June 12, 2012, it turned out that the defendant already knew about it.
Considering that this is also the case with the defendant's argument in his answer, which states that:
"The Advance Pyment Bond was obtained from one of the Marketing Agents of the Defendant's Surety Bond, namely PT. Mitra Jasa Pratama, where at the time PT. Mitra Jasa Pratama issued and issued the Advance Payment Bond not

in accordance with the Licensing Procedure and without the knowledge or approval of the Defendant ";
"There is no relationship between the Defendant and the Plaintiff in matters relating to the Advance Payment Bond, because there is no legal basis connecting the Defendant with the Plaintiff in the issuance of the Advance Payment Bond."
In the opinion of the Panel of Judges, it was only an attempt to escape from the defendant's responsibility in disbursing the down payment he had issued;
Considering, whereas the defendant's statements above seem to confirm that the Advance Payment Bond, which consists of:

1. Surety Bond with reference No. MJP / APB / SP / 13/271172 dated April 6, 2012. Exhibit P-11a.
2. Surety Bond with reference No. MJP / APB / SP / 13/271710 dated 9 June 2012. Exhibit P-12a.
3. Surety Bond with reference No. MJP / APB / SP / 13/271708 dated 10 July 2012. Exhibit P-13a. (Exhibit T-1);

Obtained from one of the Marketing Agents of Defendant's Surety Bond, namely PT. Mitra Jasa Pratama and is not the responsibility of the defendant;
Considering that the defendant tries to prove the defendant's denial in fulfilling its responsibilities by providing evidence as follows:

a. Surety Bond Marketing Agency Cooperation Agreement between Defendant and PT. Mitra Jasa Pratama No. 27 / AIA-PK / BOND-MJP / IV / 2011 dated April 7, 2012, Exhibit T-2;
b. Letter No. 192 / AIA.KSG / 1V / 2011 dated 7 April 2011, Exhibit T-3;

Furthermore, according to the defendant from the two pieces of evidence, it is clear that the Defendant's Agency Cooperation Agreement with PT. Mitra Jasa Pratama is no longer valid and has not been extended by the defendant. Besides, the defendant also stated that from the T-3 evidence above, it is clear that the maximum Advance Bond that the defendant can issue is only a maximum of Rp. 500,000,000 (five hundred million rupiahs), even then for the construction sector;
Considering, whereas the defendant's denials in the opinion of the Panel of Judges have been refuted by the existence of evidence P-19 in the form of Letter No. 007 / I & P / 1/2013-AIA dated January 7, 2013, from the Attorney of INTRA ASIA INSURANCE, Imam Supriyono, SH & Partners, in which he acknowledged that the Surety Bond which the Plaintiff claimed was disbursed was actually issued by the defendant. Regarding procedural errors in the issuance of the Surety Bond, of course, it is not the responsibility of Plaintiff. This is following Article 29 of OJK Regulation No. 1 / POJK.07 / 2013, which regulates as follows: "Financial services business actors are required to be responsible for consumer losses arising from errors and / or negligence of the management, employees of Financial Services Business Operators and / or third parties working for the benefit of Service Business actors. Finance";
Considering, whereas the defendant's denials are also contrary to Article 27 paragraph (3) of Government Regulation No. 73/1992, which states that: "all actions of an agent relating to insurance transactions are the responsibility of the agency insurance company," and Article 66 paragraph (2) of the Regulation of the Minister of Finance No.152 / PMK.010 / 2012 concerning Insurance Business Management which states that: "Insurance companies that carry out marketing through insurance agents as referred to in paragraph (1), are fully responsible for the consequences arising from insurance coverage by the insurance agent concerned";
Considering, therefore, that the Surety Bond that has been issued by the defendant as mentioned above is valid and legally binding because the defendant has admitted in evidence T-19 that it was the defendant who issued it even though it was obtained through one of the marketing agents of the Defendant's Surety Bond. Namely PT. Primary Services Partners. Thus, Petitum number 2 of the Plaintiff's Lawsuit deserves to be granted;
Considering that although the individual parties associated with the Plaintiff's and Co-Defendant's cooperation and the issuance of Surety Bonds which guarantee the payment of the Plaintiff's cooperation with the Co-Defendants, have been criminally reported and have also been convicted of a criminal offense by the Criminal Court. As contained in the documentary evidence as follows:

a. Police Report to the Central Jakarta Resort Police against Deddy Sugiyarto, Soeparman Duto Pradono, and Yudi Irianto registered with Police Report No. 098 / K / I / 2013 / Polres JP dated January 24, 2013, Exhibit P-21;
b. Central Jakarta District Court Decision No. 1923 / Pid.Sus / 2013 / PN.Jkt.Pst dated March 6, 2014, with the defendants Michael Mindo Kristianto (Freelance Officer) and Singgih Andhika (Assistant Technical Manager of the Defendant). Exhibit P-22.
c. Central Jakarta District Court Decision No. 755 / Pid.B / 2014 / PN.Jkt.Pst dated March 6, 2014, with the defendant Tendra Prapanca as the President Director of the Defendant. Exhibit P-23.
d. Central Jakarta District Court Decision No. 754 / Pid.B / 2014 / PN.Jkt.Pst dated March 6, 2014, with Defendant Yudhi Irianto as the Defendant's Regional Manager who signed the Advance Payment Bond. Exhibit P-24;
e. However, it still did not reduce the obligation of the defendant as the legal entity that issued the advance deposit guarantee as mentioned above, and the Plaintiff still had the right to withdraw the advance deposit guarantee of Rp. 13,750,000,000 (thirteen billion seven hundred and fifty million rupiah). As contained in the Surety Bond with reference No. MJP / APB / SP / 13/271708 dated 10 July 2012. (vide Evidence P-13a and evidence T-1), and because so far the defendant has tried to avoid its obligation to withdraw the advance guarantee, it is evident that the defendant has committed default. , so that the Plaintiff's claim point 3 should be granted;

They were considered, whereas, regarding Petitum point 4, the Plaintiff's Lawsuit requires that the defendant be sentenced to pay Rp's material compensation. 13,750,000,000 (thirteen billion seven hundred and fifty million rupiahs) to the Plaintiff in cash with 10% interest per annum. Since the Surety Bond issued by the defendant did not agree to an interest payment, Petitum number 4 was granted in the amount of the down payment Guarantee stated in the Surety Bond, which was Rp. 13,750,000,000

(thirteen billion seven hundred and fifty million rupiahs), after the verdict in this case has permanent legal force;
Considering that since the claim that the Plaintiff has asked for in this case is the payment of an amount of money, the claim regarding the imposition of forced money must be rejected;
Considering, whereas also regarding the Plaintiff's request for the Panel of Judges to issue a verdict and Merta in the quo Case, according to the Panel of Judges, it must be rejected because the lawsuit in the quo Case did not meet the requirements as stipulated in Article 18 paragraph (1) HIR jo. SEMA No.3 of 2000 jo SEMA No. 4 of 2001;
Considering, whereas it is the same with Petitum number 7, because, like the Surety Bond certificate issued, there is no agreement regarding the obligation for the Surety Company to pay interest, this Petitum number 7 must also be rejected;
Considering, whereas based on the above considerations, the Panel of Judges declared that it had granted the Plaintiff's claim partly and rejected the rest;
Considering that because the Plaintiff's Lawsuit was partially granted, the Co-Defendants were punished for submitting and obeying this decision;
Considering, whereas other shreds of evidence submitted by the Parties in this case which were not considered by the Panel of Judges, must be set aside because they are deemed irrelevant to this case;

In Reconpensi

Considering, whereas in their response, apart from submitting an answer to the Plaintiff's Lawsuit. The defendant had simultaneously filed a counterclaim against the Plaintiff;
Considering that the purposes and objectives of the counterclaim plaintiff's lawsuit areas mentioned above;
Considering that all legal considerations in the Conference must be considered contained in the Conference;
In essence, the counterclaim filed by the Counterclaim Plaintiff requests the panel of judges to declare that the defendant's counterclaim has nothing to do with the Issuance of the Advance Payment Bond. Where the person responsible for the issuance of the Advance Payment Bond is PT. Primary Services Partners;
They were considering that as the Panel of Judges considered in the Main Case of the Conference's considerations. That the defendant of the Conference (Defendant of the Conference) had acknowledged the Surety Bond. The subject of the matter was indeed issued by the Plaintiff of Conference (Defendant Conference) as revealed in Exhibit P-19 in the form of Letter No. 007 / I & P / I / 2013-AIA. Dated January 7, 2013, from the Attorney of INTRA ASIA INSURANCE Imam Supriyono, SH and Partners;

In Conpensi and Rekonpensi

Considering that as has been considered above, where the Counterclaim Plaintiff's claim is declared partially granted and the counterclaim filed by the counterclaim plaintiff has been declared rejected in its entirety. Therefore, the defendant in the Conference (Reconciliation Plaintiff) is the party who was defeated. In this case, and must be punished to pay the court fee. The amount of which is mentioned in the Decision Letter below;

Table 1

Comparison of legal considerations of Bani's decision with PN, PT (company), case and review of the advance payment bond (PT. Asuransi intra Asia) draft claim case				
BANI's verdict No. 599/VI/ARB-BANI/2014	South Jakarta District Court Decision No.419/Pdt.G/2016/PN	Jakarta High Court Decision No.107/PDT/2017/PT.DKI	Cassation Decision No.3425 K/Pdt/2017	The Decision of the Supreme Court of the Republic of Indonesia Number 470 PK/Pdt/2019
Submitted by:	Submitted by:	Submitted by:	Submitted by:	Submitted by:
PT Premier Resources Indonesia (Pemohon)	PT Premier Resources Indonesia (Pemohon)	PT Asuransi Intra Asia (Pembanding)	PT Asuransi Intra Asia (Pemohon Kasasi)	PT Asuransi Intra Asia (Pemohon Peninjauan Kembali)
Against:	Against:	Against:	Against:	Against:
PT Duta Sari Perdana (Termohon I)	PT Asuransi Intra Asia (Tergugat)	PT Premier Resources Indonesia (Terbanding)	PT Premier Resources Indonesia (Termohon Kasasi)	PT Premier Resources Indonesia (Termohon Peninjauan Kembali)
And:	And:	And:	And:	And:
PT Asuransi Intra Asia (Termohon II)	PT Duta Sari Perdana (Turut Tergugat)	PT Duta Sari Perdana (Turut Terbanding)	PT Duta Sari Perdana (Turut Termohon Kasasi)	PT Duta Sari Perdana (Turut Termohon Peninjauan Kembali)
Amar Verdict:	Amar Verdict:	Amar Verdict:	Amar Verdict:	Amar Verdict:
1. To declare that Respondent I has been legally and properly summoned to attend the trial 2. Passed a decision in the absence of Respondent I 3. To partially grant the Petitioner's Petition 4. Granted the Respondent II's Exception petition 5. To punish Respondent I to pay the Applicant Rp.	In the Conference: In Exception: Rejecting the exception submitted by the Defendant in its entirety In the Subject: 1. Partially granted the Plaintiff's claim 2. Declare that the Advance Payment Bond between the Defendant and the Plaintiff is valid and legally binding 3. Declare that the Defendant	1. Receiving an appeal from the Defendant's original attorney for appeal 2. Strengthening the Decision of the District Court No. 419 / Pdt.G / 2015 / PN.Jkt / Sel dated 4 May 2016 for which an appeal was filed 3. Ordered the Appellant to initially pay the case fees incurred in this appeal rate of Rp. 150,000.	1. Rejecting the request for cassation from PT Asuransi Intra Asia 2. To sentence the Cassation Petitioner to pay court fees at the cassation level of Rp. 500,000	1. Reject the Application for Reconsideration of PT ASURANSI INTRA ASIA; 2. To punish the Petitioner for Reconsideration to pay the cost of the case at all levels of the trial, which in the level of review is Rp. 2,500,000.00 (two million and five hundred thousand rupiah).

335,699,285	has defaulted.			

Discussion

Two legal theories underlie the Advanced Payment Bond: the Theory of Objectivity and Regulation in the Indonesian Commercial Code. In the theory of objectivity, the author cites Philips Kotler's opinion in his Management Dictionary, which states that every insurance must have a specific object. A particular object means that the object's type, identity, and characteristics must be clear and definite. The insured must notify the type, identity, and nature of the object of insurance to the Insurer. Nothing is allowed to be hidden. The nature of the object of insurance may be the cause of the loss. Based on the notification, the Insurer can consider whether he will accept the transfer of risk from the Insured or not. The advantage of this theory is that the Insurer is protected from dishonest acts of the Insured.

On the other hand, the Insured is always motivated to be honest and is always careful about notifying the insurance object's nature to the Insurer. Objectivity theory aims to direct the Insurer and the Insured to enter into an insurance agreement based on the principle of fair contracting freedom. The objectivity theory's weakness is the impossibility of the Insured knowing the hidden defect attached to the object of insurance which may be used as an excuse by the Insurer to declare that the insurance is canceled after an event; however, honest the Insured may be. According to the author, Philips Kotler's Theory of Objectivity correlates with the disbursement of Advance Payment Bond claims made by PT Asuransi Intra Asia. Because the Insured must be transparent with the nature of the object of insurance, the Insurer can make considerations.

Moreover, for the second theory, the authors use the arrangements in the Indonesian Commercial Law Book, which the author quotes from Abdulkadir Muhammad in his book entitled Indonesian Insurance Law that the Insured is obliged to notify the Insurer about the condition of the insurance object. This obligation is carried out when entering into insurance. If the Insured is negligent, then the legal consequence is that the insurance will be canceled. According to the provisions of Article 251 of the Indonesian Commercial Code, all false or untrue notifications, or concealment of circumstances known to the Insured about the object of insurance, will result in the insurance being canceled. The notification obligation also applies if there is a risk weighting on the object of insurance after the insurance is held. The obligation to notify Article 251 of the Indonesian Commercial Code does not depend on whether there is good faith from the Insured. If the Insured mistakenly informs, without intentionally. It will also result in the insurance's cancellation unless the Insured and the Insurer have agreed otherwise. Usually, an agreement like this is expressly stated in the policy with a clause "already known." In the Case of Advance Payment Bond Disbursement Claims, PT Asuransi Intra Asia has defaulted with the knowledge that the Advance Payment Bond that he issued on July 10, 2012, was for the benefit of his Principal, namely PT Duta Sari Perdana. The party that has issued the Advance Payment Bond has defaulted and violated its legal obligations as a guarantor company.

According to the judge's consideration, the reason for the reconsideration could not be justified in the Supreme Court Decision Number 470 PK / Pdt / 2019, because after carefully examining the memory of the review on November 13, 2018, and the counter-memory for the reconsideration dated January 4, 2019, it was connected with the considerations of Judex Juris and Judex. There was no fact of a judge's mistake or an obvious mistake. With the following considerations: "Whereas the Defendant was in default to the Plaintiff. According to the defendant as the guarantor to compensate the Plaintiff in the form of money that the Plaintiff had submitted to the Co-Defendant in the amount of Rp13,750,000,000. 00 (thirteen billion seven hundred and fifty million rupiah); " That way, according to the author's opinion, the Guarantee Company in this case is that PT Asuransi Intra Asia has defaulted and must disburse the Advance Payment Bond that the company issued on July 10, 2012.

Furthermore, in this case the PT Premier Resources Indonesia Company can claim an Advance Payment Bond. which has been paid in the amount of Rp. 13,750,000,000.00 (thirteen billion seven hundred and fifty million rupiah).

Conclusion

Indonesian law regarding Surety Guarantee places more on material problems so that the priority principle becomes dominant. This can be seen in a review of the Supreme Court's decision of the Republic of Indonesia Number 470 PK / Pdt / 2019 regarding who the parties are. How the case for the position of the Advance Payment Bond Disbursement Claims issued by PT. Intra Asia Insurance., What are the judges' considerations, and how the results of the judge's decision can be concluded; First: Arrangement of Advance Payment Bond in the sale and purchase contracts in Indonesia is regulated in Article 93 paragraph (2) of the Presidential Decree Number 4 of 2015: Implementation Guarantee is disbursed; the goods/services provider must pay the remaining advance payment; Goods/service providers pay late fees, and goods/services providers are included in the blacklist. In connection with Point 1 in Article 93 paragraph (2) concerning Disbursement of Implementation Collateral, the author has explained the settlement of claim disbursement due to Principal Default through a case of default experienced by PT (Persero) Asuransi Intra Asia in a Surety Bond in the form of an Advance Payment Bond. Second, the results of the analysis of Judges 'Considerations, analysis of Judges' Judgments and Decisions in the Decision of the Supreme Court of the Republic of Indonesia Number 470 PK / Pdt / 2019 on the claim that Advance Payment Bond Disbursement is in accordance with Article 93 paragraph (2) of Presidential Decree Number 4 of 2015 that disbursement of Advance Payment Bonds can be completed due to Principal Default.

Thus, the right of individuals who should understand reality in practice is somewhat neglected. Referring to Rawl's suggestion, the legal issue regulating material security needs a constitutional social consensus. In Indonesian law, it is time to be united in a more specific law outside the insurance law, regulating general guarantees.

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