

E-Cash Collateral: A New Global Paradigm of Security Law

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Abstract: Indonesia's Security Law is running slowly yet legislators have not taken initiative to renew the law. Applicable law regulates that guarantee functions to cover risk of bank's losses in case of bad credits. This article proposes and examines new paradigm in security Law, such as Performance Guarantee, Digitization of Assurance, and Electronic Assurance. Digitization of collateral intended to guarantee credit by the object's value, not physical. Value is entered into checking account at issuing bank, which can be secured electronically to the lender through SWIFT. Collateral e-cash guarantee can be conducted across borders, and suitable for regional and global financing.

1 INTRODUCTION

Security law system in Indonesia has not been fully utilized to insure large bank loans; it can be said that it is outdated. One of the reasons is the positive law on guarantees still leans on the Dutch Colonial Guarantees Law. The proof of lagging is that there are thirty-two permits for the development and management of toll roads in Indonesia that have been owned by national companies, both private and state-owned, since 1996 until 2014 due to lack of funds.

The lack of funds is one of the causes that these companies are not able to prepare a big guarantee for the financing of toll road development projects. If this problem is not immediately solved, then in the near future most projects will soon be taken over by foreign companies, potentially threatening the sovereignty of the state in the economic field.

The current Guarantee Law in Indonesia, such as the Deposit Insurance Law, the Fiduciary Law, and the regulation on mortgage only stipulate limited guarantees in the form of land, houses, and goods of small values. Thus, security law in Indonesia should be evaluated, revised and developed, so it can be used as a legal basis for guarantees of a great value.

Guarantees under Indonesian law both in terms of material security and individuals are very difficult to guarantee for big projects due to the following reasons:

- The collateral in the form of land, buildings, cars, and other material security have small value for

big projects. For example: for the smallest Toll Project, the Soroja 1 (Soreang-Pasir Koja) Highway is estimated to be worth Rp2.5 trillion, while the value of the collateral must be 140% to 160% of the project value, thus it requires a big amount of collateral.

- In practice, Indonesian entrepreneurs should establish international legal entity, such as legal entities established in Singapore, Hong Kong, Kuala Lumpur and so on. If warranty of the material located in Indonesia, while it uses the law from other countries, it will cause the issue of execution.
- The value of projects in Indonesia, for example toll road projects often change due to price changing in land prices and material prices to build roads, such as cement, iron, and so on. Changes in the value of this project should be followed by changes in bank's credit agreements and changes in collateral. The change is certainly is not easy to do, and if it can be done, it requires a long time and big cost.
- Surveillance of guarantees: material security, such as land, buildings, cars, and so on are easily diverted and potentially damaged, such as land and buildings affected by natural disasters.
- Change of designation: large financing is usually a long term financing of at least 5 years and a maximum of 20 years. In the long span of time, usually the guarantee of land often changes the designation, making it difficult to be executed.

- Documentation of warranties: evidence of collateral in the form of letters should be documented safely in the long term. For large credit, it requires a lot of guarantees because the guarantees have small value which means that there are many proofs of guarantee. Thus, the problems of securing the documents of guarantee letters also cause problems.

From the above description, security law in Indonesia has not fully guaranteed legal certainty in infrastructure projects with big funds from banks or international financing institutions. Whereas, bank is a financial institution which called intermediary institution, that runs according to its clients trust (Murwadi 2015).

In conjunction with the construction of infrastructure in the form of toll roads with geographical conditions in the form of an archipelagic state, it is required that the Government of Indonesia to cooperate with investors to construct toll roads that cross the inter-island sea or juridical called "archipelagic waters".

The construction of inter-island toll roads costs much more than the mainland toll roads. For comparison, the cost of the 14 km-long Soreang-Pasirkoja toll road is Rp2.5 trillion, while the 29-km toll road construction of the Sunda Strait Bridge costs Rp270 trillion. So the cost of inter-island toll road costs 54 times the cost of land toll.

With the big cost mentioned above, it causes many problems to obtain national and international syndication credits. One of the crucial issues is the underlying guarantee. According to Article 8 of the Banking Law, credit principal is the project financed by the credit. In the case of the toll road financing, the collateral is the toll road and land construction used for the toll road. In the case of inter-island toll road financing, only the toll bridges can be guaranteed because the land under the sea that connects the two islands has not been regulated explicitly as collateral for bank credit, and until now there is no bank that has provided credit with the guarantee of Mainland Archipelagic Waters.

Based on the above descriptions, We centralize this research on bank guarantees in the form of land under inland waterways to guarantee national and international syndication credits. Based on preliminary research conducted by myself, research on the Mainland Archipelagic Waters, a bank credit guarantee has not been examined, and this topic is my original thoughts.

Based on the description of the problem in the introduction, the formulation of the problem is as follows:

- How is performance guarantee as the solution of banking guarantee problem in Indonesia for the development of guarantee law in Indonesia?
- Is the guarantee of rights of islands waters management in Indonesia feasible as a new paradigm of guarantee law in Indonesia?
- What is the rationale for digitalization as the basis for electronic guarantee in Indonesia?
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2 MATERIALS AND METHODS

The methods used in this study i.e., legal research methods with normative juridical approach that prioritizes how researching references (secondary data) in the form of positive law. This method prefer research librarianship and how its implementation in practice. Methods of juridical normative approach includes an examination of the principles of law, legal systematic, the synchronization level of the law. Methods of juridical normative approach is used with the intent to discuss the positive law of Indonesia is associated with the data field as a support.

The nature of this research is a descriptive analytical, i.e. a specification describing the facts of the data obtained based on reality. The fact is then associated with the applicable law, discussed, analyzed, and drawn a conclusion that eventually are used to address existing problems. Researchers analyzed the relation between the applicable legislation with legal theories and practice of implementation of positive law that concerns the problems concerning local wisdom that can be used in dealing with bad credit.

This research was conducted in two stages, namely the research libraries (library research) and research in the field. Research libraries are aimed at reviewing, researching and searching secondary data in the form of primary law, secondary and tertiary. The field research performed to obtain primary data in the field as a result of secondary data collection and interviews with practitioners, academics as well as other professionals who have the competence with the material of the research in the writing of the law.

3 RESULTS AND DISCUSSION

3.1 Performance Guarantee as a New Theory Development of Legal Guarantee in Indonesia

Bank is defined according to Article 1 number (2) of Law Number 7 of 1992 as amended by Act Number 10 of 1998, concerning Banking as "a corporate entity mobilizing funds from the public in the forms of Deposits and channeling them to the public in the forms of Credit and/or other forms in order to improve the living standards of the common people".

In conducting its business, Indonesian banking system has always applied the principle of prudence, as stated in Article 2, Law Number 7 of 1992, as amended by Act Number 10 of 1998, concerning Banking that "Indonesian banking in conducting its business is based on economic democracy by using the principle of prudence.

The activity of raising and channelling funds is a principal activity of banking. It is more firmly stated in Article 3 of Law Number 7 of 1992 as amended by Act Number 10 of 1998, concerning Banking that the main function of Indonesian banking is as the collector and distributor of funds community

Furthermore, in Article 4 of Law Number 7 of 1992 as amended by Act Number 10 of 1998 concerning Banking, it is stated that Indonesian banking aims to support the implementation of national development in order to improve equity, economics growth, and national stability towards the improvement the welfare of the masses.

The distribution of funds through credit to the community is an activity that plays a very important role in the life of a banking business. One of the government's active roles in regulating banking policy is by assigning banking institutions to channel or provide credit to the community in need to improve the economic welfare of the community.

Based on the provisions of Article 1 letter (k) of Law Number 7 of 1992 as amended by Act Number 10 of 1998 concerning Banking, the meaning of credit is "the provision of money or equivalent claim to money based on a loan agreement between a Bank and another party, obligating the borrowing party to repay his debt after a certain period with interest"

In its function as a financial intermediary, one of the bank's main activities is to channel funds to a society known as "Banking Credit". The main revenue from the bank is expected from lending, in the form of interest. Banking is a sensitive business because it relies on public confidence to the bank. In granting the credit, a bank shall take into account the

principles of sound crediting, in the sense that there is a confidence in the debtor's ability to settle their obligations in accordance with the contract.

Given this belief, the bank expects a lot for the credit given to the debtor customers to not to have a loan problem, or even become bad credit in the future. Prior to granting credits, the bank shall conduct a thorough analysis of the willingness and the ability of the debtor customers to settle the debt or to refund the financing in accordance with the contract.

Bank is a business entity based on public trust and a financial institution in which every company and individual entrust their funds. Through the bank services, flow of goods and services can be done smoothly and the payment traffic can run efficiently; therefore, in the banking business public trust must be maintained (Hasan 1999).

According to Thomas Suyatno, the elements contained in the meaning of credit are (Suyatno 1993):

- Trust, such as the existence of confidence from the bank on the achievements that it gives to the debtor to be repaid as agreed at a certain time;
- Time, such as the existence of a certain period of time between the granting and repayment of credit, the period of time previously approved or mutually agreed between the creditor and the debtor;
- Achievement and Consideration, such as the existence of certain objects in the form of achievement and consideration at the time of reaching approval or credit agreement as outlined in credit agreement between creditor and debtor that is in the form of money or bill measured with money and interest or reward or even without reward for Islamic Bank;
- Risk, the presence of risks that may occur during the period between granting and repayment of such credit.

In order to implement prudential principles, banks are obliged to conduct comprehensive analysis of various aspects, including character, capability, capital, collateral and the condition of the economy or commonly called the five Cs of credit analysis (5C analysis), in accordance with the provisions stipulated by Bank Indonesia.

In relation to the 5C analysis, We propose a new opinion in the grouping of guarantees, i.e. collateral divided into two, namely:

- Guarantees in the broad sense: the guarantee of the company (customer debtors) to good performance so that it is able to meet the implementation of credit agreements and the survival of the company, at least until the

repayment period of credit. We argue that the 5C analysis is a guarantee in a broad sense.

- Warranty in the strict sense: that is part of the guarantee in the broadest sense, i.e. the fourth C: collateral or collateral. The function of the guarantee in the narrow sense is as closing risk when a bad credit occurs. As has been described in the background of this article that the problems faced by large, medium and small entrepreneurs in Indonesia in obtaining credit banking is the inadequacy of the company to guarantee the credit repayment (bankable). This condition shows that the guarantee has not been fulfilled in the broad sense. The solution is a credit worthiness analysis focused on the fulfillment of the guarantee in the narrow sense (feasible), as a powerful weapon to cover credit risk.

We argue that banking policy that loosens the guarantee in the broadest sense and tightens the guarantee in the strict sense is a big mistake that will have a negative impact. The negative impacts are the debtor customer company will continue to be unfit for banking credit, while preparing adequate collateral will cost a lot. It can be concluded that the debtor customer company sacrifices a lot of time, thought, cost, and effort to provide assurance of things rather than focusing on the company's core business.

The condition must end by strengthening the guarantee in a broad sense by loosening the guarantee in the narrow sense. In this article, We present a new theory in the law of assurance; it is Performance Guarantee. According to this theory, in terms of the four credit application requirements, namely character, capability, capital, and business outlook are met, collateral is only a formality to fulfill the obligation for the bank to examine the ability of the prospective debtor to prepare the guarantee as a credit application requirement.

Technical analysis of the Performance Guarantee Theory is done quantitatively and qualitatively. Technical quantitative analysis is intended to assess the achievement of standard numbers. For example, credit approval is required to achieve a score of 70%. If the calculation and summation of figures from character, capital, ability and economic condition reach 80% score, then logically credit application should be approved and the collateral is only a formality. The rationale of this new theory is if the performance of the company is good, in the sense that it can fulfill the credit agreement, then the guarantee becomes unimportant.

The Performance Guarantee Theory is based on the Legal Theory of Development by Mochtar Kusumaatmadja that law must be active and used to

change certain circumstances and conditions in accordance with the wishes of the community (W 1990). In addition, rules or laws that serve as a means of community renewal, based on the idea that it can serve as a means of regulating human activities in the direction desired by development or renewal (Kusumaatmadja 1990).

In achieving the objectives of the national development in the field of economy, that is to achieve a just and equitable welfare in order to fulfill human needs must be balanced with development in the field of law that is able to follow the development of society. The existence of law is very necessary as a means to realize the changes that exist in society in order to achieve the goal of economic development, namely the just welfare (economic democracy). The understanding is proposed by Roscoe Pound, who is known as a sociological jurisprudence marketer as it is believed that law is a tool for social engineering (Rasjidi and Rasjidi 2002).

3.2 Guarantees the Rights of Islands Watershed Management in Indonesia as a New Paradigm of Warranty Law

The basic idea on the guarantee of large-scale credit in financing the inter-island toll road with the guarantee of the Mainland Waters Land Management Rights due to the development of paradigm by Government of President Joko Widodo and Vice President M. Yusuf Kalla leading to the construction of maritime. According to Etty R. Agoes, in Indonesia there is political development after the end of the New Order government. The impact of the centralized order of the centralized government has led to demands for reform which, among other things, resulted in wider recognition of regional autonomy. Law No. 22 of 1999 on Regional Government grants Regional Authority at sea. Article 3 of the Act provides "The territory of the Provincial Region, as referred to in Article 2 paragraph (1), shall consist of land territories and territories as far as twelve miles sea measured from the coastline towards the open sea and/or towards the Mainland Waters".

Regional authorities in the sea shall be further regulated in Articles 2 and 3 that regional authorities in the territorial sea, as referred to in Article 3, shall include:

- Exploration, conservation, exploitation, and management of marine resources to the extent of the territorial sea;
- Arrangement of administrative interest;
- Spatial arrangement;

- Law enforcement of regulations issued by the regions or delegated authority by the Government Support of security enforcement and state sovereignty.

The authority of the Regency and Municipal Region in the sea territory, as referred to in Paragraph (2), is one third of the provincial sea border.

Legal provisions intended to give more role to this region have proved to cause various problems because in the implementation it has resulted in the separation of marine area management. One thing that can be interpreted not in accordance with the ideals of Archipelago Insight to make the territory of Indonesia as a whole in form the Unitary State of the Republic of Indonesia (NKRI). The impact of its implementation has caused problems in the management of the sea, due to the emergence of various disputes, mutual catching of ships, seizure of territory and others (Agoes 2013).

Lately there has also been the desire of a number of provinces whose territory consists of island or islands to form a new unity called the island province, following the principles recognized by international law applicable to an archipelagic state, and not for parts of a country. It is conceivable that if the desire is accommodated then it is questionable about the existence of the unitary Republic of Indonesia as well as the recognition of the territory Archipelago Insight.

The embodiment of Archipelago Insight based on Broad Outlines of State Policy (GBHN) 1973 and 1978 are still been heard of. But other things that have been spoken have different implemented. The management of the sea is far from integrated, and it has said to be increasingly segmented by sector. The jealousy between sectors has given rise to aversion for synchronization or harmonization in neither its regulation nor its management.

Indonesia as an archipelago based on Article 2 of Law No. 6 of 1996 on Indonesian waters holding on 4 pillars that are the four elements of Indonesian nationalist independence, namely Pancasila, UUD 1945, NKRI & Bhinneka Tunggal Ika are a package to gain an independent soul from the Indonesian nation, both free souls in the sense of self-sovereign, and free spirit in the sense of united-tolerance. One of them is the Unitary State of the Republic of Indonesia (NKRI) which symbolizes the Unitary State. The transportation problems caused by the geographical condition of Indonesia as a state of archipelago in practice, holds up the realization of the Unitary Republic of Indonesia, which should able to be implemented in the construction of toll bridges and non-toll road projects.

Specific arrangements on the Rights of Islands Watershed Management are of paramount importance, because on the Mainland Islands Waters can be placed land rights, such as Cultivation Rights, Building Rights as mentioned in Article 16 of BAL and according to Mortgage Law can be guaranteed. As a result of the regulation, both districts/municipalities and the Central Government have the potential to earn a Local Own Revenue with a profit-sharing system in projects above the Right to Management. As the development of these projects can increase the welfare of the community around the waters of the Islands, for example the community around can be used as project personnel and as employees who work on company partner in the fishery sector, seaweed resources and so forth.

Regarding the legal issues of Bank Indonesia Guarantee Law in guaranteeing Land Rights over the Right of Islands Watershed Management in terms of legislation on Guarantee is going to be a legal vacuum because the arrangement of territorial waters land guarantee has not been regulated. Until now there have been no prospective borrowers who apply for credit with the guarantee of the Mainland Waters Land Management Rights.

From the banking aspect, good banking guarantee can be viewed from three aspects: legal, economic, and strategic. At this time the Mainland Waters of the Islands do not include guarantees which are categorized as good banking guarantees when reviewed according to the above three aspects, namely:

- Legal Aspects

In the legal aspect there is a legal vacuum, because there is only a special regulation on the authority of the Watershed Management Rights based on Law No.27 of 2007 limited to 12 miles, so that the area can be said to be a "no-man" territory as a result of the Right of Management in the power of the central government. Proof of ownership of Regional Government from waters land also not yet exist, hence there is legal problem to propose mainland waters as bank guarantee.

- Economic Aspects

Until now the economic aspect does not have any activities on the projects undertaken in the waters of the island area that are bankable to be financed by banks. I argue that banks will not be interested to discuss the financing guaranteed by the Mainland Waters Land Management Right.

- Aspects of Strategy

From the strategy aspect, firstly, the execution of the guarantee on the Management Rights of the Mainland Waters has difficulties even it is impossible

to do because the land is state-owned, so it cannot be executed through the auction. Secondly, there has been no policy regarding the guarantee of Mainland Islands by the Banking Authority so that the Banking has not been "minded" to fund the projects guaranteed by the Right to Management.

Against the weakness of underwriting of the Mainland Islands Watershed Management Rights, the author argues that the statement is only applicable in the case of non-fulfillment of "Guarantees in a broad sense" i.e. the assessment of the quantity and quality of character, capacity, capital and business prospects (economic condition) does not achieve minimum scores or not bankable.

The opposite will occur if quantitative and qualitative accounting of character, capability, capital and business outlook have been met, then the collateral is a formality only to fulfill the obligation of the bank to examine the ability of the prospective debtor to prepare the guarantee as a credit application requirement.

The author concludes that the position of the Mainland Watershed Management Rights as collateral is a good guarantee in terms of legal, economic and strategic aspects when the minimum score of guarantee criteria is calculated in a broad sense. Conversely, if the minimum score is not achieved, then the position is as a bad guarantee.

This new theory of Performance Guarantee will change the paradigm of security law which prioritizes the achievement of warranties in a broad sense and loses the guarantee in a narrow sense.

3.3 The Rationale for Digitalization as the Basic Electronic Guarantee in Indonesia

In international business, it is imperative that the smoothness of financial transaction and business actors' performance always avoid obstacles. To anticipate this, the parties involved in a financial transaction often involve a third party in the liquidity of funds. In order to accommodate these interests, professional business must be able to utilize maximally the services of financial institutions such as banking (Suyatno 1993).

Practically the role of banking institution services as supporting business activities is through the issuance of Bank Instruments. Banking instruments are provided by the banking industry to assist in the improvement and realization of the smoothness of all aspects of sustainable business forms.

One of the banking industry products which are bank's instrument, which I focus on, is the bank

guarantee. Bank guarantee is one of the instruments that can be used in business transactions and other forms of business to ensure the adequacy and ability to conduct financial transactions. Bank guarantees issued by banks and provided to their customers constitute a credit facility directly from the bank. The role of bank guarantees can be categorized as one of the core components of the financial transaction system and can serve the needs of financing and expedite the mechanism of payment systems of various sectors of the economy. The usefulness of bank guarantees in some sectors of the economy is to support the guarantee of the flow of goods and services from business actors destined to its users.

Bank guarantees are supporters of most business movements and are related to the circulation used as a means of exchange or payment, as well as moving objects that have economic value so that the monetary policy mechanism can work. These things indicate that the bank guarantee is a financial instrument that plays an important role in carrying out economic and trade activities as a transaction bond.

The development of an increasingly developed economy always involves the banking industry; hence, the function of bank guarantees as a security instrument is always used in reducing the risk of reliable business transactions related to the requirements of a healthy business as well as providing a better position for the issuer and the bank guarantee recipient as it gives "better negotiable terms and condition (Miller and Jentz 2002).

In relation to bank guarantees as collateral attributable to the underwriting of land areas and digitization of warranties, it can be described that nowadays, the mechanism of underwriting is done by interpreting the value of the guarantee made with the official appraisal apparatus based on standard assessment norms. Once assessed, then the guarantee is made binding of the guarantee in certain form, for example by pledge, mortgage rights, fiduciary and mortgage. The value is only a preliminary reference in the process of credit approval process. The value of the risk cover depends on the proceeds of the sale through the auction, so there is no legal certainty.

The legal theory proposed by the author on the assessment of collateral is immaterialization of the guarantee. The immaterialization of collateral is essentially a transformation of certain security assets, such as gold into the nominal value of a particular currency for subsequent incorporation into a bank account. The bank that performs the immaterialization process by the Author is called the Issuing Bank of Guarantee. Guaranteed items are stored in the safe deposit box at the bank.

Furthermore, the issuing bank will issue the documents required for the guarantee. For example, documents issued by a foreign bank, which in the opinion of the Author is immaterialization of the guarantee that includes Acknowledgment As to Bank, Authentication Letter, Bank Coordinate, Bank Guarantee, Bank Statement for Promissory Notes, Promissory Note, Certificate of Inheritance and Mandate, Confirmation Letter, Confirmation of Bank Guarantee, Custodian Safekeeping Certificate, Proof of Fund, Proof of Gold, Safekeeping Receipt, Verification Letter and Acknowledgment Letter.

By such immaterialization, at the request of the owner or the authorized person (by legal mandate) to pledge the collateral goods may borrow money or credit of a financing or banking institution. This guarantee is what is meant by cash collateral derived from immaterialization of collateral object. Another term that can be used for immaterialization is the digitalization because the immaterialization result is entered into the issuing bank's checking account. Thus, immaterialization is basically a digitization because of the numbers (not currency).

The immaterialization of material security to cash collateral is an analogy with the issuance of money by the Central Bank. The difference is that the money is issued by the Central Bank and can be disbursed and transferred while cash collateral is issued by a bank and cannot be cashed but can be overbooked. For the future, cash collateral can be functioned as a security and can be equated with demand deposit.

The problem arising from the collateral cash, collateral in the form of the figures is how the issuing bank can guarantee interbank loans regions, even between countries? To answer this question, it needs to be discussed about the Society Worldwide Interbank Financial Telecommunication (SWIFT).

In the face of developments in the financial system and global guarantees supported by the international banking telecommunication system, Banking and Security Laws in the National Legal System should develop a guarantee digitization system through the International Financial and Guarantee System that has implemented the Worldwide Interbank Financial Telecommunication System international financial guarantee transmission. SWIFT as an international organization that operates telecommunication networks for uniformity of banks worldwide.

Security and validity of news in traffic among members is what distinguishes SWIFT by other means such as public network or telex. SWIFT has the utility as a verification system in the banking world in order to provide a legitimacy of bank

guarantees that are used as the main guarantee for parties conducting business transactions or for the fulfillment of the requirements of a project or business capital assistance, as well as an instrument that can be executed because it has economic value as transferable trading object.

Based on banking procedures, in the practice of bank guarantees, transactions are conducted through global financial messaging service provider organization, SWIFT, which has an important role in balancing the development of the financial industry so that the challenges of financial services sector preparedness for each member of the SWIFT user country. Bank guarantees are in practical terms as banking instrument that cannot be separated in regulating the flow of guarantee payments between the financial institutions of each country. Until now, bank transfers are made through SWIFT in collaboration with the user community and have standardized the exchange of messages by organizations conducting financial business.

In international businesses that use bank guarantees as a tool for transactions using SWIFT, this can be seen as a great opportunity for fellow business people to share information about best practices in the industry and agree on the best way to work especially in non-competitive spaces to meet the demands of the financial sector in Indonesia.

The owner may apply for the issuance of Bank Guarantee based on the cash collateral mentioned above. Furthermore, under SWIFT mechanism, Bank Guarantee can guarantee bank credits from countries that are members of SWIFT. In the event of default of loan or credit, debiting the cash value of cash collateral by means of transferring finance from the cash collateral account of the owner at the bank issuing Bank Guarantee to the lender bank or loan.

Bank guarantee warranty system is done through Message Type (MT) code in SWIFT transmission; in bank transaction guarantee process is through SWIFT MT 799. MT 799 is pre advised that the format using the prefix code number "7" as the first notification to transact and also explains the existence of funds that guarantee bank guarantee. Then the MT 799 format may be used by the receiving bank for the purpose of being verified so that everything contained therein shall be in accordance with the interests of the first beneficiary.

After receiving bank receives MT 799 then follow up by sending reply MT 199 as a form of willingness and instruction to issuing bank to send MT 760 which is the second transmission from bank guarantee delivery. MT 760 is a proof of binding guarantees of bank guarantee that can be used in following up the

banking transaction process, especially in the guarantee of funds, so that the recipient bank can immediately provide or disburse funds, so that the recipient bank can immediately provide or disburse funds to the beneficiary after the final verification by sending MT 199 or MT 999, then all liabilities can be met and it is known that the bank blocks the funds or assets and has a value of more than the nominal amount listed in the bank guarantee.

4 CONCLUSIONS

Based on the description in problem identification and discussion, it can be concluded that Performance Guarantee can be used as solution of bank guarantee problems in Indonesia in the framework of development of guarantee law in Indonesia.

For a company that becomes a debtor customer, with the assurance of this performance, it will be triggered to improve the performance and health of the company. In addition, the company will focus on working in accordance with its core business because it is not burdened by the security affairs.

Guarantee on the Right of Islands Watershed Management in Indonesia is feasible as a new Paradigm of the Guarantee Law in Indonesia because the archipelagic islands are the continuation of the land as a whole. In addition, this guarantees support the development program based on maritime.

The rationale for digitalization as the basis of electronic guarantee in Indonesia is the physical condition of Indonesian state geography consisting of thousands of islands that needs national and international guarantee system. In addition, the rapid advancement of digital technology can be used to support the implementation of the National and International Guarantee system.

In this study, the author suggest to the Government of the Republic of Indonesia, in this case the Ministry of Law and Human Rights to change the paradigm of the legal system of guarantee, that is the high level of performance and the health of the company that becomes the debtor customer is more important than the great sacrifices of money, and the mind to provide assurance.

The second suggestion is given that the guarantee of the Right Watershed Management Rights of the Islands is only appropriate for large business actors capable of realizing the guarantee in the broad sense, high performing companies, national and international reputations and a healthy company; it is necessary to set minimum level of Government Regulation.

Finally, given the final result of the immaterialization of this asset in the form of belligerent account numbers, digitizing becomes very important. The government needs to make reliable Electronic Assurance System regulations in accordance with applicable ITE legislation. The system should be integrated with the international guarantee system, e.g. SWIFT.

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