

Surety Bond Agreements in The Scope of Insurance in Indonesia

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Abstract

Surety Bond is a form of guarantee that usually the obligee (the owner of the job/project) asks for a letter of guarantee or surety bond from the principal (contractor/contractor) with the intention of stating the principal's sincerity in carrying out his work according to the agreed contract/agreement. Surety bonds are guarantees that are indemnity / indemnity. In Indonesia, Surety Bonds are used to guarantee the implementation of various projects, the government has placed restrictions on what sectors can be guaranteed, namely projects related to the Presidential Decree No. 16/1994 on the State Budget Implementation Guidelines. This research is descriptive with a qualitative approach.

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INTRODUCTION

Currently, development and the economy in Indonesia are growing in various sectors, so the government's support in regulations or government policies in development is increasing. Projects held by the government through the department are divided into two, namely construction and non-construction projects. Generally, construction projects can be in the form of public facilities, while non-construction projects are in the form of procurement of goods to fulfill the government's vision and mission. To carry out these projects requires special skills and large enough capital so that it makes the government worry about the obligee and the contractor (principal), so guarantees are needed for project work. There are 3 types of guarantees, namely guarantees issued by insurance companies in the form of surety bonds, Guarantees issued by banks are in the form of bank guarantees and guarantees issued by guarantee companies. The purpose of holding these guarantees is to provide certainty that the contractor (principal) can complete the project according to the time and specifications determined by the obligee. The legal basis of the surety bond guarantee agreement is regulated in the third book of the Civil Code concerning engagements and bank guarantees as the basis for the third book of the Civil Code Chapter XVII from article 1820 to article 1850, namely on guarantees and Bank Indonesia regulations in the form of Decree of the Board of Directors of Bank Indonesia No.23 /88/KEP/DIR dated March 18, 1991 which was circulated through Circular Letter No.23/7/UKU dated March 18, 19919 concerning the Provision of Bank Guarantees by Banks.

The existence of two guarantee products, namely surety bonds and bank guarantees, makes an alternative for project owners to decide which product to use as one of the conditions for project grants.

A surety bond agreement occurs when the company guarantees the principal for the benefit of the obligee, so that the surety company as the guarantor is responsible for fulfilling its obligations

to the obligee based on the agreement between the principal and the obligee. Later the guarantor will pay the loss if there has been a loss and a claim claim in accordance with the contract clauses. Settlement of claims can be made by making payments as compensation to the obligee in the event of a loss or failure by the principal in the amount of the guarantee value (penaltythe principal for the benefit of the obligee, so that the surety company as the guarantor is responsible for fulfilling its obligations to the obligee based on the agreement between the principal and the obligee. Later the guarantor will pay the loss if there has been a loss and a claim claim in accordance with the contract clauses. Settlement of claims can be made by making payments as compensation to the obligee in the event of a loss or failure by the principal in the amount of the guarantee value (penalty bond). However, the existence of a surety bond has several problems.

THEORETICAL BASIS

Insurance in general is a guarantee for various risks that threaten property and various interests. Interest in this case can be said to have many things, the form of interest must have risks that must be controlled.

Insurance is coverage or protection for an object from the threat of danger that causes losses. From a legal point of view, insurance is a risk coverage contract (agreement) that is agreed between the insured and the insurer. The insurer promises to pay the loss caused by the insured risk to the insured. Meanwhile, the insured pays the premium periodically to the insurer. So, the insured exchanges large losses that may occur with certain payments in accordance with the agreement.

Insurance or in Dutch "verzekering" means coverage. There are two parties involved in insurance, namely the party who is able to bear or guarantee that the other party will receive compensation for a loss, which he or she may suffer as a result of an event that is not necessarily going to happen or at first it cannot be determined

when it will occur. Insurance services in everyday life are needed in dealing with financial risks that arise as a result of the arrival of death and cause problems for those left behind or risks to property owned.

According to the Commercial Code Article 246 Insurance or coverage is an agreement, whereby an insurer binds himself to an insured, by receiving a premium to compensate him for a loss, damage, or loss of expected profit, which may occur due to an unspecified event. According to the Law of the Republic of Indonesia number 40 of 2014 concerning insurance, insurance is an agreement between two parties, namely the insurance company and the policy holder, which is the basis for receiving premiums by the insurance company in return for:

- a. provide compensation to the insured or policy holder due to loss, damage, costs incurred, loss of profit, or legal liability to third parties that may be suffered by the insured or policy holder due to the occurrence of an uncertain event; or
- b. provide payments based on the death of the insured or payments based on the life of the insured with benefits whose amount has been determined and/or based on the results of fund management.

Law No. 2 of 1992 concerning Insurance Business explains that insurance or coverage is an agreement between two or more parties, whereby the insurer binds himself to the insured, by receiving insurance premiums, to provide compensation to the insured due to loss, damage, or loss of profit. expected, or legal liability to third parties that may be suffered by the insured, arising from an uncertain event, or to provide a payment based on the death or life of an insured person.

Surety Bond is a form of guarantee that usually the obligee (the owner of the job / project) asks for a guarantee letter or surety bond from the principal (contractor/contractor) with a view to stating the principal's sincerity in carrying out his work according to the agreed contract/agreement. The surety bond business in Indonesia has been introduced since 1980 at the discretion of the

government. With the aim of helping weak economic entrepreneurs to participate in development, the government issued Presidential Decree no. 14 A/0 of 1980 concerning the Implementation of APBN/APBD and Foreign Aid. In its implementation, the government stipulates the granting of licenses to Non-Bank Financial Institutions to issue guarantees in the form of surety bonds. The legal basis of surety bonds According to Article 1319 of the Civil Code which states "All agreements, both those with a special name and those not known by a certain name, subject to the general rules contained in this chapter and the previous chapter." So the surety bond as an agreement must also be subject to Article 1320 of the Civil Code concerning the conditions for the validity of the agreement. The conditions for a valid agreement are:

1. Agree with those who bind themselves
2. Able to make an agreement
3. Regarding certain things or objects
4. A lawful reason

Because a surety bond is an agreement to provide guarantees which in the legal system is known as a guarantee agreement, the legal basis for a surety bond is regulated in articles 1820-1850 of the Civil Code which regulates a guarantee agreement (borgtochten). The Insurance Agreement has the following characteristics:

- ✓ Accessoir nature
- ✓ Personal guarantee
- ✓ Does not give preference rights (preferred)
- ✓ The guarantor has the privilege and the right of defense
- ✓ The guarantor's obligations are subsidiary
- ✓ The guarantee agreement is firm and unsuspected
- ✓ Guarantee passes to the heirs

Bank Guarantee can be defined as a document issued by the Bank containing a guarantee in which the Bank promises to pay a certain amount of money with certain terms or conditions to the Guarantee Beneficiary if the Guaranteed Party is unable to fulfill its obligations to the Guarantee Beneficiary based on the contract/agreement that has been made between the Guaranteed Party.

with the Guarantee Beneficiary." Certain conditions or conditions referred to above are if there is a "default" or "failure" or "default" from the Guaranteed Party to the Guarantee Beneficiary based on the contract or agreement that forms the basis for the issuance of the said Bank Guarantee and the claim requirements stipulated in the Bank have been fulfilled. Warranty.

A bank guarantee is a guarantee agreement so that its legal basis is Article 1820-1850 of the third book of the Civil Code. Article 1820 of the Civil Code states that: "Insurance is an agreement by which a third party, for the benefit of the debtor, binds himself to fulfill the obligation of the debtor when this person himself does not fulfill it."

From the formulation it is known that a debt guarantee includes several elements, namely:

- a. Debt coverage is a form of agreement
- b. Debt coverage involves the existence of a debt that previously existed. This means that without the existence of the borne debt, the guarantee never exists.
- c. Debt coverage is solely for the benefit of the creditor and not for the benefit of the debtor
- d. Debt insurance only requires the insurer to fulfill his obligations to creditors when the debtor has been proven not to fulfill his obligations or performance of his obligations.

Because a bank guarantee is an agreement, it must comply with Article 1320 of the Civil Code concerning the conditions for a valid agreement.

METHOD

This research is descriptive in nature, that is, it describes the data obtained from with other variables. Descriptive research is a form of research aimed at describing existing phenomena, both natural phenomena and man-made phenomena which can include activities, characteristics, changes, relationships, similarities, and differences between one phenomenon and another (Sukmadinata, 2017, 2017). p. 72). The qualitative descriptive research method according

to Sugiyono (2018, p. 15) is a research method based on the philosophy of postpositivism which is commonly used to examine the condition of natural objects.

Qualitative descriptive research aims to describe, describe, explain, explain and answer in more detail the problems to be studied by studying as much as possible an individual, a group or an event.

DISCUSSION

Characteristics of a Surety Bond agreement

Surety bonds were first introduced in America in 1837 by Willian L Wattsin. From the beginning of the journey, problems arose, especially regarding the standardization of surety bond forms. So that in 1909 the townner rating bureau was established, which was tasked with providing the surety coys with standard rating standards that surety coys had to adhere to.

The validity of surety bonds in Indonesia was introduced in 1980 with the issuance of Presidential Decree No. 14A/80/1980 concerning the implementation of the APBN/APBD and foreign aid. Based on the Presidential Decree, a Decree of the Minister of Finance No. 271/KMK.011/1980 was issued regarding the issuance of permits for banks and non-bank financial institutions to be able to issue guarantees. . As is known, surety bonds are part of a loss insurance product, where insurance is an agreement that automatically implements a surety bond subject to the book III agreement law of the Civil Code.

Minister of Finance Regulation No.124/PMK.010/2008 dated September 3, 2008, general insurance companies that have marketed credit insurance products and surety bonds for the type of construction guarantee are required to make adjustments to the provisions in Minister of Finance Regulation No.124/PMK. the 010/2008. The reporting procedures and requirements are the

same as the new product reporting requirements and procedures.

Surety Bond is a form of guarantee that usually the obligee (the owner of the job/project) asks for a guarantee letter or surety bond from the principal (contractor/contractor) with the intention of stating the principal's sincerity in carrying out his work according to the agreed contract/agreement. The guarantee is provided by a guarantee (surety/surety company) issued by a non-bank financial institution, namely an insurance company that has a surety bond program.

According to article 1319 of the Civil Code which states "All agreements, both those that have a special name and those that are not known by a certain name, are subject to the general rules contained in this chapter and the last chapter." So the surety bond as an agreement must also be subject to Article 1320 of the Civil Code concerning the conditions for the validity of the agreement. The conditions for a valid agreement are:

1. Agree with those who bind themselves
2. Able to make an agreement
3. Regarding certain things or objects
4. A lawful reason

There are many debates among jurists and insurance experts regarding the legal basis of surety bond agreements, there are experts who are based on a surety bond agreement to a debt guarantee agreement (borgtocht) as well as the legal basis of a bank guarantee agreement, but some legal experts say that a surety bond agreement is an agreement indemnity or indemnity agreement article 1316 of the Civil Code. While the indemnity agreement or suretyship is an indemnity guarantee, where surety as the guarantor is positioned the same as the principal debtor who is jointly and severally obligated to settle obligations to the obligee (creditor). So based on this understanding, So in theory a surety bond is an indemnity guarantee where the surety's position will automatically align with the main debtor when the main debtor is unable to settle his obligations to creditors. In the Civil Code, the provisions regarding indemnity are

regulated in article 1316, while the guarantee is regulated in articles 1820 to 1850 of the Civil Code. J. Satrio, SH mentions the indemnity agreement article 1316 as a guarantee agreement, while some experts state it as an indemnity agreement or joint responsibility agreement or suretyship agreement.

The difference between an indemnity agreement and a guarantee agreement is that the indemnity agreement is a stand-alone agreement, while the guarantee agreement is Accessoir (follows the main agreement) if the guarantee agreement is only possible if there are other guaranteed agreements, then in the indemnity agreement there is no such condition even in general agreements. Indemnity is actually given before the guaranteed party is bound. For example, an illustration for example "A" and "B" comes to a creditor "C" and "A" tells creditor "C" to provide a loan to "B" and "A" will pay the return, then this is an indemnity agreement not a guarantee.

In an indemnity agreement, the responsibility of the guarantor (indemnitor) does not depend on the default of the other party in fulfilling its obligations. Once the terms and time specified in the agreement are due, the indemnitor is obliged to fulfill his/her engagement (Sani, 2003). In a guarantee agreement with characteristics including accessorization, default is an absolute requirement for the birth of a guarantor's responsibility and before carrying out his obligations, the debtor must first carry out his obligations for the default action. So it can be seen that surety bonds are subject to indemnity agreements while bank guarantees are subject to underwriting agreements. Thus the surety party will immediately pay the loss in cash if it is clear that there is a loss and for that there has been a claim. because the position of surety is the same as or replaces the position of the principal (joint responsibility) in the responsibility of the obligee. In contrast to the guarantee agreement (bank guarantee), in this case the guarantor (guarantor) has special rights including the payment of guarantees can be made if the debtor has paid in advance.

Surety Bonds in Insurance in Indonesia

	2016	2017	2018	2019	2020
IT	12	13	14	15	16
Aviation	931.802,28	123.889,10	101.751,48	98.432,04	185.002,36
Subsidi	7.292,32	5.478,02	11.041,35	6.105,88	11.580,97
Energy-Carbon	84.940,46	55.604,06	86.100,74	52.160,73	57.301,27
Energy-Offshore	14.490,75	106.964,95	235.642,78	289.905,37	232.742,01
Engineering	806.976,14	824.473,68	1.094.713,82	1.052.261,51	1.064.079,22
Liability	1.252.212,31	843.940,37	790.774,76	859.833,45	595.484,58
Personal Accident & Health	3.014.562,38	6.234.779,07	6.369.343,55	6.694.995,88	7.952.360,69
Credit & Surety Bond	4.124.936,34	5.340.135,06	7.254.322,60	13.543.810,38	16.280.090,02
Credit	3.316.621,04	4.881.581,02	6.977.713,68	11.719.937,70	14.058.944,04
Surety Bond	808.315,29	1.458.554,04	1.276.608,92	1.824.872,68	2.221.145,98
Others	2.370.550,78	2.603.228,32	4.320.008,25	4.870.530,89	2.521.145,98
Retention Ratio (%)	53,01	57,26	57,65	57,88	53,62

Source : Statistic Peransuransian OJK

In Indonesia, Surety Bonds are commonly used to guarantee various project implementations such as (Zulkifli, 2003):

1. Civil construction projects dry, dry wet (constructions)
2. Projects ² installation, plumbing and erection projects
3. Projects ² project consulting, supervision, and preparation of feasibility studies (consultancies)
4. Project ² procurement project (supply contract).

The government has placed restrictions on what sectors I can guarantee, namely projects related to the Presidential Decree No. 16/1994 concerning the State Budget Implementation Guidelines, namely Surety Bonds should only guarantee (Zulkifli, 2003):

1. Projects ² projects funded by APBN
2. Projects ² projects funded by APBD Level I (Province).
3. Projects ² projects funded by APBD Level II (Kabupaten / Kotamadya)
4. Projects ² projects funded by foreign aid (IMF, World Bank, ADB, IDB, OECF, JICA, and others).
5. Projects ² State-Owned Enterprises (BUMN) and BUMD projects.

Contract bonds associated with a construction contract are an agreement between the obligee and the principal as the executor of the construction agreement to carry out a construction or construction project. There are four types of surety bonds in construction contracts, including:

1. Bid Guarantee (Bid bond)

The bid guarantee is a guarantee required by the principal if the principal will participate in a tender for a construction project financed by the obligee or the project owner. This bid guarantee is the first step required by the obligee to prospective principals who wish to participate in the tender for the auction in accordance with the design, specifications and others regarding the project that will be planned to be built.

2. Performance Guarantee (Performance Bond)

After the bid guarantee ends with the signing of the project implementation contract that proves the principal's ability to carry out the project from the won tender, it is required in the main agreement, namely in the project implementation contract that this time the principal will seriously carry out the required project and there is an implementation guarantee from the insurance company. as a surety company that it will compensate the obligee's losses if the agreed project or fails (principal default).

3. Advance Payment Guarantee (Advance Payment Bond)

The down payment guarantee issued by the surety company aims to guarantee the obligee that the principal will be able to return the advance he has received from the obligee in accordance with the terms agreed in the contract, otherwise the surety will repay the principal's obligations to the obligee in accordance with the agreed terms. If the down payment is not returned, the principal is deemed to have failed and the surety company will pay compensation to the obligee up to the maximum amount of the

guarantee. In the signed work contract, it is usually stated that the amount of the down payment (eg 20%) and the return is determined according to the progress of the work implementation.

4. Maintenance Guarantee (Maintenance Bond)

After the work is completed, the obligee usually withholds 5% of the contract payments, the amount of which is referred to as retention money and a reserve fund for repair costs if any damage occurs after the first handover. So, in principle, this maintenance guarantee is issued to guarantee the obligee that the principal will be able to repair the damage to the work after the completion of the work as agreed, if not, the surety will replace the damage suffered by the obligee at a maximum of the value of the guarantee (Sianipar & Pinotoan, 2003).

Indemnity Agreement (Letter Of Indemnity)

The provision of surety bonds requires a compensation agreement. because the surety bond concept is collateral and the principle of the surety bond in the scope of insurance is as a risk taker from the principal and or the insured and besides the practice of spreading risk or re-assuming (reinsurance) as one way for surety companies to reduce the risk burden if the principal defaults. As a consequence of the concept of no collateral in the technical implementation of surety bonds, it requires a compensation agreement in the form of an indemnity agreement signed by the principal and or the guarantor (indemnitor) and the essence of the indemnity agreement is the right to demand from the surety company to the principal for the obligations that the surety has paid to the obligee as a result of principal default.

1. That the principal and or the guarantor must pay the surety money that has been paid to the obligee as a result of the principal's failure to fulfill his obligations to the obligee,

including other costs incurred by the surety for the payment of the obligee's claim.

2. That surety in its policies and considerations with the aim of reducing losses that may be suffered can control, manage, run and manage every problem related to that surety in its policies and considerations with the aim of reducing losses that may be suffered can control, administer, run and manage any problems related to.
3. That immediately after the surety is asked to pay based on the guarantee issued on behalf of the principal, the principal and or the guarantor binds themselves and is obliged to pay the surety an amount equal to the guarantee requested by the obligee within 7 (seven) days after the request by the surety.
4. That the principal and the guarantor and the persons appointed by them either jointly or individually are bound by the terms of the indemnity agreement, which is an integral part of the guarantee issued by surety.

Claim Procedure and Claim Settlement Process in Surety Bond Agreement Provisions regarding the amount of claim payment for project implementation based on the provisions in Presidential Decree No. 80 of 2003 is the amount of the guarantee value or equal to 100% (one hundred percent). Meanwhile, for projects whose implementation does not follow the provisions as regulated in Presidential Decree No. 80 of 2003, the claim paid is equal to the loss suffered by the obligee, namely the difference between the bid price of the first winner and the bid price of the principal which is then determined as the winner or executor with a maximum payment of the value of the guarantee. Furthermore, claim payments are made through the obligee's account that has been determined. Claims must be submitted no later than 3 (three) months from the end of the guarantee period.

CONCLUSION

Development and the economy in Indonesia are growing in various sectors, government policies in development are also increasing. To carry out construction projects requires special skills and large enough capital so that it makes the government worry about the obligee and the contractor (principal), so guarantees are needed for the project work. There are three types of guarantees that can be used, namely guarantees issued by insurance companies in the form of surety bonds, guarantees issued by banks in the form of bank guarantees and guarantees issued by guarantee companies.

The validity of surety bonds in Indonesia was introduced in 1980 with the issuance of Presidential Decree No. 14A/80/1980 concerning the implementation of the APBN/APBD and foreign aid. Surety Bonds are a form of guarantee that usually the obligee (the owner of the job/project) asks for a guarantee letter or surety bond from the principal (contractor/contractor) with the intention of stating the principal's sincerity in carrying out his work according to the agreed contract/agreement.

Some legal experts say that the surety bond agreement is an indemnity agreement or an indemnity agreement in article 1316 of the Civil Code. While the indemnity agreement or suretyship is an indemnity guarantee, where surety as the guarantor is positioned the same as the principal debtor who is jointly and severally obligated to settle obligations to the obligee (creditor). So based on this understanding, theoretically a surety bond is an indemnity guarantee. The difference between an indemnity agreement and a guarantee agreement is that the indemnity agreement is a stand-alone agreement, while the guarantee agreement is Accessoir (follows the main agreement).

In Indonesia, Surety Bonds are used to guarantee the implementation of various projects, the government has placed restrictions on what sectors can be guaranteed, namely projects related to the

Presidential Decree No. 16/1994 on the State Budget Implementation Guidelines. There are four types of surety bonds in construction contracts, namely bid guarantees, performance guarantees, advance payment guarantees, and maintenance guarantees.

In carrying out the claim procedure for project implementation based on the provisions in Presidential Decree No. 80 of 2003, the value of the guarantee is 100% (one hundred percent). Meanwhile, projects whose implementation does not follow the provisions as stipulated in Presidential Decree No. 80 of 2003, the claim paid is amounting to the loss suffered by the obligee.

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