

Legal Protection for Creditors in Credit Agreements with Mortgage Guarantees

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Abstract

The main problem in the research is how legal protection is for creditors in credit agreements with collateral. The research method used is normative legal research, which is conceptualized in a statutory regulation, and examined in relation to protection for creditors in credit agreements with collateral for mortgage rights. The results of the research show that legal protection for creditors is that they are given the right to take repayment of debts to previous creditors in the form of executing the object of collateral rights using method (1). Parate execution (direct execution), namely the creditor holding the first mortgage right has the right to sell the object of the mortgage right under his own authority through a public auction. (2). Execution with the assistance of a judge is a request for execution by the creditor to the Chairman of the District Court to carry out the execution with a judge's decision which has definite and binding legal force. (3). Execution of sales under the hand, namely an agreement between the giver and the holder of the mortgage right to carry out a sale under the hand of the object of the mortgage right to obtain the highest possible price that is useful for all parties.

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1. INTRODUCTION

Humans always live in groups, of course they need objects. Humans do not need daily activities as group creatures without the support of objects. If a person as a member of society needs an object that supports their life, it means that the object in question has (economic) value, so that what has economic value experiences mobility, moving from the control of one party to another and the ownership of another party. Changing the owner of an object through various transactions, of course, is one of the key forms of trading.

Objects can be seen from every corner of the market, both domestically and internationally, as part of a sale and purchase agreement. The traditional market or mall is full of activity, so that the sale and purchase contract become the most important artery in everyday business. In export import traffic, things always move across territorial boundaries that then reach thousands of kilometers around the world. The parties carry out the sale and purchase with the help of the sale and purchase agreement board. In addition to being used as an object of buying and selling transactions, goods are also proven to be used as collateral, usually used to secure debts so as to give creditors a stronger position in the growth of economic development.

Economic development as part of national development is one of the investments based on Pancasila and the 1945 Constitution to realize the welfare of a just and prosperous society. In the business world, there is a very large and increasing need so that a financing institution is needed to borrow funds. People need funds from banks to meet their needs, one of which is through credit. Banks are one of the institutions that serve the community

to obtain loans or credit that the community really needs. One financial institution that can provide solutions to these capital problems is banking.

The form of collateral most used as collateral for credit agreements in banking is in the form of land and buildings, which have the status of land rights in the form of property rights, use rights, building use rights, or use rights because they have a value or price that continues to increase and is relatively high. , then it is appropriate for debtors as loan recipients and credit providers as well as other related parties to be given protection through legal institutions that provide strong guarantees that can guarantee legal certainty. Based on the provisions of the Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations as stated in Article 51, it regulates that there is a strong guarantee institution that can be imposed on Land Rights, namely that mortgage rights are a substitute for mortgage and credit institutions. Since the UUPA has been in force for more than 30 years, this mortgage rights institution has not been able to function as it should, because there is no law that regulates it completely, the provisions in the regulation do not comply with the principles of Indonesian national law and do not meet the economic needs of the mortgage sector 1.

The existence of this lien guarantee institution has been recognized by law no. 4 of 1996 regarding lien rights on land and things related to land and affecting the interests of debtors and creditors to obtain legal protection from the government. The main purpose of enforcing the right of liability is to provide legal protection especially to creditors when the debtor's obligations are not met. According to law no. 4 of 1996, lien rights are security rights that are encumbered with land rights as defined in law no. 5 of 1960 regarding the Basic Regulations of Agrarian Trees, with or without other things that are a union with the land, for the repayment of certain debts, which gives priority to certain creditors compared to other creditors.

To provide a guarantee of legal certainty as a form of legal protection, the encumbrance of this mortgage must be registered at the land office, in order to fulfill the publicity element for the collateral, and make it easier for third parties to monitor if a transfer of collateral occurs. In the process of granting credit, the creditor often experiences losses because the debtor is unable to fulfill his obligations, in this case legal regulations are needed in implementing the imposition of mortgage rights contained in a credit agreement, which aims to create certainty and legal protection for the parties. related parties, especially for creditors if the debtor neglects his obligations (default). This right encourages the author to conduct research on how the provisions in Law No. 4 of 1996 concerning mortgage rights over land and objects related to land can guarantee legal protection for creditors, especially in terms of credit agreements if the debtor is in default with the mortgage collateral.

2. RESEARCH METHOD

Normative legal research is research into what has been conceptualized in statutory regulations or norms and rules. Where a statutory regulation becomes the basis for implementing a policy and legal protection. Normative legal research, namely examining legal rules relating to legal protection for creditors in credit agreements with mortgage rights.

3. RESEARCH RESULTS AND DISCUSSION

Provisions of Law Number 4 of 1996 relating to land which provides legal protection to creditors when debtors are in default

Article 1 number 11 of Banking Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 explains the meaning of Credit: "Credit is the provision of money

or bills that can be equated with it, based on an agreement or loan agreement between the bank and the party Others require the borrower to pay off the debt after a certain period of time with interest." In the provisions of this article, what is meant by agreement or loan agreement is a form of credit agreement where the agreement must be made in writing.

Approvals made in banking credit agreements must be made in writing. This provision is contained in the Elucidation to Article 8 of Law Number 10 of 1998, Amendment to Law Number 7 of 1992 concerning Banking, which requires banks as lenders to make written contracts. The requirement that a banking agreement must be in written form has been stipulated by Bank Indonesia in the banking laws and regulations as intended in Article 8 paragraph (2) of the banking law. According to Badriyah Harun, the main provisions stipulated by Bank Indonesia are:

1. Providing credit or financing based on sharia principles is made in the form of a written agreement;
2. Banks must have confidence in the abilities and capabilities of debtor customers, which is obtained, among other things, from a careful assessment of the debtor customer's character, abilities, capital, collateral and business prospects.
3. The bank's obligation to develop and implement credit or financing procedures based on sharia principles;
4. The bank's obligation to provide clear information regarding credit or financing procedures and requirements based on sharia principles;
5. Prohibition of banks from providing credit or financing based on sharia principles with different requirements to debtor customers and/or affiliated parties;

According to H.R. Daeng Naja stated that revolving credit agreement disputes has several functions, namely:

1. The credit agreement functions as the main agreement, meaning that the credit agreement determines whether other subsequent agreements are valid or not, for example collateral binding agreements;
2. A credit agreement is evidence of restrictions on rights and obligations between creditors and debtors
3. A credit agreement serves as a credit management tool.

Article 10 of Law Number 4 of 1996 explains that an agreement creates a debt and receivable relationship whose repayment is guaranteed and can be made in 2 (two) forms, namely in the form of a private deed or an authentic deed, depending on the provisions of the legislation governing the agreement. In order to provide guarantees for repayment of creditor debts in a credit contract, collateral must be provided. According to the explanation of Article 10 of Law Number 4 of 1996, it is clear that an agreement has a debt-receivable relationship whose repayment can be guaranteed in the form of a private deed and an authentic deed, in accordance with the material terms of the agreement. Legal protection offered to creditors is based on regulations. This is stated in the mortgage rights law number 4 of 1996 in the credit agreement itself. The agreement functions as evidence and limits the rights and obligations of both parties. With the existence of a credit agreement, repayment of the debtor's debt can be guaranteed, therefore the process of binding collateral is carried out at the time of granting security rights, if the object of collateral is an immovable object. Many people use land and buildings as collateral because the value or price usually increases every year. After the collateral is bound by a clause granting mortgage rights, a Deed of Granting Mortgage Rights is drawn up by the Land Deed Making Officer (PPAT) which contains an agreement that provides protection for creditors, so that creditors receive

repayment. through 2 (two) stages, namely registration and determination of Mortgage Rights in the form of a Mortgage Rights Certificate.

As proof that the land has been used as collateral, the Land Agency Office issues a Mortgage Rights Certificate with *irah-irah* which is valid if the debtor later breaks his promise. In banking practice, written credit agreements are outlined in 2 (two) forms, namely:

1. A credit agreement is an agreement made only between the parties without the presence of an official authorized to make deeds, namely a notary. This private deed usually takes the form of a draft which is first prepared by the bank itself and then offered to prospective customers containing all the terms and conditions whose form and contents are never discussed or negotiated with the prospective debtor. If the prospective customer (debtor) does not like the clauses contained in it, then the clauses that are not permitted by the prospective customer cannot be rejected, because the agreement is a standard clause that has been determined by the banking institution concerned. Thus, prospective customers who want to apply for a loan must agree to all the conditions put forward by the bank as the lender. In practice, credit agreements with private deeds have several shortcomings, so that in the author's opinion they guarantee repayment of debt claims and legal protection for creditors. Some of the weaknesses of this underhand deed are:
 - a) The debtor's negligence ultimately leads to legal proceedings, if the debtor denies or does not acknowledge his signature, this weakens the bank's position in court and the debtor's legal strength in the credit agreement.
 - b) Because this private agreement or deed is only made between the parties, it is possible that there is mandatory data that must be completed to obtain a credit.
2. A credit agreement or authentic deed is a letter, writing or agreement by which the bank grants credit to its customers and is made by or in front of a notary. According to article 1868 of the civil law book, namely: "an authentic deed is a deed in the form determined by law, made by or in the presence of public officials who have the authority to execute it in the place where the deed was made". Article 1868 of our civil law law has several definitions of the act of a notary as follows
 - a) A notary has the authority to make authentic deeds, unless the authority is transferred to another official or other person. Other officials who can make authentic certificates are, for example, a clerk at a court hearing, a civil registry employee when making birth or marriage certificates or the government when making regulations.
 - b) Authentic deeds are distinguished between those made "by" and those made "in the presence of" a public official. In this case, "making a verbal deed process" means that a notary writes what he sees and experiences about the actions (*handeling*) and events (*daadzaken*), reads and signs only with witnesses outside of their presence or because of the objection of the presenters. So, in making a *partij deed*, a notary reads the deed, followed by the signing of the deed by the presenters and witnesses and by the notary.
 - c) The content of the authentic deed is all the acts that are required by law to be done in the authentic deed and all the "agreements" and "controls" required by those who are interested. An authentic deed can contain a "legal act" that is required by law or an agreement that is desired by the parties, for example sale, purchase, rent, or grant.
 - d) An authentic deed provides certainty regarding the date. That a notary provides certainty regarding the date of his deed, which means that he is obliged to state in the relevant deed the year, month and date when the deed was made. Violation of this obligation results in the deed losing its authentic nature, and thus only having the strength of a private deed. The binding process in a credit agreement made before a

Notary which is made by the parties in the form of an authentic deed with a Deed of Granting Mortgage Rights (APHT) first made by the Land Deed Making Officer (PPAT) is useful for giving the creditor the right to get repayment of his receivables and limiting the authority of the debtor, and the next stage, the stage of registration of mortgage rights at the National Land Agency office, is the process of imposition of mortgage rights as proof of the issuance of a mortgage rights certificate which has the irah-irah "FOR JUSTICE BASED ON THE ONE GOD" where this certificate is a guideline for execution if the debtor later day refused to pay his debt. Based on the description above, it is clear that creditors are given legal protection through law number 4 of 1996 concerning mortgage rights over land and objects related to land which came into effect on April 9 1996. The provisions of the mortgage rights law provide legal protection to creditors as follows in Article 1 point 1: giving priority or priority position to the holder of mortgage rights (*droit de preference*). This article also provides the definition of mortgage rights: mortgage rights over land and objects related to the land, which are hereinafter referred to as mortgage rights are rights over land as intended in Law number 5 of 1960 concerning basic regulations. agrarian, including or not including other objects which are an integral part of the land, for the repayment of certain debts, which gives certain creditors a preferred position over other creditors. "In paragraph 1, this means that if the debtor defaults, the creditor as the collateral holder has the right to sell the object of the mortgage right to collect repayment of the receivables through a public auction based on the applicable laws and regulations, where the preferred creditor does not reduce the preference of the receivables. country based on applicable laws. Priority creditors have claim rights which are categorized as privileges by law, and their claims are referred to as preferential claims, while creditors are called preference creditors. This preference or privilege right is also regulated in book II title

- 1) Claims with priority rights;
 - 2) Preemptive rights over certain goods;
 - 3) Priority rights over all movable and fixed assets in general.
- e) Article 1131 of the Civil Code regulates the following, namely:
- 1) Creditors are given the privilege to take repayment from the debtor's assets, both movable and immovable;
 - 2) Any existing or future debtor's assets can be sold to pay off creditor claims
 - 3) The creditor's claim rights are only guaranteed by the debtor's assets, not by the "person of the debtor".

Execution of mortgage rights according to the provisions of law number 4 of 1996 concerning mortgage rights over land and objects related to land.

Regulations regarding the Execution of Mortgage Rights have been regulated in Article 20 and have been explained in Article 6 and Article 14 paragraph (1), paragraph (2), paragraph (3), one of the characteristics of mortgage rights is that they are a strong and certain guarantee institution for land. in its execution. Based on the general explanation of number 9 of Law number 4 of 1996, although the provisions for execution have generally been stipulated in the applicable civil procedural law, it is considered important to explicitly include provisions regarding the execution of mortgage rights in Law number 4 of 1996, namely regulating execution *parate agency*.

Article 7 regulates that the mortgage right always follows the object in whose hands the object is in (the *droit suite* principle) which is one of the privileges of the mortgage right. One of the characteristics of mortgage rights is that special guarantees are provided for the interests of the mortgage rights holder. Even though the object of

the mortgage has changed hands and belongs to another party, the creditor can still exercise his right to execute, if the debtor breaks his promise, which can be seen in the explanation of article 7 of the mortgage rights law..

The mortgage rights law systematically and integrately regulates the execution of mortgage rights. Article 20 of the mortgage rights law comprehensively regulates the types of execution. The object of the mortgage right is sold through a public auction based on the provisions of the law to pay off the mortgage holder's receivables before other creditors. The sale of mortgage rights objects can be carried out privately based on an agreement between the mortgage rights provider and the mortgage rights holder, if it is possible to obtain the highest price that is beneficial to both parties. This regulation regulates its implementation according to procedures

This regulation regulates three types of methods that can be used to carry out the execution of Mortgage Rights, namely: parate execution (direct execution), execution by means of a Judge, and execution of private sales:

1. The Execution Parate (public auction) of Mortgage Rights objects is regulated by Article 20 (1), Article 6 and Article 11 (2) e of the Mortgage Rights Law. According to Article 20 (1) in conjunction with Article 6 of the Mortgage Rights Law, if the debtor is unable to carry out his performance, then the first Mortgage Rights holder is given the right to sell the Mortgage Rights object under his own authority through a public auction and collect the receivables from the sale proceeds. This is based on HIR Articles 224 and 256 Rbg. Article 11 paragraph (2): applies to promises contained in the Deed of Granting Mortgage Rights. Some of the agreements contained in this article provide legal protection to lenders (creditors), but only a few agreements provide protection for creditors in the event of default by the debtor. The provisions in Article 11 paragraph (2) of the Law include promises contained in a Deed of Granting Mortgage Rights (APHT), if these promises are a form of legal protection against creditors, if the debtor is negligent or breaks his promise. This legal protection takes the form of a promise that limits the authority of the Mortgage Rights holder (debtor) not to take action that is detrimental to the Mortgage Rights holder (creditor) or to carry out if the debtor is negligent, such as a promise that authorizes the Mortgage Rights holder to do the same thing. The parate execution procedure referred to in Article 20 (1) a of the Mortgage Rights Law in conjunction with Article 6 of the Mortgage Rights Law, which in this case requires an agreement that the first Mortgage Rights holder has the right to sell on his own authority the Mortgage Rights object if the debtor does not carry out their obligations (*beding van eigenmachtig verkoop*) as regulated in Article 11 (2) e of the Mortgage Rights Law.
2. Execution with the assistance of a judge of objects of mortgage rights. Execution with the assistance of a judge of objects of mortgage rights is regulated by Article 20 (1) b of the Mortgage Rights Law jo. Article 14 (2) and (3) Mortgage Rights Law. The execution procedure with the assistance of a Judge as referred to in Article 20 (1) b of the Mortgage Law regulates the application for execution submitted by the creditor to the Chairman of the District Court, then the District Court carries out the execution in accordance with the Judge's decision which has permanent legal force (*in kracht van gewijsde*). The execution was carried out on the Mortgage Rights Certificate which contained *irah-irah* with the words: FOR THE SAKE OF JUSTICE BASED ON THE ALMIGHTY GOD. The execution of the Mortgage Rights Certificate has executorial power on the basis of a court decision as regulated in Article 14 of the Mortgage Rights Law and its explanation.

3. Execution of sales under the hands of Mortgage Rights objects. Execution of sales under the hands of Mortgage Rights objects is regulated by Article 20 (2) and (3) of the Mortgage Rights Law. The underhand sale execution procedure can be carried out if it meets the requirements stipulated in Article 20 paragraphs (2) and (3) of Law number 4 of 1996. The requirement is that there is agreement between the giver and recipient of the mortgage right for the sale to be carried out under the hand. for objects that are guaranteed to obtain the highest price that provides benefits for all parties. In other words, private sales occur if the sale is likely to be carried out by auction (public sale) or by execution by a judge as intended in Article 20 paragraph (1) a and b of the Mortgage Rights Law and will not reach the highest price. Private sales can only be carried out after 1 (one) month has passed by the giver and/or holder of the mortgage right by notifying the interested parties in writing and announcing it in at least 2 (two) newspapers circulating in the area concerned. and/or local mass media, and no party has any objections.

Legal protection for creditors in collateral for mortgage rights is an important aspect of Indonesian obligations. Mortgage guarantee is one form of material collateral that is most widely used in practice, especially in banking credit agreements. According to the theory of justice, creditors who provide loans to debtors are entitled to adequate legal protection. This is because the creditor has given trust to the debtor and has provided a certain amount of funds to the debtor. As Aristotle argued, justice is a balance between rights and obligations. Justice is achieved when everyone gets what they deserve, while Commutative Justice, namely justice that regulates the relationship between two parties, is achieved when everyone gets their rights according to the agreement made. The same thing in the balance theory states that legal protection for creditors and debtors must be balanced, because creditors and debtors are parties who have equal rights and obligations. Heider's opinion regarding balance theory is that humans have a tendency to balance their attitudes towards other people and the objects around them. In credit agreements with collateral rights, balance theory plays an important role in ensuring that the rights and obligations of the parties are protected fairly and equally. This principle applies to various aspects of the agreement, including:

- (a). Debtor's obligations: the debtor has an obligation to fulfill credit requirements, such as paying installments on time and maintaining the condition of the collateral object.
- (b). Creditor's Rights: the creditor has the right to receive installment payments and has the right to execute the collateral object if the debtor defaults.

Based on these two theories, legal protection for creditors in debt and receivable agreements with collateral rights according to UUHT No. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land can be realized as follows: the right of precedence is the right owned by the creditor holding the mortgage right to obtain debt repayment from the proceeds of the sale of the previous collateral object rather than other creditors, and the Right Execution is the right owned by the creditor holding the mortgage right to execute the object of the mortgage right if the debtor defaults.

4. CONCLUSION

Legal protection given to creditors in a credit agreement with collateral for mortgage rights if the debtor commits negligence according to Law Number 4 of 1996 concerning mortgage rights over land and objects related to land as regulated in the explanation of Article 10 which regulates agreements that give rise to legal relations. debts whose repayment is guaranteed. The agreement can be made by private deed or must be made by

authentic deed, depending on the laws and regulations concerning the contents of the agreement. The creditor's right to recover his receivables when the debtor does not carry out his obligations in the credit agreement with an authentic deed. The advantage of this authentic deed is that you can request a Grosse Debt Acknowledgement Deed which has executive power and is the basis for execution if the debtor breaks his promise. The execution of Mortgage Rights is regulated in the Mortgage Rights Law (UUHT) in a systematic and integrated manner. Provisions regarding the types of mortgage rights execution are comprehensively regulated in Article 20 of the Mortgage Rights Law (UUHT). The object of the Mortgage Right is sold through a public auction according to the procedures specified in the statutory regulations for repayment of the mortgage holder's receivables before other creditors.

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