

JURIDICAL REVIEW OF MORTGAGE RIGHTS GUARANTEES IN CREDIT AGREEMENTS ACCORDING TO LAW NUMBER 4 OF 1996 CONCERNING MONITORING RIGHTS

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Abstract

Risks that generally occur in providing credit facilities are failure or delays in repayment of credit (credit risk), risks arising from market movements (market risk), risks due to the bank being unable to fulfill its maturing obligations (liquidity risk), and risks due to there are weaknesses in the juridical aspect caused by legal demands, the absence of supporting legislation (legal risks). In Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the definition of credit is formulated "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 other party. others that require the borrower to pay off the debt after a certain period of time with interest." Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land and makes the interests of debtors and creditors receive legal protection from the government. The main objective of enacting the Mortgage Rights Law is, in particular, to provide legal protection for creditors if the debtor commits an unlawful act in the form of a default. If the debtor breaks his promise, the object of the Mortgage Rights is sold through a public auction according to the method specified in the applicable laws and regulations and the holder of the Mortgage Rights has the right to take all or part of the proceeds to pay off his receivables, with pre-emptive rights over other creditors.

Keywords: *Credit Risk, Debts and Receivables, Mortgage Rights*

1. INTRODUCTION

Providing credit facilities contained in a credit agreement by a bank to a debtor is not without risk, because risks may occur, especially because the debtor is not obliged to pay the debt in full or in cash, but the debtor is entrusted by law in the credit agreement to pay later in full, gradually or in installments. Risks that generally occur in providing credit facilities are failure or delays in repayment of credit (credit risk), risks arising from market movements (market risk), risks due to the bank being unable to fulfill its maturing obligations (liquidity risk), and risks due to there are weaknesses in the juridical aspect caused by legal demands, the absence of supporting legislation (legal risks). Land The activity of borrowing and borrowing money or what is better known as credit in daily life practice is not something foreign, in fact the term credit is not only known to urban communities, but also to rural communities. Credit generally functions to facilitate business activities, and especially for economic activities in Indonesia, it plays an important role in its position, both for production businesses and private businesses that are developed independently because they aim to improve the standard of living in society. Articles 3 and 4 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking state that the main function of Indonesian banking is to collect and distribute funds from the public which aims to support the implementation of national development towards improving people's welfare. In carrying out this business, the Bank collects funds from the public in the form of demand deposits, time deposits, certificates of deposit, savings, and/or in other equivalent forms. In this case, the Bank also channels funds from the public by providing credit in the form of banking credit business. Banking credit has been utilized and practiced by the community for decades in order to

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improve their standard of living. Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking formulates the definition 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 other party. others that require the borrower to pay off the debt after a certain period of time with interest." According to CH. Gatot Wardoyo, in his article entitled: "Around the Clauses of Bank Credit Agreements", states that credit agreements have several functions, including:

1. The credit agreement functions as the main agreement. This means that the credit agreement is something that determines whether or not other agreements that follow it will be cancelled. For example, a guarantee binding agreement.
2. The credit agreement functions as evidence regarding the limitations of rights and obligations between debtors and creditors.
3. The credit agreement functions as a tool for monitoring credit. Another function of credit guarantees is in the context of providing credit with the debtor's seriousness in fulfilling his obligations to pay off the credit as agreed and using the funds he has properly and carefully, where it is hoped that this will encourage the debtor to pay off his debt so as to prevent liquidation of the guarantee. credit that may be undesirable because it has a higher value (price) when compared to the debtor's debt to the Bank. The issues raised are what form of legal protection there is for creditors when debtors default and what sanctions are given to creditors when debtors default. The goals I want to achieve in writing this research are as follows :
 - a. To find out the form of legal protection for creditors when the debtor defaults.
 - b. To find out what the creditor gives when the debtor defaults. The method used in this research uses a quantitative method, namely a method based on the philosophy of positivism. This method is used to research certain populations or samples. Sampling techniques are generally carried out randomly (data collection).

2. LITERATURE REVIEW

Forms of Legal Protection for Creditors when Debtors Default in the context of increasing national development which focuses on the economic sector, where the perpetrators include the government and society as individuals and legal entities, very large amounts of funds are needed, so that with the increase in development activities then There is also an increase in the need for available funds, most of which are obtained through credit. Financial institutions that produce financial services are banking institutions. In banking credit bookkeeping, it must be based on an agreement or loan agreement, or in other terms, it must be preceded by a written Credit Agreement, either by private deed or National Deed. The credit agreement here has the function of guiding the Bank in planning, implementing, organizing and supervising credit providers by the Bank so that the Bank is not harmed and the interests of customers who entrust their funds to the Bank are guaranteed as well as possible. Therefore, when providing credit, the Bank must ensure that all legal aspects relating to credit have been resolved and provide adequate protection for the Bank.

3. RESULTS AND DISCUSSION

Guarantee right

Based on the provisions in Article 51 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, it is stated that a strong security rights institution has been provided and can be imposed on land rights, namely Mortgage Rights as a substitute for hypotheek and creditverband institutions. The existence of this Mortgage Guarantee Institution has been recognized through Law Number 4 of 1996 concerning Mortgage Rights for Land and Objects Related to Land and makes the interests of debtors and creditors receive legal protection from the government. The main objective of enacting the Mortgage Rights Law is, in particular, to provide legal protection for creditors if the debtor commits an unlawful act in the form of a default. Based on the formulation

contained in the Banking Law regarding credit agreements, it can be concluded that the basis of a credit agreement is a money lending and borrowing agreement. This money lending and borrowing agreement contains a broad meaning, that the object is an object that is used up. From the explanation above, it is clear that the creditor can take firm action against the debtor if the debtor is in default, because provisions like this are contained in Articles 1131 and 1132 of the Civil Code which read: "All the debtor's (debtor's) objects, whether moving or immovable, whether existing or which will exist in the future, is the responsibility of all individual engagements." Legal protection for creditors is also contained in Law Number 4 of 1996 concerning Mortgage Rights over Land and objects related to land and makes the interests of debtors and creditors receive legal protection from the government. The main objective of enacting the mortgage rights law is specifically to provide legal protection for creditors if the debtor violates the law in the form of default.

Understanding the Law of the Republic of Indonesia Number 4 of 1996

Based on the Mortgage Rights Law, objects that can be encumbered with Mortgage Rights are rights to land and objects related to the land. Land rights that can be encumbered with Mortgage Rights are:

1. Right of ownership;
2. Cultivation Rights;
3. Building rights.

In addition to land rights as intended in paragraph (1), Use Rights on State land which according to applicable provisions must be registered and by their nature can be transferred may also be subject to Mortgage Rights. Mortgage rights can also be imposed on land rights as well as existing or future buildings, plants and works which are an integral part of the land, and which belong to the holder of the rights to the land whose encumbrances are expressly stated in the Deed of Granting Mortgage Rights. concerned. If the buildings, plants and works as intended in paragraph (4) are not owned by the holder of the land rights, the imposition of Mortgage Rights on these objects can only be carried out by signing the Deed of Granting the Mortgage Rights concerned by the owner or authorized person. for that by him with an authentic deed. An object of Mortgage Rights can be encumbered with more than one Mortgage Right to guarantee the repayment of more than one debt. If an object of Mortgage Rights is encumbered with more than one Mortgage Right, the ranking of each Mortgage Right is determined according to the date of registration at the Land Office. The ranking of Mortgage Rights registered on the same date is determined according to the date of making the Deed of Granting the Mortgage Rights in question. In Mortgage Rights there are also legal subjects which become Mortgage Rights which are related to the agreement granting the Mortgage Rights. In a mortgage agreement there are two parties who bind themselves, namely as follows:

1. The Giver of Mortgage Rights is the person or party who guarantees the object of Mortgage Rights.
2. The Mortgage Rights Holder is the person or party who receives the Mortgage Rights as collateral for the receivables they provide.

The Mortgage Rights Law contains provisions regarding the subject of Mortgage Rights in Article 8 and Article 9, namely as follows. The Giver of Mortgage Rights is an individual or legal entity who has the authority to carry out legal actions against the object of the Mortgage Rights in question. The authority to take legal action against the object of the Mortgage Rights as intended in paragraph (1) must be with the person giving the Mortgage Rights at the time the Mortgage Rights registration is carried out. The holder of the mortgage right is an individual or legal entity whose position is the party that owes the receivable. In accordance with the accessoir nature of the mortgage right, the existence of the mortgage right depends on the existence of receivables whose repayment is guaranteed.

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If the receivable is written off due to settlement or other reasons, the mortgage right in question will automatically be written off as well. In addition, the Mortgage Right holder can relinquish his Mortgage Rights and land rights can be erased which results in the cancellation of the Mortgage Rights. Land rights can be terminated, among other things, due to matters as mentioned in Article 27, Article 34 and Article 40 of Law Number 5 of 1960 concerning Basic Agrarian Principles or other statutory regulations. In the event that the Building Use Rights, or Use Rights which are used as the object of the Mortgage Rights, expire and are extended based on an application submitted before the end of that period, the Mortgage Rights in question remain attached to the rights to the land in question. Default is a legal dispute carried out by the debtor against the creditor when there is a credit term agreement. The debtor fails to fulfill the agreement, does not deliver or pay within the specified time or does not act as promised within the specified time limit. Debtors who try to evade the return of credit or are negligent in the credit return agreement or try to prevent the return of credit that they have received through ordinary legal measures or extraordinary legal measures. This is the work of an irresponsible debtor so that the creditor takes action in the form of sanctions aimed at the debtor, either light sanctions such as taking collateral from the debtor or imposing strict sanctions if the debtor is still unable to pay off his debt. The effort taken by the creditor is to apply to the district court on the basis of default. It's just that the process of resolving civil cases in district court until there is a final and definite court decision (in tracht van Sewisjde) usually goes through 3 (three) levels of justice, namely:

1. District Court as the court of first instance,
2. The High Court as the court of appeal,
3. Supreme Court.

According to Article 20 of the Mortgage Rights Law, by agreement of the giver and holder of Mortgage Rights, it can be carried out privately if by doing so the highest price will be obtained which is beneficial to all parties. The sale as referred to in paragraph (2) can only be carried out after 1 month has passed after being notified in writing by the giver and/or holder of Mortgage Rights to interested parties, announced in at least 2 newspapers circulating in the area concerned and/or the mass media. local, and no party expressed objection. Any promise to carry out the execution of Mortgage Rights in a manner that is contrary to the provisions in paragraph (1), paragraph (2) and paragraph (3) is for the sake of law. Until the announcement for the auction is issued, the sale as referred to in paragraph (1) can be avoided by paying off the debt guaranteed by the Mortgage Right along with the execution costs that have been incurred. If the debtor breaks his promise, the object of the Mortgage Right is sold through a public auction according to the method specified in the applicable laws and regulations and the holder of the Mortgage Right has the right to take all or part of the proceeds to pay off the debt, with pre-emptive rights over other creditors.

This is called mortgage execution. If we talk about execution, it is necessary to explain first that execution in relation to Mortgage Rights is not included in the meaning of what is called real execution. And even if we talk about real execution, then in fact the real execution known in HIR is only "real execution after an auction". Meanwhile, the meaning of real execution in the actual sense is that we take the operation from the Rv system, which according to jurisprudence can still be used if necessary. Execution in relation to Mortgage Rights is not a real execution, but means selling by auction the object of the Mortgage Rights, the proceeds of which are then paid to the creditor of the Mortgage Rights holder, and if there is any remaining, it is returned to the debtor. If the credit agreement has been fulfilled in its entirety as well as possible or in other words the debtor has paid off the principal loan including interest, provisions and other costs, then the collateral agreement will automatically no longer be valid. However, if the debtor fails to pay off the loan when it is due and the creditor/bank has warned the debtor to pay off the loan as soon as possible and if the reprimand is by requesting assistance from the District Court, then such warning is called *sommatic* or *subpoena*. If the debtor has received a warning and then paid the loan in full, then execution of the guarantee is no longer needed. On the other hand, if even though he has been warned, the

debtor still does not want to pay the loan, the creditor or bank will start trying to execute the credit guarantee.

Executorial Power of Mortgage Rights Certificate

The Mortgage Rights Certificate as proof of the existence of Mortgage Rights contains regulations with the words "For the sake of Justice Based on Belief in One Almighty God". The Mortgage Rights Certificate has the same executorial power as a court decision which has obtained permanent legal force and is valid as a substitute for the Grosse Acte Hypotheek as far as land rights are concerned. The rules stated on the Mortgage Rights certificate are intended to confirm the executorial power of the Mortgage Rights certificate, so that if the debtor breaks his promise, it is ready to be executed just like a court decision that has permanent legal force. One of the characteristics of mortgage rights is that they are easy and certain to execute, if at any time the debtor breaks his promise. In article 20 of the Mortgage Rights Law, it is stipulated that if the debtor breaks his promise, then based on the rights of the Mortgage Rights holder, namely:

1. First, a promise to sell the object of the Mortgage Rights under one's own authority, through a public auction without requiring further approval from the person giving the Mortgage Rights (explanation of Article 6 of the Mortgage Rights Law) and the rules stated in the Mortgage Rights certificate which is an executorial title with the same power with a Court Decision that has permanent legal force, creditors can carry out the execution of Mortgage Rights. As explained in the General Explanation number 9, the transitional provisions in this Article provide confirmation that during the transition period, the provisions of the procedural law above apply to the execution of the Mortgage Rights, with the delivery of the Mortgage Rights certificate as the basis for implementation, the right of the first Mortgage Right holder to sell the object of the Mortgage Rights. Dependents as intended in Article 6, or
2. The two executorial titles contained in the Mortgage Rights certificate as intended in Article 14 paragraph (2), the object of the Mortgage Rights is sold through a public auction according to the procedures specified in the statutory regulations for repayment of the mortgage rights holder's receivables with the right to precede creditors. other. Apart from the two methods above, it is also possible to execute mortgage rights through private sales, as long as this is agreed upon by the holder and grantor of mortgage rights by fulfilling certain conditions. The assertion that the Mortgage Rights Certificate is a substitute for the Grosse Acte Hypotheek is intended to equalize perceptions regarding one of the documents that must be submitted for the execution of the Mortgage Rights, which previously often gave rise to differences of opinion and perception regarding the procedure for executing the Mortgage Rights. Mortgage Rights are designed as strong collateral rights, with the characteristics of "easy and certain" execution. However, in practice this is not the case. Several UUHT provisions are unclear, incomplete, and do not pay attention to the configuration of regulations in the applicable legal system (including regarding the many legal measures that can be misused to suspend auctions for the execution of Mortgage Rights objects), thereby actually triggering uncertainty. To limit these obstacles, additional provisions are needed, especially those that emphasize that the auction of Mortgage Rights objects based on the execution parate is carried out without court fiat. As for what is carried out based on the executive title of the Mortgage Rights Certificate, it cannot be suspended at all unless there is a criminal element. If a credit is tied to a mortgage, then if the debtor (customer) breaks his promise, the land used as collateral can be executed by force. Banks do not need to go to court which takes a long time, requires a lot of energy and is expensive. The bank can directly ask the court to execute the collateral for sale at auction. The basis for a request for execution of collateral by a bank is that the mortgage certificate has executorial force, so it is equated with a judge's decision which has permanent legal force. The executorial transfer from gross mortgage deed to mortgage certificate and then to Mortgage

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Rights certificate is a deviation from Article 224 HIR which is coercive in nature. Khoidin confirmed this opinion. According to him, even though the transfer was confirmed by law, it was also inappropriate, because Law no. 4 of 1996 is material law, not formal law. Material law regulates rights and obligations, while formal law is imperative which regulates procedures for implementing material law. According to Article 224 HIR, a gross deed of mortgage and debt securities made before a notary in Indonesia, where in its head the sentence "For the sake of justice based on belief in the Almighty God" has the same force as the judge's decision. The regulation on the execution of gross deeds in Article 224 HIR is intended to expedite activities in the economic sector, namely so that business actors can resolve debt and bad credit disputes quickly and precisely.

Mortgage Declared Bankrupt

Whereas Article 21 of the UUHT states that if the mortgage rights holder is declared bankrupt, the mortgage rights holder remains authorized to exercise all the rights they have obtained according to the provisions of this law. In relation to the position of the Mortgage Right holder in the event of the bankruptcy of the Mortgage Rights giver, the position of the Mortgage Rights holder due to the bankruptcy of the Mortgage Rights giver is further regulated by Law Number 4 of 1998 concerning Bankruptcy (as replaced by Law No. 37 of 2004 concerning Bankruptcy and PKPU). In Article 56A of the Bankruptcy Law, it is stated that the preferential right of creditors holding mortgage rights to execute land rights is suspended for a maximum period of 90 days from the date the bankruptcy decision is determined. Even though the execution is suspended, the rights to the land cannot be transferred by the curator. Bankruptcy assets that can be used or sold by the curator are limited to inventory and/or movable goods (current assets) even though the bankruptcy assets are encumbered with material collateral rights. As is known, Mortgage Rights aim to guarantee debts given by Mortgage Rights holders to debtors. If the debtor breaks his promise, the land (right to land) which is encumbered with Mortgage Rights is entitled.

4. CONCLUSION

Conclusion

From the description above, the author draws the conclusion that legal protection for creditors is contained in Law Number 4 of 1996 concerning Mortgage Rights over Land and objects related to land and makes the interests of debtors and creditors receive legal protection from the government. The main objective of enacting the Mortgage Rights Law is specifically to provide legal protection for creditors if the debtor violates the law in the form of default. 1. If the debtor is not responsible, the creditor can take action in the form of sanctions aimed at the debtor, either light sanctions such as taking collateral from the debtor or imposing strict sanctions if the debtor is still unable to pay off the debt. This is also contained in the provisions of article 20 paragraph (1) of the Mortgage Rights Law.

Suggestion

Settlement of land disputes through mediation at the land office according to the author is a good resolution, but there are still several suggestions, including the following:

- a. For people who have problems regarding land, it is better to resolve them through mediation at the Land Office rather than directly using the court route, because there is a big possibility that a resolution through the court will be detrimental to one of the parties.
- b. The Land Office as a mediation institution/mediator can provide education to the public about mediation so that the public can resolve land disputes through mediation and carry out mediation well.
- c. The government, especially law makers, has to make more specific regulations regarding mediation for resolving land disputes at the Land Office.

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