



JURIDICAL ANALYSIS OF CREDIT AGREEMENTS WITH MORTGAGE GUARANTEE AND *CESSIE* REQUIRED AS GUARANTEE AT PT. BRI AGRO NIAGA PEKANBARU

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Abstrac

Banking institutions have an important role in economic development with lending activities regulated in credit agreements. In the credit agreement between PT. BRI Agro Niaga Pekanbaru and PT. Sipakko Jaya Abadi with PTPN V there are efforts to secure credit with collateral and cessie required as collateral. This study uses empirical normative legal research methods. The data used include primary, secondary and tertiary data. Collecting data using library research and field research with interviews. Furthermore, the data were analyzed using qualitative data analysis methods. The results of the study indicate that the credit agreement between PT. BRI Agro Niaga Pekanbaru and PT. Sipakko Jaya Abadi has complied with the legal basis in force in Indonesia and the legal relationship that exists between PT. BRI Agro Niaga Pekanbaru as creditor and PT. Sipako Jaya Abadi as the debtor with PTPN V as the third party is PT. Sipakko Jaya Abadi entered into a credit agreement with PT. BRI Agro Niaga Pekanbaru with the aim of financing the work contract with PTPN V. The implementation of the Mortgage Guarantee with the required cessie as collateral is not in accordance with the legal basis and because essentially the cessie is a transfer of receivables. The execution of the guarantee in the credit agreement cannot be carried out on the cessie required as collateral.

Keywords: *Credit Agreement, Collateral, Mortgage Guarantee, Cessie*

1. INTRODUCTION

Promoting public welfare is one of the national goals of the Indonesian nation. In achieving this goal, a comprehensive and sustainable national development is needed in various fields, including one in the economic field. The existence of banking institutions in the midst of society has a very important role in terms of economic development. The main function of banking institutions is to collect and distribute public funds. The function of banking institutions as fundraisers is carried out in the form of receiving deposit funds and the function of banking institutions as channeling funds is carried out in the form of providing credit. Credit is defined as the provision of money or an equivalent claim, based on an agreement or loan agreement between the bank and another party that requires the party being financed to return the money or claim after a certain period of time with compensation or profit sharing. The form of transactions in credit must begin with an agreement between the debtor and creditor which is stated in the form of an agreement.

Although credit has been started with a credit agreement, credit security is still needed related to the element of risk and uncertainty in credit. Collateral is one of the things required by the bank as a creditor in providing credit that must be given by the debtor in order to guarantee the repayment of his debt in the credit agreement. The guarantee itself is defined as a form of bank confidence in the debtor's ability to repay the credit in accordance with the agreement.

In practice in the midst of society, there are 4 (four) kinds of material guarantees that can be used, including Pawn, Hypotek, Mortgage and Fiduciary. In the credit agreement contained in PT. BRI Agro Niaga Pekanbaru, material guarantees that are often found are mortgage guarantees. In addition to the guarantee of mortgage in the credit agreement, the existence of a cessie or transfer of receivables is also an effort to secure the bank's position as a creditor in providing credit

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to debtors at PT. BRI Agro Niaga Pekanbaru. Basically, legally, *cessie* is not a binding guarantee and cannot be equated with Pawn, Hypotek, Mortgage and Fiduciary.

In banking practice at PT. BRI Agro Niaga Pekanbaru, there is a relationship between credit agreements, mortgage guarantees and *cessies*. The credit agreement between PT. BRI Agro Niaga Pekanbaru as creditor with PT. Sipakko Jaya Abadi as debtor aims for working capital and project financing between PT. Sipakko Jaya Abadi with PT Perkebunan Nusantara V Pekanbaru, hereinafter referred to as PTPN V as a third party. In the credit agreement there are 2 (two) guarantees which are conditions and must be submitted by PT. Sipakko Jaya Abadi to PT. BRI Agro Niaga Pekanbaru, namely collateral for Mortgage and *cessie* in the form of receivables from PT. Sipakko Jaya Abadi against PTPN V. In essence, the existence of a *cessie* in the midst of society in accordance with article 613 of the Civil Code is as a transfer of receivables, not as a guarantee institution. However, in the credit agreement between PT. BRI Agro Niaga Pekanbaru with PT. Sipakko Jaya Abadi, *cessie* is required as collateral.

The formulation of the problem of this research are:

1. What is the legal basis and legal relationship in the credit agreement between PT. BRI Agro Niaga Pekanbaru and PT. Sipakko Jaya Abadi with PTPN V?
2. How is the arrangement and implementation of the Mortgage Guarantee with the *cessie* required as collateral in the credit agreement at PT. BRI Agro Niaga Pekanbaru?
3. How is the execution of guarantees in credit agreements related to bad loans at PT. BRI Agro Niaga Pekanbaru?

In accordance with the formulation of the problem above, the objectives of this study are:

1. To understand the legal basis and legal relationship in the credit agreement between PT. BRI Agro Niaga Pekanbaru and PT. Sipakko Jaya Abadi with PTPN V.
2. To find out the arrangement and implementation of the Mortgage Guarantee with the *cessie* required as collateral in the credit agreement at PT. BRI Agro Niaga Pekanbaru.
3. To know and understand the execution of guarantee execution in credit agreements related to bad loans at PT. BRI Agro Niaga Pekanbaru.

2. RESEARCH METHODS

In this legal research, the writer will use the normative-empirical research method. The normative research method is defined as legal research that puts the law as a system of norms. The system of norms in question is about principles, norms, rules of statutory regulations, court decisions, agreements and doctrines (teachings). The empirical method is used in this research so that it becomes applied research, namely normative-empirical legal research starting from written positive legal provisions that apply to legal events in concreto in society, so that in research there is always a combination of two stages of study, namely the first stage is a study of normative law that applies and the second stage is the application of events in concreto in order to achieve the goals that have been set. The application can be realized through concrete actions and legal documents. The results of the implementation will create an understanding of the realization of the implementation of the normative legal provisions that have been studied properly or not. The use of these two stages requires secondary data and primary data.

The legal materials in this research include:

1. Primary legal materials, namely legal materials that are authoritative, meaning that they have authority consisting of statutory regulations, official records or minutes in making legislation and judge decisions. The primary legal materials are:
 - a. Kitab Undang-Undang Hukum Perdata
 - b. Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 about Basic Regulations on Agrarian Principles
 - c. Undang-Undang Republik Indonesia Nomor 4 Tahun 1996 about Mortgage Rights on Land and Objects Related to Land



- d. Undang-Undang Republik Indonesia Nomor 10 Tahun 1998 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1992 about Banking
- e. SK Direksi Bank Indonesia No. 23/69/KEP/DIR tanggal 28 Februari 1991
2. Secondary legal materials, namely legal materials consisting of textbooks written by influential legal experts, legal journals, opinions of scholars, legal cases, jurisprudence, and the results of the latest symposiums related to research topics. The secondary legal materials in this study include:
 - a. Credit Deed between PT. BRI Agro Niaga Pekanbaru with PT. Sipakko Jaya Abadi
 - b. Cessie Agreement between PT. BRI Agro Niaga Pekanbaru with PT. Sipakko Jaya Abadi
3. Tertiary legal materials, namely materials that provide instructions and explanations of primary and secondary legal materials, such as encyclopedias, cumulative indexes and so on.

In this study, the data collection techniques used are as follows Library research is the activity of collecting and tracing library documents that can provide the necessary information and information, in this case referred to as secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials. Field research in this study in the form of in-depth interviews conducted directly to the research subject or resource persons, namely practitioners or officials in the field of credit at PT. BRI Agro Niaga Pekanbaru as an official directly involved in making credit agreements and cessie agreements with one of the customers, namely PT. Sipakko Jaya Abadi.

The data that has been systematically compiled are then analyzed in order to get the final argument and answers to the problems contained in this study. In this case, qualitative analysis will be used, namely by describing quality data in the form of regular, coherent, logical, non-overlapping and effective sentences so as to facilitate interpretation and understanding of the results of the analysis. This qualitative analysis will be juxtaposed with the statute approach so that a complete and comprehensive explanation can be obtained regarding the legal construction of the credit agreement, mortgage guarantee and cessie required as collateral.

Drawing conclusions in this study will use the deductive method where this method is a way of thinking to seek and master knowledge that starts from general reasons towards more specific directions.

3.. RESEARCH RESULT AND DISCUSSION

3.1. Legal Basis and Legal Relations in the Credit Agreement between PT. Sipakko Jaya Abadi and PT. BRI Agro Niaga Pekanbaru with PTPN V

The credit agreement is a form of agreement between the parties in it, namely the bank as the creditor and the customer as the debtor. The credit agreement is included in the anonymous agreement (innominaat), this is in line with Article 1319 of the Civil Code. Credit is a form of bank business activity in the context of channeling funds to the public as the implementation of the main functions of banking institutions. In the process of disbursing funds, the bank assesses the debtor based on the 5C's or what is known as The Five Cs of Credit Analysis, namely Character, Capacity, Capital, Collateral and Condition of economy. The credit agreement is present as a form of embodiment of the will of the parties, namely the bank and the debtor in which there are rights and obligations of the parties with various additional provisions in accordance with the agreement.

The existing credit agreement between PT. BRI Agro Niaga Pekanbaru and PT. Sipakko Jaya Pekanbaru in its implementation is in accordance with the legal basis and statutory regulations regarding existing credit agreements, namely Articles 1315, 1319, 1320, 1329, 1330, 1331, 1332, and 1338 paragraph (1) of the Civil Code, Banking Law, Circular Letters Bank Indonesia No. 03/1093/UPK/KPD dated December 29, 1970, and Attachment to Regulation of the Financial Services Authority Number 42/POJK.03/2017 concerning Obligations to Prepare and Implement Credit or Bank Financing Policies for Commercial Banks.

The legal relationship begins with the cooperation between PT. Sipakko Jaya Abadi with PTPN V which is marked by the existence of a cooperation contract between PT. Sipakko Jaya Abadi with PTPN V. Furthermore, PT. Sipakko Jaya Abadi entered into a credit agreement with PT. BRI Agro Niaga Pekanbaru In the credit agreement between PT BRI Agro Niaga Pekanbaru and PT. Sipakko Jaya Abadi, there are a number of credit limits that can be used by PT. Sipakko Jaya Abadi after submitting the required *cessie* as collateral to PT. BRI Agro Niaga Pekanbaru.

3.2. Arrangement and Implementation of Mortgage Guarantee with Cessie Required as Collateral in the Credit Agreement at PT. BRI Agro Niaga Pekanbaru

In the activity of providing credit facilities, collateral is a manifestation of the bank's belief as a creditor that the debtor has the ability to repay the credit in accordance with the credit facility provided. According to the Banking Law, a guarantee is defined as a belief based on an in-depth analysis of the intention and ability and ability of the debtor customer to pay off his debts or return the financing in accordance with the agreement. Mortgage as one of the material guarantees is one of the types of guarantees that are most often encountered in the community in providing credit facilities by banks.

The term *cessie* which is defined as a method of transferring receivables on behalf of or transfer of receivables and in the Civil Code is regulated in Article 613. In this article it is stated that the transfer of receivables is carried out by making an authentic or private deed which delegates the related rights where the transfer of receivables is will only result in the debtor after it has been approved by him in writing and the transfer of receivables must be accompanied by the delivery of debt securities on an order made by giving it together with the endorsement of the letter. Basically, *cessie* is not a guarantee institution like Mortgage or *credietverband*, Pawn, Mortgage or Fiduciary. This can be seen from one of the *cessie* objects which is a rental right or kiosk where legally this right cannot be tied to a fiduciary or other guarantee institution.

In the credit agreement between PT. BRI Agro Niaga Pekanbaru with PT. Sipakko Jaya Abadi, the existing guarantee is a Mortgage Guarantee which is marked by the surrender of part of the wealth from PT. Sipakko Jaya Abadi. At PT. BRI Agro Niaga Pekanbaru. A credit agreement will be accompanied by the required *cessie* as collateral if the credit agreement is a Working Capital Credit agreement. Implementation of the required *cessie* as collateral for PT. BRI Agro Niaga Pekanbaru is not in accordance with legal regulations regarding guarantee institutions and there are no legal principles and laws and regulations that state that a *cessie* can be required as collateral.

The placement of the *cessie* clause which is required as collateral before the guarantee of Mortgage in the credit agreement is not juridically correct and negates the power of Mortgage as one of the legal guarantee institutions according to the law.

3.3. Execution of Collateral in Credit Agreements Related to Bad Loans at PT. BRI Agro Niaga Pekanbaru

Loans that are not repaid by the debtor in whole or in part will be a loss to the creditor. In non-performing loans, there is a category of bad credit with the condition that the debtor can no longer pay the principal or interest on the loan. Bad credit can be defined as a loan that has difficulty repaying due to intentional factors and or external factors beyond the control of the debtor. The occurrence of bad loans in the provision of credit facilities can be caused by two factors, namely internal factors and external factors. Bank internal factors can be in the form of inaccurate bank analysis, collusion between bank officials who handle credit and customers and the limitations of bank officials on the type of debtor's business. Meanwhile, external factors come from customers either intentionally or unintentionally, government regulations and natural disasters.

Efforts to settle bad loans are legally regulated in UUHT in terms of guarantees in the form of Mortgage Rights. In Article 6 UUHT it is stated that if the debtor is in breach of contract, the holder of the first Mortgage has the right to sell the object of the Mortgage on his own power through a public auction and take repayment of his receivables from the proceeds of the sale. The



execution of Mortgage guarantees through the court must go through a civil lawsuit in the case of a general court and a bankruptcy suit in the case of a commercial court. Efforts to settle bad loans in the provision of credit facilities by PT. BRI Agro Niaga Pekanbaru by way of auction through fiat execution carried out by the District Court together with the Office of the State Assets and Auction Service (KPKNL). Regarding the cessie required as collateral in the credit agreement at PT. BRI Agro Niaga Pekanbaru, when there is bad credit, there is no attempt to execute the cessie required as collateral. Based on the applicable procedures, PT. BRI Agro Niaga Pekanbaru cannot directly collect the receivables to bowheer, namely PTPN V. These receivables can only be collected by PT. BRI Agro Niaga Pekanbaru to PT. Sipakko Jaya Abadi where then PT. Sipakko Jaya Abadi continues the billing process to PTPN V.

4. CONCLUSIONS AND SUGGESTIONS

4.1. Conclusions

1. Credit agreement between PT. Sipakko Jaya Abadi and PT. BRI Agro Niaga Pekanbaru has complied with the legal basis of credit agreements in force in Indonesia and the legal relationship that exists between PT. Sipakko Abadi as the debtor and PT. BRI Agro Niaga Pekanbaru as the creditor with PTPN V as the third party is PT. Sipakko Jaya Abadi entered into a credit agreement with PT. BRI Agro Niaga Pekanbaru with the aim of financing the work contract of PT. Sipakko Jaya Abadi with PTPN V.
2. Arrangement and implementation of Mortgage Guarantee with the required cessie as collateral in the credit agreement at PT. BRI Agro Niaga Pekanbaru is not in accordance with the legal basis because there is a clause in the Credit Agreement which states that the cessie required as collateral precedes the position of the Mortgage guarantee and the implementation of the cessie required as collateral harms the position and position of PT. Sipakko Jaya Abadi as debtor.
3. Execution of guarantees in credit agreements related to bad loans at PT. BRI Agro Niaga Pekanbaru can only be implemented against mortgage guarantees. The execution of the cessie which is required as a guarantee cannot be carried out by PT. BRI Agro Niaga Pekanbaru directly to PTPN V but still through PT. Sipakko Jaya Abadi and there are no laws and regulations governing the execution of the cessie required as collateral.

4.2. Recommendations

1. It is recommended to PT. BRI Agro Niaga Pekanbaru to further facilitate and speed up the process of granting credit to debtors while still based on the analysis method and assessment method from the bank and adjusted to the legal basis and legislation regarding credit.
2. It is recommended to notary bank partners not to take sides and provide legal counseling to creditors and debtors regarding the legal basis of cessie and not to include a clause in the credit agreement that makes cessie a condition of guarantee.
3. It is recommended to PT. BRI Agro Niaga Pekanbaru not to use cessie as a guarantee requirement, but PT. BRI Agro Niaga Pekanbaru can use a corporate guarantee from a third party as an additional guarantee for credit security.

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