



EFFORTS AND LEGAL CERTAINTY IMPLEMENTATION OF ACQUIRED ASSETS (AYDA) BY THE BANK BASED ON LAW NUMBER 4 OF 1996 CONCERNING COLLATERAL RIGHTS TO LAND AND OBJECTS RELATED TO LAND

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Abstract

Implementation of AYDA in the field often experiences obstacles that can cause delays in the implementation of AYDA and takes 1 (one) year to 5 more years to complete the AYDA even to the point where the process stops or gets stuck and in practice there are still many who don't follow the system set forth. regulated by UUHT. So this will cause legal uncertainty for the object of Mortgage Rights controlled by the bank so that it violates the aspect of Guarantee Law that guarantees cannot be owned by creditors. The formulation of the research problem (1) What legal steps can be taken if the implementation of the AYDA is not based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land? (2) What is the legal certainty of the Mortgage Object Controlled by the Bank in the Implementation of Foreclosures of More Than 1 (One) Year? The research method used is normative legal research method. The primary legal material used is the applicable laws and regulations relating to the issues to be discussed. The secondary legal materials used in this writing consist of: (1) books related to the legal issues at hand; (2) Results of research/scientific work relating to the legal issues at hand; (3) Legal magazines/journals/articles on legal issues encountered. tertiary Legal Materials, at this writing, namely: Big Indonesian Dictionary; legal dictionaries; Encyclopedia; Newspaper. The results of the study show that legal remedies that can be taken if the implementation of the AYDA are not based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, namely ordinary legal remedies and extraordinary legal remedies. Legal Certainty of Mortgage Objects Controlled by Banks in the Implementation of Foreclosures of More Than 1 (One) Year, namely Mortgage Objects in principle cannot be owned by creditors as referred to in Article 12 of the Mortgage Law. To protect this principle, Article 12A of the Banking Law stipulates that collateral purchased by a bank must be resold as quickly as possible in order to pay off its receivables because banks are not allowed to own the collateral that has been purchased. This is an embodiment of legal certainty on the Mortgage object that is controlled by the bank in implementing the AYDA for more than 1 (one) year. Legal certainty in this regulation is to maintain the principle that the guarantee is not to own the goods, but is used to guarantee that the debtor will carry out his obligations until they are paid off or if they fail, they can be sold as soon as possible to pay off the debtor's debt.

Keywords: *Implementation, AYDA, UUHT.*

1. INTRODUCTION

Credit is the provision of money or bills that can be equated with it, based on a loan agreement or agreement between the bank and another party that requires the borrower to pay off the debt after a certain period of time with interest. Customers/debtors who wish to obtain credit facilities from banks will be given requirements in the form of guarantees/collaterals, although in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law), it does not explicitly require there is a guarantee, but

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implicitly the bank wants a guarantee based on the ability and ability of the customer to fulfill his obligations. This is as stipulated in Article 8 paragraph (1) of the Banking Law which reads: "In providing credit or financing based on sharia principles, Commercial Banks are required to have confidence based on an in-depth analysis of the intentions and abilities of debtor customers to pay off their debts or return the intended financing. according to what was promised." Guarantees/collaterals are quite important requirements to be met, and absolutely must be considered by creditors. In considering or evaluating collateral guaranteed by customers/debtors, creditors may apply the precautionary principle. Broadly speaking, there are 2 guarantees, namely:

1. Individual guarantee.
2. Material guarantee.

Within the scope of banking, in practice the preferred and more important collateral is material guarantees, because in material guarantees, the rights of creditors to take precedence in making payments over other creditors, on the proceeds from the sale of a certain object or a certain group of objects, which specifically attached. In this case, movable or immovable objects that have been guaranteed in the credit agreement by the customer/debtor when obtaining the credit facility. As also regulated regarding the creditor's rights to the debtor in Article 1131 of the Civil Code (hereinafter referred to as the Civil Code) states that, all the debtor's assets, both movable and immovable, both existing and new ones will exist in the future , being responsible for all individual engagements. Looking at Article 1311 of the Civil Code, it can be concluded that the principles of creditor external relations are as follows:

1. A creditor may take repayment of any part of the debtor's assets.
2. Every part of the debtor's wealth can be sold to pay off creditors' bills.
3. The creditor's billing rights are only guaranteed by the debtor's property.

Guarantees in the form of land rights are usually charged with mortgage rights. According to Budi Harsono, mortgage rights are land tenure which contains the authority for the creditor to do something with the land. But not to be physically controlled and used but to be sold if the debtor defaults and takes the proceeds from the sale in whole or in part as payment for the remaining debt. Related to the implementation of binding guarantees through mortgage rights, it is marked by the enactment of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT). Mortgage rights give the position of the creditor to take precedence in terms of debt repayment by the debtor (*droit de preference*) and collateral rights to land will also continue to burden the land that is used as collateral even though in whose hands the land is located (*droit de suite*). If the credit is not repaid according to the time period, several ways can be chosen by the bank/creditor, namely:

1. Auction

For banks wishing to execute mortgage rights, there are two ways that can be done as mortgage holders, namely:

- a. The holder of the mortgage right can apply for the execution of the mortgage right to the Head of the District Court;
- b. The holder of the mortgage right does not execute the mortgage right through the court, but directly asks the State Assets and Auction Service Office (KPKNL) to sell the mortgage object.



2. Underhand sales

The implementation of underhand execution is carried out because it involves interested third parties (second, third rank mortgage holders and so on), it must be notified to them by way of announcement in two local newspapers by the giver or mortgage holder. However, apart from the two executions of collateral as mentioned above, there is another way, namely by taking over assets or collateral belonging to the debtor by the creditor (bank/financial institution providing credit) which is usually known as foreclosed collateral (AYDA). Article 20 paragraph (2) UUHT explains: "Under the agreement of the giver and the holder of the Mortgage, the sale of the object of the Mortgage can be carried out privately if in this way the highest price that benefits all parties can be obtained." In paragraph (3) "The implementation of the sale as referred to in paragraph (2) can only be carried out after the expiration of 1 (one) month after being notified in writing by the giver and/or holder of the Mortgage to interested parties and announced at least in 2 (two) newspapers circulating in the area concerned and/or local mass media, and no party has expressed any objections."

Based on this explanation, it must be ensured that the mechanism for transferring the AYDA mortgage rights must be carried out in a systematic manner as follows:

1. There is an agreement between the giver of the mortgage right and the holder of the mortgage right to sell the object of the mortgage right;
2. Must be with a selling nominal that is at the highest price and benefits both parties;
3. There is a written notification by the parties which is announced in two newspapers;
4. There was no statement of objection from any third party.

In the implementation of the AYDA in the field, there are often obstacles that can cause the implementation of the AYDA to be hampered and it takes 1 (one) year to 5 more years to complete the AYDA, even to the point where the process stops or gets stuck and in practice there are still many who do not follow the system set forth. regulated by UUHT. So this will cause legal uncertainty for the object of Mortgage Rights controlled by the bank so that it violates the aspect of Guarantee Law that guarantees cannot be owned by creditors. Based on the description of the background above, the author will discuss further with the title "Efforts and Legal Consequences of Executing Assets Taken Over (AYDA) by Banks Based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land".

2. RESEARCH METHODS

The research used by the author is normative research. The type of research in this study is the type of research for academic purposes, namely legal research methods that identify legal facts, eliminate irrelevant matters, and define existing legal issues for research for academic work. This study aims to examine the law as the norms and rules that apply in society. Primary legal materials are obtained or collected by the author from various existing sources such as documentation and literature studies. Obtained through books, documents, and especially the applicable laws and regulations relating to the issues to be discussed. The secondary legal materials used in this writing consist of: (1) books related to the legal issues at hand; (2) Research results/scientific work relating to the legal issues encountered; (3) Law magazines/journals/articles legal issues encountered; (4) Other materials related to the material. Tertiary legal materials, in this writing, are: Big Indonesian Dictionary; legal dictionaries; Encyclopedia; Newspaper.

3. RESULTS AND DISCUSSION

3.1 Legal remedies that can be taken if the implementation of the AYDA is not based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land

Legal remedy is an effort provided by law in certain cases to fight against a judge's decision for the parties, be it a person or legal entity who feels dissatisfied and is deemed not in accordance with what is desired. In its implementation legal remedies can be distinguished between ordinary legal remedies consisting of appeals and cassation. And extraordinary legal remedies consist of cassation and judicial review. The judge as one of the law enforcement officials has a duty as one of the determinants of case decisions. Decisions made by judges in court ideally do not create new problems in society. The quality of the judge's decision has an important influence on the community environment and affects the authority and credibility of the court institution itself. Judges in making decisions are only bound by relevant events or facts and legal principles that become or are used as a juridical basis.

Foreclosed Collateral is collateral between a creditor in the form of a bank and an individual debtor or company that enters into a debt agreement with collateral in the form of personal assets or land. In this debt-receivable activity, the collateralized land asset is in the form of an asset at the borrowing bank or creditor. Foreclosed Collateral are assets acquired by a bank for settlement of credit problems. Foreclosed Collateral can be carried out through auction or outside the auction, based on voluntary submission by the collateral owner or based on a power of attorney to sell outside the auction from the collateral owner in the event that the debtor has been declared insolvent. This AYDA is an option for banks in the context of solving credit problems as stipulated in the Financial Services Authority Regulation (POJK), so that if bad credit occurs, the bank can take over the collateral from the debtor. Article 12A paragraph (1) of the Banking Law stipulates that regarding the management of Foreclosed Collateral by commercial banks, it stipulates that commercial banks may purchase part or all of the collateral, both at auction and outside the auction, based on voluntary submission by the collateral owner or based on power of attorney outside the auction by the collateral owner, in the event that the debtor customer does not fulfill its obligations to the bank provided that the collateral purchased must be disbursed as soon as possible.

The concept of a AYDA legal event is of course that there are two subjects consisting of debtors and creditors in carrying out debt and credit activities with guarantees or collateral in them. The mechanism for executing the mortgage right can be through an auction of collateral items carried out by the creditor (bank) without the need for the debtor's approval if there is a breach of contract (default) as Article 6 jo. Article 20 paragraph (1) UUHT. However, the implementation of the AYDA in the field often experiences obstacles that can cause delays in the implementation of the AYDA and it takes 1 (one) year to 5 more years to complete the AYDA even to the point where the process stops or gets stuck and in practice there are still many who do not follow through. system regulated by UUHT. Legal remedies that can be taken if the implementation of the AYDA are not based on the UUHT are by means of ordinary legal remedies and extraordinary legal remedies. Ordinary legal remedy is an effort granted by law to a person or legal entity in certain cases against a judge's decision. Ordinary legal remedies are resistance to Verstek's decision, appeals and cassation. The exception is if the decision is handed down with the provision that it can be implemented first (uitvoerbaar bij voorrad, Article 180 HIR, then even though an ordinary legal remedy is filed, the execution will continue). Ordinary legal remedies are aimed at court decisions that have not been *incracht* / do not yet have definite legal force. In general, it only suspends



ordinary legal decisions except for iutvoerbaar bij voorraad. Open for any decision, during the time determined by law. The authority to use it is removed by accepting a decision. Ordinary legal remedies include: verzet, appeal, and cassation. Extraordinary legal remedies are aimed at incracht decisions. Extraordinary legal remedies include: judicial review and derden verzet. Ordinary legal remedies can only be carried out by the parties or their proxies. Extraordinary legal remedies can be made by the parties, their attorneys, heirs and third parties.

3.2 Legal Certainty of Mortgage Objects Controlled by Banks in Implementation of Foreclosed Collaterals for More Than 1 (One) Year

Bank Indonesia Regulation Number 13/26/PBI/2011 has determined that efforts to settle foreclosed assets are no later than 1 (one) year after taking over the collateral, it does not mean that each of these settlement processes will run smoothly, for example there are obstacles as previously explained . Basically the Mortgage Law provides convenience for creditors in accelerating the process of implementing foreclosed assets so that they do not exceed the stipulated time period in completing the settlement of their receivables if the debtor defaults. Taking over of collateral through the execution of the object of the Mortgage in practice is often opposed on the basis of unclear legal status of ownership of the collateral object, or the amount of the debt is uncertain (fixed). In several cases it was found that the settlement of bad loans through the execution of collateral objects of Mortgage based on executorial titles encountered obstacles and required a long time. In Decision Number 383/Pdt.G/2008/PN.Jkt.Bar. it was found that it took about 4 (four) years (October 1, 2007 to November 10, 2011) for the creditor to execute the Mortgage guarantee. This fact is certainly not in line with the objectives of the Mortgage Law, one of which states that the execution of Mortgage is carried out easily and surely. This of course will lead to legal uncertainty regarding the Mortgage object controlled by the bank because it exceeds the stipulated time period.

In the end, it will violate the legal aspects of the Guarantee Law, namely that collateral or collateral may not be owned by creditors. This legal aspect is in accordance with the provisions of Article 12 UUHT which states that a creditor is prohibited from automatically becoming the owner of a Mortgage object because the debtor defaults. Based on the Elucidation of Article 12 UUHT, this provision is intended to protect the interests of the debtor and other Mortgage providers, especially if the value of the Mortgage object exceeds the amount of the guaranteed debt. The object of Mortgage that is agreed to be owned by the Mortgage Holder is null and void by law. To protect the above legal aspects, then Article 12A of the Banking Law stipulates that banks can buy collateral through auctions or outside auctions based on voluntary submissions or based on the power to sell outside auctions if the debtor does not fulfill his obligations, provided that the collateral that has been purchased must be disbursed as soon as possible. The elucidation of this article states that the purchase of collateral by a bank is intended to expedite the settlement of the debtor's obligations. The bank is not allowed to own the collateral that has been purchased and must be resold as soon as possible so that the proceeds from the sale of the collateral can be used by the bank to settle the debtor's obligations.

The elucidation of this article states that the purchase of collateral by a bank is intended to expedite the settlement of the debtor's obligations. The bank is not allowed to own the collateral that has been purchased and must be resold as soon as possible so that the proceeds from the sale of the collateral can be used by the bank to settle the debtor's obligations. The elucidation of this article states that the purchase of collateral by a bank is intended to expedite the settlement of the debtor's obligations. The bank is not allowed to own the collateral that has been purchased and

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must be resold as soon as possible so that the proceeds from the sale of the collateral can be used by the bank to settle the debtor's obligations. Ownership of collateral by a bank at the time of implementation of Foreclosed Collateral that exceeds a period of 1 (one) year cannot be owned by that bank, although it is still controlled for the settlement of the debtor's obligations. Article 12A of the Banking Law is a form of legal certainty for Mortgage objects that are controlled by banks when implementing AYDA for more than 1 (one) year. The legal certainty in this regulation is to maintain the principle that the guarantee is not to own the goods, but guarantees that the debtor will carry out his obligations until they are paid off or if they fail, they can be sold as soon as possible to pay off the debtor's debt.

The implementation of the Foreclosed Collateral through a public auction is inseparable from the difficulties in finding a buyer for the object of the Mortgage Right to be executed through the auction. This difficulty causes more and more time needed to sell Mortgage objects. However, Article 78 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Guidelines for Auctions stipulates that the purchase of collateral by a bank is carried out by another party appointed later within a period of 1 (one) year from the date of the auction. If within a period of 1 (one) year has not found a buyer for the object of Mortgage to be auctioned, then the bank is determined as the buyer. This regulation provides legal certainty that in the absence of a buyer for the Mortgage object to be auctioned in the implementation of the AYDA, the bank is determined as the buyer. Implementation of Foreclosed Collateral by banks aims to accelerate the settlement of defaulted debtor obligations. One way is through the execution of collateral that has previously been guaranteed to creditors to obtain credit facilities. Creditors usually carry out execution through parate execution. Parate execution is carrying out the execution itself without the help or intervention of a court or judge.

In carrying out the execution of the object of guarantee, the creditor does not immediately carry out the execution of the execution, but first gives warnings in accordance with the customary law that applies in the practice of banking institutions. If the debtor does not carry out his obligations, then the parate execution step is carried out against the collateral object. You can pay attention to the provisions contained in Article 6 of the Mortgage Law, which stipulates that if the debtor defaults, the first mortgage holder has the right to sell the mortgage object under his own authority through a public auction, and collect the settlement of his receivables from the proceeds of the sale. In the elucidation of Article 6 of the Mortgage Law it is stated that the right to sell the object of the Mortgage on its own power is a manifestation of the priority position held by the holder of the Mortgage or the first Mortgage holder in the event that there is more than one Mortgage holder. This right is based on a promise made by the mortgagee that if the debtor defaults,

The remainder of the proceeds from the sale remains the right of the mortgagee. Thus it can be said that the right to sell the object of Mortgage over its own power is one of the manifestations of the priority position held by the holder of the Mortgage, or by the holder of the first Mortgage in the event that there is more than one Mortgage holder. Because Article 6 of the Mortgage Law gives the right to the Mortgage holder to be able to carry out parate execution, in other words, whether it is agreed upon or not agreed upon, that right by law belongs to the Mortgage holder. Therefore the Mortgage Certificate which is proof of the existence of the Mortgage Right granted by the Land Office and which contains the instructions "For the sake of JUSTICE BASED ON THE ONE ALMIGHTY GOD", has the same executorial power as a court decision that has



obtained permanent legal force. Parate execution Mortgage can be done directly without fiat court execution based on the Circular of the Agency for Accounts Receivables and State Auctions (BUPLN) Number SE-21/PN/1998 jo. SE-23/PN/2000 concerning Instructions for the Implementation of Article 6 Law Number 4 of 1996 concerning Mortgage Rights is in accordance with the provisions of Article 6 of the Mortgage Law which stipulates that creditors can carry out the execution of Mortgage rights with their own authority.

Implementation of parate execution is a protection for creditors so that in the process of granting credit, especially after the credit is realized and has been received by the debtor, the creditor is not harmed by the debtor who defaults, especially in carrying out the credit agreement, also to provide legal certainty for returning credit that has been made. given by creditors to debtors and legal certainty is one of the essential principles in a rule of law state. It can be said that creditors who obtain legal certainty in the expropriation of collateral through parate execution can speed up the process so that the implementation of Foreclosed Collateral does not exceed the stipulated time period, which is a maximum of 1 (one) year.

In implementing the Mortgage Execution Parate there are obstacles including juridical constraints and sociological constraints. The main juridical obstacle was the Supreme Court Decision Number 3021/K/Pdt/1984 (January 30, 1984) which stated that an execution which was carried out without seeking approval from the district court, even though it was based on Article 1178 paragraph (2) of the Civil Code, was an unlawful act and an auction which done is null and void. This has the potential to cause legal uncertainty. While the sociological obstacles are resistance through court proceedings, which is carried out by the debtor when he knows that the bank will carry out an execution attempt on land and or buildings that are collateral for credit and the bank's difficulties in finding buyers for the auction of land and buildings that are the object of the execution auction. Therefore, there is often resistance from the debtor which causes the process of implementing the foreclosed collateral through the execution of the Mortgage object beyond the specified time period, which is a maximum of 1 (one) year.

Apart from parate execution, other types of execution can be carried out by the bank as the creditor. Provisions regarding the type of execution of the Mortgage object as a whole are regulated in Article 20 of the Mortgage Law, namely Execution by Court Order (fiat execution) and Execution by private sale. Execution by Court Order (fiat execution) is contained in Article 14 paragraph (2) in conjunction with Article 20 paragraph (2) of the Mortgage Law. Banks can apply for court rulings (fiat execution) through district courts or religious courts (for sharia banks or sharia institutions) referring to the provisions of Article 14 of the Minister of Finance Regulation Number 27/PMK.06/2016 concerning Guidelines for Conducting Auctions. The practice of executing executions that are generally granted through a court order is the execution of guarantees as a result of a credit agreement between the customer and the bank. This is because in general debt and guarantees in credit agreements can be proven quickly and simply. In submitting an application for the execution of a Mortgage Certificate that is "FOR JUSTICE BASED ON THE ALMIGHTY GOD" to the Chairman of the District Court to be granted, the application should contain the following demands:

1. Doing a warning to the respondent (debtor) to fulfill the contents of the Mortgage Certificate;
2. If within 8 (eight) days of the reprimand, the respondent (debtor) neglects to do so, the Head of the District Court will carry out the Execution Confiscation of the collateral belonging to the respondent (debtor);

3. So that the Chairperson of the District Court determines the Execution Auction of the collateral object for repayment of the debt of the respondent (debtor).

Execution by selling under the hands contained in Article 20 paragraph (2) and paragraph (3) of the Mortgage Law. What is meant by offsetting is the sale of land that is used as collateral and is burdened with Mortgage Rights by the creditor himself directly to another person/interested party, but also assisted by the owner of the land and building in question. Sales under the hand can be done as long as this is agreed upon by the giver and the holder of the Mortgage, and by fulfilling the condition that the implementation of the sale under the hand can only be carried out after the expiration of 1 (one) month after being notified in writing by the giver and/or the holder of the Mortgage to interested parties and announced at least 2 (two) newspapers circulating in the area concerned and/or local mass media, and no party has expressed objections. This execution is intended to accelerate the sale of Mortgage objects and at high selling prices.

4. CONCLUSION

Legal remedies that can be taken if the implementation of the Foreclosed Collateral is not based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, namely ordinary legal remedies and extraordinary legal remedies. Ordinary legal remedies are resistance to verstek, appeal and cassation decisions. Extraordinary legal remedies are aimed at incracht decisions. Extraordinary legal remedies include: judicial review and derden verzet. Ordinary legal remedies can only be carried out by the parties or their proxies. Extraordinary legal remedies can be made by the parties, their attorneys, heirs and third parties. Legal Certainty of Mortgage Objects Controlled by Banks in the Implementation of Foreclosures of More Than 1 (One) Year, namely Mortgage Objects in principle cannot be owned by creditors as referred to in Article 12 of the Mortgage Law. To protect this principle, Article 12A of the Banking Law stipulates that collateral purchased by a bank must be resold as quickly as possible in order to pay off its receivables because banks are not allowed to own the collateral that has been purchased. This is an embodiment of legal certainty on the Mortgage object that is controlled by the bank in implementing the AYDA for more than 1 (one) year. Legal certainty in this regulation is to maintain the principle that the guarantee is not to own the goods, to repay the debtor's debt.



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