

The Juridical Review of Completion of Kupedes Bad Loans (General Rural Credit) With Mortgage Guarantees

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Abstract. *KUPEDES (Rural General Credit) is a credit facility provided by the Unit Office of PT. Bank Rakyat Indonesia (Persero) Tbk. to develop or improve viable micro, small and medium enterprises. This study aims to find out and analyze why there are bad kupedes (rural general loans) with guaranteed dependent rights at PT. Bank Rakyat Indonesia Persero Tbk. Unit Pengkol Jepara Branch Office. To find out and analyze the settlement of KUPEDES bad debts (Rural General Credit) with guaranteed dependent rights at PT. Bank Rakyat Indonesia Persero Tbk. Unit Pengkol Jepara Branch Office. This research is a type of empirical juridical research, with analytical descriptive research specifications, data collection methods in this study through observation and interviews with sources, as well as analyzing field materials and library materials. Meanwhile, the data analysis method in this study uses qualitative analysis methods. The occurrence of KUPEDES bad debts is caused by: 1) from the banking side: in conducting a less thorough analysis, collusion on the part of credit analysts, the bank does not spread credit risk, weak credit coaching and monitoring. 2) On the part of the debtor: the debtor has no will in the payment of installments, the use of credit funds is not in accordance with the purpose of use, the debtor's business cannot compete with the market. The completion of KUPEDES bad debts with the guarantee of dependent rights carried out by executing the object of dependent rights on the condition that in APHT and SHT there is a promise that the holder of the first dependent right has the right to sell on his own power the object of dependent rights, the creditor can execute the dependent rights object directly through the KPKNL.*

Keywords: Debts; Dependent; Rights.

1. Introduction

The national development that has been carried out so far is a continuous development effort in the context of creating a just and prosperous society based on Pancasila and the 1945 Constitution. economics and finance. Banking financial

institutions have an important role for economic development in Indonesia. This role is as an infrastructure for collecting funds and channeling public funds.¹

Rural general credit (KUPEDES) is credit given to develop or improve small businesses that already exist in rural areas, both businesses that have previously been assisted with mini or midi credit facilities and other types of credit as well as businesses from prospective customers. new. The purpose of the kupedes credit is to finance both investment and working capital needs in order to increase business in all sectors of the rural economy.²

The implementation of granting credit facilities from creditors to debtors is generally carried out by entering into agreements, because every credit that has been approved and agreed upon by the credit applicant must be included in the credit agreement. The agreement is the most important source that gave birth to an agreement on something concrete for an event. Based on Article 1338 of the Civil Code, every agreement must comply with the principle of good faith in its implementation because it is binding in nature as a law.³

Of course, the distribution of credit carried out by banks does not always go smoothly as desired, so that in practice the bank must be careful. Banks must be wise in providing loans or credit to the public so that in this case the bank must pay attention to the principle of distributing or extending credit.⁴

In practice, the loan agreement with collateral rights is made by the bank as the creditor, so that if the debtor defaults in paying off his debt to the creditor, the creditor has the right to execute the collateral object.⁵Mortgage rights are synonymous with guarantee rights, which when imposed on land with ownership rights, land with building use rights or land use rights, give the main position to certain creditors who will replace other creditors in the event that the debtor

¹Riskha Amaliya Lubis, and Maryanto. "Outcome Measures of Non-Performing Loans on BPR Sejahtera Klaten Of Central Java". Journal of Sovereign Law Vol 1, No 3 (2018). p.s. 779. url :<http://jurnal.unissula.ac.id/index.php/RH/article/view/3400/2509>accessed on 10 September 2018.

²Suyatno, Thomas. et al. (2003). Fundamentals of Credit. Tenth Edition. Jakarta: Gramedia Pustaka Utama. matter. 48.

³Lathifah Hanim, and MS. Norman. "Settlement of Bank Credit Agreements as a Result of Force Majeure Due to the Earthquake in Yogyakarta". Journal of Legal Renewal Vol 3, No 2 (2016). p.s. 161-162. url :<http://jurnal.unissula.ac.id/index.php/PH/article/view/1406>accessed 2 May 2016.

⁴Dhika Rachmat Pratama, and Amin Purnawan. "Default In And Credit Agreement And Implementation Of Solution Efforts (A Case Study Of Decision 336 / Pdt / G / 2016 / Pn.Smg)". Journal of Sovereign Law Vol 1, No 2 (2018). p.s. 345.url :<http://jurnal.unissula.ac.id/index.php/RH/article/view/3272>accessed 15 June 2018.

⁵Euis Listianti, and Umar Ma'ruf. "Criminal Law Protection Of Giving Rights Of Liability Is Not The Debtor". Journal of Sovereign Law Vol 1, No 3 (2018). p.s. 592.url :<http://jurnal.unissula.ac.id/index.php/RH/article/view/3342>accessed 3 September 2018.

(debtor) defaults or defaults on payments debt, in other words it can be said that the holder of the first mortgage is more preferable to other creditors.⁶

In granting loan facilities to debtors there is a potential threat called credit risk. For financial institutions such as banks, if bad credit is not resolved immediately, it has the potential to cause losses to the banks. Bad credit will have a negative effect on bank performance. In the financial industry, bad loans are also known as Non-Performing Loans (NPL). If the NPL percentage is not maintained and is outside the recommended limits, it will have an effect on the reputation of the bank when it will make funding to external parties and increase the cost of reserves for writing off receivables. Based on this, this study aims to find out and analyze how to settle bad credit KUPEDES (General Rural Credit) with guaranteed mortgage rights.

2. Research Methods

The approach method used in this study is an empirical juridical method. With research specifications in the form of descriptive analytical research. Methods of data collection in this study were carried out by means of observation, interviews, document studies and literature studies. Then in analyzing the data, this study used qualitative analysis methods.

3. Results and Discussion

Loans are categorized as non-performing loans or non-performing loans if the credit quality is classified as substandard, doubtful and loss collectibility. Non-performing loans or non-performing loans are the risks inherent in every credit given by a bank. This risk is in the form of a situation where credit cannot be returned on time. The classification of non-performing loans can be said if the debtor defaults or does not fulfill what was promised in the credit agreement. Classification of credit at PT. Bank Rakyat Indonesia (Persero) Tbk is carried out based on several categories, namely as follows:

a. Current (pass)

That is, if the payment is made by the debtor in a timely manner in accordance with bank regulations, both principal and interest installments.

⁶Oting Supartini, and Anis Mashdurohatun. "Legal Consequences of the Credit Agreement Deed Made by a Notary With Guarantee of Mortgage Rights There is Legal Certainty and Fairness of the Parties". *Journal of Legal Renewal* Vol 3, No 2 (2016). p.s. 204. urls :<http://jurnal.unissula.ac.id/index.php/PH/article/view/1443> accessed 2 August 2016.

b. With special mention

That is, if the payment made by the debtor is in arrears, both in installments of the principal and interest on the debt and has not exceeded 90 consecutive calendar days.

c. Substandard

That is, if the debtor is in arrears in credit payments, both principal installments and debt interest from arrears of more than 90 calendar days in a row.

d. Doubtful

That is, if the debtor is in arrears in credit payments, both principal installments and debt interest from arrears that exceed 120 calendar days in a row.

e. Jam (loss).

That is categorized as bad credit if the debtor is in arrears in credit payments, both principal installments and debt interest from arrears that have exceeded 270 consecutive calendar days.

If the debtor defaults on the implementation of the credit agreement, the bank does not immediately execute it, but still tries to take a persuasive approach to the customer. This approach is taken in order to obtain a peaceful resolution of non-performing loans without going through execution. Rescue of problem loans can be carried out by referring to Bank Indonesia Circular Letter Number 26/4/BPPP dated 29 May 1993 which in principle regulates the rescue of problem loans before they are resolved through legal institutions, namely through alternative handling by rescheduling, reconditioning, , and restructuring is as follows:

a. Rescheduling

Rescheduling is rescheduling part or all of the debtor's obligations. This is adjusted to the projected cash flows originating from the ability of the debtor's business which is experiencing difficulties.

b. Reconditioning Requirements

Reconditioning is an attempt by the bank to save the credit it provides by changing some or all of the conditions (requirements) that were originally mutually agreed upon by the debtor and creditor which are then set forth in the credit agreement.

c. Restructuring

Restructuring, namely the efforts of the bank to save the credit it provides by changing the terms of the credit agreement in the form of granting additional credit, or converting all or part of the credit into company equity which is carried out with or without rescheduling.

If efforts to save credit are not successful, the bank will make efforts to settle bad loans by executing the mortgage object (mortgage auction). The settlement efforts made by the BRI Pengkol Unit in overcoming the problem of bad loans whose collateral is in mortgages are as follows:

a. The BRI Pengkol Unit will remind the debtor verbally by visiting the debtor or using other means of communication regarding the delay in paying the loan principal and interest.

b. Routine billing at the debtor's residence by filling out model 152, a list of customer bad credit visits and reminding them of their debt obligations and asking for promises of payment.

c. Conduct coaching and provide model 61 so that it can provide understanding to the debtor to immediately pay off his credit debt.

d. If the debtor is unable to pay the principal of the loan, efforts are made to pay interest on the loan so that the collectability of the loan does not change.

e. The BRI Pengkol Unit forms a special team to deal with arrears and bad loans by re-recording problem debtors and conducting visits and billing as well as providing an explanation of the legal consequences and legal remedies that occur if the debtor does not complete these obligations.

f. If the debtor does not heed the notification, the bank will give a subpoena/reprimand to the debtor who is in arrears in credit payments containing:

1) Notification regarding the maturity of payment of interest and/or principal of credit

2) An order to pay a debt of a certain amount at the request or notification of the bank.

3) Deadline for the debtor to make payments

The warning is carried out by giving a warning letter 1 (SP 1) which is sent to the

debtor. If warning letter 1 (SP 1) is not responded to by the debtor, 7 days later the bank will continue giving warning letter 2 (SP 2). If warning letter 2 (SP 2) is also not responded to, continue with warning letter 3 (SP 3).

g. If up to warning letter 3 (SP 3) the debtor does not carry out his obligations to the Bank, the matter will be pursued through legal channels, namely by submitting files to the State Assets and Auction Service Office (KPKNL).⁷

All credit loans that are experiencing congestion and there is no good will from the debtor to settle them, the collateral can be auctioned in accordance with the proposal from the Head of the Bank Rakyat Indonesia Branch, Jepara Branch Office to the KPKNL, there is no specific limit to the amount that can be auctioned by Bank Rakyat Indonesia, only procedures and the auction mechanism is different. However, auctions for guarantees with a ceiling below 50 million are rarely carried out and prioritize amicable settlement. In connection with the implementation of the auction, Bank BRI Pengkol Unit will carry out an initial inventory and verification related to the auction of mortgage objects that will be requested for auction from the KPKNL, then the auction request will be examined by the KPKNL within 14 days from receipt of the auction request to the KPKNL.

- a. Proof of debtor default, in the form of warning letter 1 (SP 1) to warning letter 3 (SP 3) made by the Bank.
- b. Copy of proof of details of the amount of debt that must be fulfilled by the debtor
- c. Copy of credit agreement
- d. Copy of mortgage certificate
- e. Copy of certificate of ownership (SHM) as proof of ownership of the right.
- f. Copy of notification of the auction plan to the debtor by the creditor, submitted no later than 1 day before the auction is held.

In carrying out the auction execution carried out by the KPKNL, the following matters must be considered:

- a. The Deed of Granting Mortgage Rights (APHT) must contain a promise that if the debtor defaults, then the holder of the first mortgage has the right to sell the object of mortgage on his own authority through a public auction and collect the

⁷Interview with Mrs. Lailin Nikmah, Mantri BRI Pengkol Unit, 20 July 2022.

settlement of his receivables from the proceeds of the sale.

- b. Acting as the bidder is the creditor holding the first mortgage right.
- c. Implementation of the auction through the Office of State Assets Services and Auctions.
- d. The announcement of the auction follows the procedure for announcing an execution auction.
- e. No debtor's approval is required for the auction
- f. As far as possible, the auction limit value is determined by the appraiser
- g. The implementation of mortgage rights auctions can involve auction halls in pre-auction services.

Furthermore, the announcement of the auction as regulated in Article 20 of Minister of Finance Regulation Number 40/PMK.07/2006 contains at least:

- a. Seller identity
- b. Day, date, time and place of auction
- c. Location, land area, type of land rights, and presence/absence of buildings, specifically for immovable property in the form of land and/or buildings
- d. Number and type/specific specification for movable property
- e. Time period to see the items to be auctioned
- f. Auction bid security deposit includes the amount, time period, method and place of deposit, in the event that a bid bid security deposit is required
- g. Auction price payment term
- h. The limit price, insofar as it is required in statutory regulations or at the will of the seller/owner of the goods.⁸

⁸Interview with Mr. Addy Kurniawan, SPV BRI Pengkol Unit, 20 July 2022

The execution of mortgage rights is regulated in the Mortgage Law in a systematic and integrated manner. Provisions regarding the type of mortgage execution as a whole are regulated in Article 20 of the Mortgage Law. In these provisions, three types of execution of mortgage rights are regulated, namely:

a. *Parate* Execution (Direct Execution) of Mortgage Objects

Parate the execution of mortgage rights is regulated in Article 20 paragraph (1) a of the Mortgage Law, Article 6 and Article 11 paragraph (2) e of the Mortgage Law. According to Article 20 paragraph (1) a jo. Article 6 of the Mortgage Law, if the debtor defaults, the creditor holding the first mortgage has the right to sell the object of mortgage on his own power through a public auction and collect the settlement of his receivables from the proceeds of the sale. The execution procedure referred to in Article 20 paragraph (1) a of the Mortgage Law jo. Article 6 of the Mortgage Law requires a promise that the holder of the first Mortgage Right has the right to sell the mortgage object under his own authority if the debtor defaults as stipulated in Article 11 paragraph (2) e of the Mortgage Law.

b. Execution With the Help of the Judge Object Mortgage

Execution with the help of a Judge on the object of Mortgage is regulated in Article 20 paragraph (1) b jo. Article 14 paragraphs (2) and (3) of the Mortgage Law. The execution procedure with the help of a Judge referred to in Article 20 paragraph (1) b of the Mortgage Law is in the form of an application for execution by the creditor to the Chairperson of the District Court, then the District Court carries out the execution as carrying out the execution of an ordinary Judge's decision which has reached definite legal force. The execution was carried out on the Mortgage Certificate which contained the *irah-irah* with the words "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD". Such Mortgage Certificates have executorial powers as court decisions, as stipulated in Article 14 of the Mortgage Law and its explanation.

c. Execution of Sales Under the Hand of Mortgage Objects

The execution of underhand sales of mortgage objects is regulated in Article 20 paragraph (2) and (3) of the Mortgage Law. The procedure for executing private sales can be carried out if the requirements set out in Article 20 paragraphs (2) and (3) are met. This requirement is that there is an agreement between the giver and the mortgage holder that the private sale of the mortgage object will obtain the highest price that benefits all parties. In other words, private sales are carried out when it is estimated that sales through auctions or sales in public through

execution or execution with the help of judges referred to in Article 20 paragraph (1) a and b UUHT will not reach the highest price.⁹

In this study, the theory of legal protection is used to analyze how to settle bad credit KUPEDES (General Rural Credit) with guaranteed mortgage rights.

Talking about the issue of legal protection, it can be noted the opinion expressed by Satjipto Raharjo who states that Legal protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is various legal remedies that must be given by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party.¹⁰

The form of legal protection given to creditors when the debtor defaults in a credit agreement with mortgage guarantees is initiated by the process of binding the credit agreement with mortgage guarantees, namely by making a credit agreement with a clause granting mortgage rights where the mortgage binding agreement is an *accessoir* agreement that follows principal agreement. Article 10 paragraph (1) of the Mortgage Law states that: "the granting of a mortgage is preceded by a promise to provide a mortgage as a guarantee of certain repayment as set forth in and is an integral part of the debt agreement in question or other agreements that give rise to the debt". The next process is the making of the Mortgage Deed (APHT) by Land Deed Making Officer (PPAT) where this is stated in Article 10 paragraph (2) of the Mortgage Law which states that: "the granting of mortgage rights is carried out by making a Deed of Granting Mortgage Rights by the Land Deed Making Officer in accordance with the applicable laws and regulations." In the Deed of Encumbrance of Mortgage (APHT) it is mandatory to include promises to protect creditors contained in Article 11 paragraph (2) of the Mortgage Law as a mandatory characteristic of the validity of the Deed of Encumbrance of Mortgage (APHT) to fulfill the special principle of mortgage rights but if it is not stated completely, it can be null and void by law. After the collateral binding process, the process of imposing mortgage rights is carried out through two stages, namely the first stage is the registration of mortgage rights. Then the second stage is the issuance of mortgage rights.¹¹

⁹Yulia Risa. "Legal Protection Against Creditors For Debtor Defaults In Credit Agreements With Mortgage Guarantees". Normative Journal Vol 5, No 2 (2017). p.s. 88-89. url :<https://ojs.unitas-pdg.ac.id/index.php/normatif/article/view/230> accessed 2 November 2017.

¹⁰Rahardjo, Satjipto. (2000). Legal studies. Bandung: PT. Image Aditya Bakti. matter. 74.

¹¹Putu Ikaputri Ayu Paramitha, Marwanto, and I Nyoman Darmadha. "Legal Protection for Creditors in Credit Agreements with Mortgage Guarantees (Study at Bank BNI West Gatsu Branch). Journal of Law Studies Vol 1. No 12 (2013). p.s. 6. urls :

Furthermore, the legal protection provided by the Mortgage Law to creditors is listed in Article 14 Paragraph (1) of the Mortgage Law, it is stated that as proof of the existence of mortgage rights, the Land Office is required to issue a mortgage certificate in accordance with applicable laws and regulations. The mortgage certificate contains irah-irah with the words "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD". Thus it has the same executive power as a court decision that has obtained permanent legal provisions and applies as a substitute *grosse acte* mortgage insofar as it concerns land rights. So the irah-irah listed on the mortgage certificate is intended to confirm the existence of executorial power on the mortgage certificate, so that if the debtor defaults (default),¹²

4. Conclusion

Settlement of KUPEDES bad credit (Rural General Credit) with mortgage guarantees at PT. Bank Rakyat Indonesia Persero Tbk. Pengkol Unit of Jepara Branch Office among others: a. Efforts to rescue problem loans through alternative handling by rescheduling, reconditioning, and restructuring, credit rescue certainly requires good faith from the debtor, and the debtor is willing to follow the conditions determined by the bank. b. If efforts to save credit are not successful, efforts will be made to settle bad loans by executing the mortgage object. The creditor can execute the mortgage object provided that in the Deed of Mortgage (APHT) there is a promise that the holder of the first mortgage has the right to sell the mortgage object under his own authority. With the promise to sell on their own power listed in the Mortgage Deed (APHT) and Mortgage Certificate (SHT), then if the debtor defaults, the creditor can execute the object of Mortgage directly through the State Auction Office (in this case the Public Service Office). State Assets and Auctions/KPKNL).

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¹²Helmi Akbar Jungjunan, and Fauzie Yusuf Hasibuan. "Implementation of Parate Execution of Mortgage Rights by Venture Capital Companies. Journal of Notarial Nuances Vol 1. No 2 (2016). p.s. 56. url:http://ejournal.jayabaya.ac.id/index.php/Nuansa_Notariat/article/view/153 accessed 18 May 2016.

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