

The Settlement of Non-Definite Loans through the Execution of Collateral Rights

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Abstract. *The objective of this study is to discover and analyze the Settlement of Bad Credit Through Executing Mortgage Guarantees at PT BPR Gunung Rizki in the city of Semarang, as well as to discover and analyze the obstacles faced in setting up bad loans through executing mortgage guarantees, as well as how to overcome the obstacles encountered in Settlement of bad debts through the execution of collateral rights. The research method used in this thesis is a sociological juridical legal research method, and the research specification employs descriptive analysis. The primary data used in this study is the 1945 Constitution, Act No. 4 of 1996, Mortgage law, Civil Code (KUHPdata), Criminal Code (KUHP), and secondary data containing books and other supporting documents collecting research data by interview techniques and study of documents or library materials. The data analysis method used in this study is an interactive qualitative model as proposed by Miles and Huberman. The results of the study show that the settlement of bad loans through the execution of mortgage guarantees at the bank has procedures, terms and conditions from the time the debtor submits a credit application until the credit that has been given by the bank is paid off. Settlement of bad debts through the execution of mortgage guarantees is regulated in Act No. 4 of 1996 concerning the Mortgage Act (UUHT).*

Keywords: Credits; Execution; Guarantees; Mortgage; Right.

1. Introduction

In the increasingly rapid economic development in Indonesia, people will need funds for their daily needs so that banks make efforts to extend credit to customers. At the beginning of the granting of credit was carried out with a principal agreement by the creditor to the debtor by mutual agreement. In the

main agreement can be done with an authentic deed by an authorized official (notary) or with an underhand agreement. Banks as creditors in carrying out credit analysis cannot escape credit principles which aim to find out the history of the debtor's financial condition and the debtor's reasons for applying for credit to obtain funds. Banks in extending credit will ask for a guarantee because in anticipation of reducing risk if the debtor cannot fulfill his obligations which results in bad credit or default, what banks often do when requesting collateral is usually in the form of land and or buildings that are bound by mortgage rights in accordance with laws and regulations applicable.

According to Act No. 4 of 1996 concerning mortgages that have permanent and strong executive power in terms of carrying out the execution, in addition to the easy implementation of executions, another reason for using mortgage rights is because of a position that takes precedence over creditors who have mortgage rights. Based on article 51 of Act No. 5 of 1960 that rights that can be burdened by mortgage rights are Property Rights (HM), Building Use Rights (HGB), and Business Use Rights (HGU). Mortgage rights in the form of land and including objects on it are intended as repayment of a certain debt, which creates rights and obligations that must be fulfilled by each of the parties concerned. The debtor must be obliged to pay installments to pay off debts to creditors according to a mutual agreement within a predetermined time. The thing that is often done by debtors is that in making debt payments they cannot fulfill their promises or defaults, giving rise to bad credit.

2. Research Methods

The research approach method used in writing this thesis is a sociological juridical research approach. Sociological juridical research emphasizes research that aims to obtain legal knowledge empirically by going directly to the object. The specification of this research uses descriptive analysis, namely research that besides providing an overview, writing and reporting an object or an event will also draw general conclusions from the problems discussed. Source of data comes from primary data and secondary data. Data collection methods include interviews, document studies or library materials ¹as proposed by Miles and Huberman.

3. Results and Discussion

3.1. Settlement of Bad Debt through Execution of Mortgage Guarantees

In the implementation of loans guaranteed by mortgage rights, there are several procedures and conditions, as for the conditions that must be met from the time the customer's application is submitted until the credit granted by the bank is paid off. After the requirements at the bank have been met, there will then be

¹Bambang Sugugono, *Legal Research Methods*, PT Raja Grafindo Persada, Jakarta, 2003, p. 119.)

conditions from the registration process for the Mortgage at the Notary to be submitted at the BPN.

In the Deed of Granting Mortgage Rights (APHT) it is explained that special conditions consist of the name and identity of the holder and giver of the mortgage right, the domicile of the parties, a clear designation of the debt or debt that is guaranteed for repayment with the mortgage right, and a clear description of the object of the mortgage right. After it has been done and the APHT deed has been signed by both parties, in order to fulfill the publicity requirements, the APHT must be registered at the local land office. The registration process must be carried out no later than 7 (seven) days after the APHT deed is signed.

A guarantee has a very important position and benefits in supporting economic development. Because the assets of this institution can provide benefits for creditors and debtors, benefits for creditors can create security for closed trade transactions, and can also provide legal certainty for creditors.

The credit agreement made by a notary provides legal certainty for the parties, namely the bank as the creditor and the customer as the debtor. This legal certainty guarantees the rights and obligations of each party in the credit agreement as stated in the authentic deed. Remembering that an authentic deed made by and before a notary is a perfect proof tool.

The main risk faced by banks in extending credit to debtors is the occurrence of bad credit caused by debtors who are unable to fulfill their obligations to pay off their debts to the bank. Therefore, in preventing bad credit, banks in channeling credit must be more careful and careful about the debtor's ability to pay off his credit/debt that has been given by the bank. It is recommended that banks, before giving credit to prospective debtors, conduct a credit analysis based on banking principles, namely:

1. character

A certain character is related to the nature of the debtor who must have good faith and have a high commitment to returning all of his obligations in accordance with the agreement that has been signed between the debtor and the bank as the creditor. The character of the debtor is beyond doubt and is not flawed or reproached. As an example of a description of some of the characteristics of a prospective debtor that will determine characters such as:

- a. Age, education, status, health;
- b. Emotional control;
- c. Association, environment, relations, socialization;

- d. Good/bad hobbies;
- e. Good/bad habits;
- f. Responsibility for obligations to all related parties;
- g. And others.

2. Capital

The debtor's business capital, initial capital, debt capital, profits, and reserve funds, will determine the percentage of the business owned by the debtor.

3. capacity

Analysis of management's ability to manage a business so that the debtor can generate profits and be able to pay all obligations in the present and in the future.

4. Collaterals

Collateral assessment is carried out to assess the degree to which the marketability of the collateral object is marketable, the easier the asset is to be traded, the lower the bank's risk level.

5. Condition

Analysis of conditions includes economic (micro and macro) both national, regional and international, politics, legislation, and others. The impact on the debtor's ongoing business is seen for the present and the future.

If it is said that a debtor lies and commits fraud or incompetence, credit will not work without other factors. a credit must have a guarantee because the bank will ask for mortgage rights to be used as a credit guarantee. Mortgage rights have a priority that lies in the execution. It has been regulated in Act No. 4 of 1996 concerning Mortgage Rights, as such mortgage rights will give priority positions to certain creditors over other creditors. The definition of a certain creditor is the one who obtains or becomes the holder of the mortgage right. In the event of default, the creditor holding the mortgage right has the right to sell through a public auction the land used as collateral according to the relevant statutory provisions.

The giver of the mortgage right is expected to appear before the Land Deed Making Officer (PPAT). If the grantor of the right cannot be present, then he must appoint another party as a proxy by making a Power of Attorney for Imposing Mortgage Rights (SKMHT), which is in the form of an authentic deed. In making SKMHT, it can be carried out by a Notary or PPAT whose existence reaches the sub-district area to facilitate services to those who need it. The birth

of the mortgage right when it has been recorded in the land book at the land office. Therefore certainty regarding the registration of mortgage rights is very important for creditors. This moment does not only determine the priority position in relation to other creditors who are also holders of mortgage rights, with the same land as collateral.

According to the Mortgage Law (UUHT) it has been explained that the Mortgage is a strong guarantee institution for land rights, while its characteristics are as follows:

- a. Giving priority or prior position to the holder.
- b. Always follow the object that is guaranteed in the hands of whoever the object is.
- c. Fulfill the principle of speciality and publicity so that it can bind third parties and provide legal certainty to interested parties.
- d. Easy and sure implementation of execution.

Based on the explanation above, the mortgagee must be present before the PPAT, if due to something that causes him to be unable to attend, he must appoint another party as his attorney through an authentic Power of Attorney for Imposing Mortgage Rights (SKMHT). SKMHT making itself is made by a notary or PPAT whose existence reaches the sub-district area in order to facilitate services to parties in need. In fact, there are still notaries who do not make APHT after the implementation of the SKMHT. For certain loans, for example micro loans, where the loan is less than 50 million, sometimes the collateral binding is limited to SKMHT without being upgraded to APHT, until the end of the credit period. Thus it can be analyzed in article 15 paragraph (2) of Law no.

Based on article 15 paragraph (3) and paragraph (4) of the UUHT, which stipulates that the Power of Attorney for Imposing Mortgage Rights (SKMHT) must coincide with the making of APHT, namely for land that has been registered and for land that has not been registered no later than 1 month after the issuance of SKMHT. . Exceptions to these provisions are for certain species. These types of credit are regulated in the Regulation of the State Minister for Agrarian Affairs/Head of BPN Number 4 of 1996 regarding the Determination of Time Limits for the Use of Power of Attorney Imposing Mortgage Rights to Guarantee the repayment of certain credits.

In fact, in addition to the credits mentioned above, if in the making of a Power of Attorney for Imposing Mortgage Rights (SKMHT) without being accompanied by the Deed of Granting Mortgage Rights (APHT), then the mortgage rights that are made collateral in granting credit become invalid mortgage rights. or cancel, so that the credit can not be implemented. However, if the mortgage that has been guaranteed is in the process of granting credit which is charged by SKMHT but

APHT is still not made, then the executive power of the mortgage is said to be non-existent because the imposition of mortgage rights is invalid. Apart from that, there are also cases regarding the imposition of mortgage rights on land that has not been certified, in practice the bank has never done it by making APHT directly on land that has not been certified. In this case the bank is only limited to making SKMHT. The law considers if APHT is not made for the lands that are registered because there is a possibility that the ownership of land rights is unclear. In practice, the notary/PPAT always makes SKMHT in accordance with Article 15 paragraph (4) of the UUHT to bind guarantees for uncertified lands that will be used as collateral. This is what creates obstacles because certification requires a process for a period of 3 (three) months or even up to 1 (one) year.

For example, such as the natural disaster of Mount Merapi, conditions such as tsunamis, earthquakes caused by nature and causing debtors to have difficulty paying their credit because their land was destroyed due to natural events. This will be the bank's risk for bad credit caused by unexpected natural events. Usually a guarantee will be given a coverage or insurance to reduce the risk that will occur. This insurance can reduce credit problems and the existence of a credit restructuring, namely by reducing the credit limit. Even though the mortgage is said to have been destroyed due to a natural event, the credit continues and the collateral for the mortgage that has been destroyed is replaced by insurance and credit reduction is carried out.

There is also the problem of the land that is used as the object of the mortgage that is affected by natural disasters such as earthquakes, landslides, tsunamis, this causes problems because the object of the mortgage is destroyed. So that the position of the mortgage certificate becomes unclear, and for the holder of the mortgage right, namely the bank will suffer a loss if the debtor cannot pay off his credit debt, the bank cannot execute the guarantee because the mortgage right in the form of land has been destroyed due to a natural disaster. It has been regulated in article 18 paragraph (1) of the Mortgage Law that it is explained that the mortgage is deleted because the debt secured by the mortgage is removed, the mortgage right is released by the mortgage holder,

It has something to do with the abolition of the mortgage due to an overmarcht situation which resulted in the object of the mortgage being destroyed which is not regulated in Article 18 of the UUHT or in other articles of the UUHT. Such a situation will lead to a vacuum of norms (*leemten van norm*) in the UUHT. So that it can be said that there is an administrative legal defect, therefore the executive power of a mortgage certificate whose object is destroyed due to a natural disaster is deleted. The abolition of the executive power of the mortgage certificate is caused by the abolition of the mortgage right because the object of the mortgage has been destroyed due to a natural disaster.

Legal protection for creditors as holders of mortgage certificates in the event of the destruction of all mortgage objects is legal protection that is preventive and repressive in nature. Preventive legal protection is carried out by including a clause that the object of mortgage must be insured in the APHT, so that creditors and debtors have an obligation to insure the object of mortgage. So that if a natural disaster occurs which causes the object of mortgage to be destroyed, then the insurer will pay for the losses arising from the event. Repressive legal protection that can be given to creditors as holders of mortgage rights certificates is the payment of claim money to creditors by the insurer as a substitute for debtor credit payments,

In practice, cases such as a guarantee submitted to the bank do not actually belong to the debtor himself but to a third party, in this case, parents, children, siblings, inherited land, etc. As time went on, the debtor's problem arose, namely bad credit, but the mortgage holder did not want his land to be executed by the bank. Thus it will not affect the implementation of the execution and will still be carried out, because from the beginning the signature of the credit agreement the collateral owner also signed the credit agreement, and of course the bank has explained to the parties concerned that in the end a mortgage guarantee must be executed. Therefore the mortgage right has the same executorial power as a Court decision which has permanent legal force and is valid as a substitute for the grosse deed of mortgage insofar as it concerns land rights. The executive power of mortgage rights in UUHT has 2 (two) ways to implement them, namely by direct execution which is also called "parate execution" (parate execution), where execution can be carried out directly by the creditor without any fiat assistance or determination and or assistance from the court . In accordance with the wording of article 6 UUHT which explains that "The holder of the First Mortgage Right Has the Right to Sell Objects of Mortgage on Their Own Power Through a Public Auction", in which Article 6 has given authority to the holder of the first Mortgage Right to sell on their own power. As well as execution through executorial titles which are carried out with reference to the provisions of article 224 Het Herziene Indonesia Regulation (HIR) / 258 Regulation tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madura (RBG). The contents of article 224 HIR/258 RBG explain that for a letter listed as irah-irah which reads "In the Name of Justice" thus the letter has the same power as a judge's decision which has definite and permanent legal force to carry out its execution if it is not complied with peaceful way, finally carried out by order and leadership of the Chairman of the District Court, in whose hands the debtor is silent or stays or chooses his position. The execution of this mortgage right does not need the creditor to sue the debtor, however, it is sufficient to submit an application for execution to the chairman of the court by enclosing evidence of the debtor's default accompanied by a certificate of mortgage rights. On that basis, the chairman of the court will issue a decree on execution and execute the object of

mortgage being requested for execution. The execution will be carried out on orders and with the leadership of the Head of the District Court, through a public auction conducted by the KPKNL.

Executorial power in this case is owned by the mortgage certificate in carrying out the execution of the mortgage on the deed that has been made by a notary which is permanent and has legal force, because the implementation of execution through auction is the same as a court decision that has permanent legal force. This is evident in the irahs which read "For the sake of Justice Based on Belief in the One and Only God". In implementing these executive powers UUHT provides 2 (two) ways, namely through direct execution in accordance with Article 6 UUHT and through executorial titles regulated in article 20 paragraph (1) UUHT. Even though there are demands from third parties, in this case the guarantee owner, the execution is still carried out according to what has been signed by the parties concerned because it has been agreed upon at the beginning of the credit agreement, both to the debtor and to the guarantor. However, in certain conditions for the executive power of mortgage rights such as natural disasters such as landslides, earthquakes, the mortgage rights become null and void because the mortgage rights that are used as collateral are destroyed. Meanwhile, in making SKMHT which is not accompanied by APHT, the executorial powers are nullified because the implementation of the mortgage rights in question is invalid.

Banking institutions in extending credit to their customers certainly have the hope of getting optimal benefits and if customers are carrying out their obligations / paying their credit there will be no congestion or non-performance. But in reality, banks often encounter problems regarding bad loans made by customers, so this can cause the bank to suffer losses because the customer does not carry out his obligations on time and does not run smoothly. Banks as creditors in extending credit to customers do not always go well without any obstacles, so that banks in providing credit to customers usually do not escape from what is called a guarantee or collateral (collateral), because this will be made as a credit guarantee that has been received by the debtor. The form of the collateral is generally in the form of land and buildings that are bound by mortgage rights, where this has been regulated in Act No. 4 of 1996 dated April 9, 1996, which explains that "Mortgage over Land and Objects Related to Land ". If a debtor has broken a promise (default), then it can be said to be a default, because in this case the debtor has not fulfilled what was promised in the credit agreement. The credit classification can be divided into several categories, namely: If a debtor has broken a promise (default), then it can be said to be a default, because in this case the debtor has not fulfilled what was promised in the credit agreement. The credit classification can be divided into several categories, namely:

a. Pass

Debtors in making timely payments, both debt principal installments and debt interest, in accordance with bank regulations.

b. Special Mentions

The debtor is in arrears in making credit payments, so that is of particular concern, both principal installments and debt installments and have not exceeded 90 (ninety) calendar days in a row.

c. Substandard

Delinquent/delinquent debtors in credit payments, both principal installments and debt interest from overdue periods of more than 90 (ninety) calendar days in a row.

d. Doubtful

The debtor is in doubt because he is in arrears in payment of credit, both principal installments and interest on the debt from arrears that exceed 120 (one hundred and twenty) consecutive calendar days.

e. Bad Credit

The debtor has been in arrears in credit payments, both principal installments and debt interest installments from the arrears that have exceeded 270 (two hundred and seventy) calendar days consecutively.

Steps of banking institutions in overcoming the settlement of bad loans, if there is a problem in credit payments made by customers, the bank will make efforts to settle bad loans with the provisions set by Bank Indonesia. The first is done by the bank with a verbal reprimand/invoice to make credit payments, if there is no good development, then the debtor will be given a subpoena/reprimand by the bank, because there has been arrears in credit payments, namely in the form of;

- a. Notification of the due date of payment of principal and interest on the loan
- b. An order to pay the debt with a certain amount according to the bank's request or notification
- c. Deadline for the debtor to make further payments.

Summons/reprimands will be made by the bank to the debtor 3 (three) times in a row and if there is no good faith from the debtor to pay the credit, then the bank as the creditor will make efforts to save the credit by means of a persuasive nature with a deliberative approach to the debtor .

To save problem loans, of course, it must be in accordance with Bank Indonesia Circular Letter Number 26/4/BPPP dated 29 May 1993 which basically regulates the rescue of problem loans before being resolved through legal institutions by means of restructuring, namely through alternative handling by:

a. Rescheduling

This method is done to adjust the tenor of the loan so that you can repay credit payments. The bank will extend the loan tenor from debtors who experience bad credit. This is done so that the installments that must be paid can be lighter, the extension of the tenor is also adjusted to the ability of the debtor to pay.

b. Restructuring

The second way is by restructuring or changing the terms of the loan, which includes changing the payment schedule, term and other requirements. This return requirement can be carried out on condition that it does not change the maximum credit limit.

c. Reconditioning

The third way is to reorganize, through the efforts of the bank by changing credit conditions in order to ease the responsibilities of debtors who are caught in bad credit.

This is done by adding a credit facility, converting arrears into a new credit principal, and until rescheduling and requirements are carried out. The last effort made by the bank in overcoming bad loans is by executing the object of mortgage as stipulated in Article 20 of the Mortgage Act (UUHT), which explains that:

a. If the debtor defaults, then based on:

- 1) The right of the first Mortgage Holder to sell the object of Mortgage as contained in article 6
- 2) Executorial title contained in the mortgage right certificate as contained in article 14 paragraph (2)

Based on the agreement of the mortgage right, the sale of the mortgage object can be carried out privately, if this will get the highest price and benefit the parties using the method of execution contained in Article 20 paragraph (1) letter a regarding execution *parate*, as regulated under article 6 of the Mortgage Law, which explains that:

"If the debtor is unable to carry out his obligations or is in default, 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 receivables from the proceeds of the sale."

According to article 6 of the Mortgage Law (UUHT) mentioned above, the executor has the authority to carry out direct execution, so there is no need to request a determination or fiat of execution from the court first. As we already know that from the words contained in the sentence declaring the right to sell on

one's own power, this already gives a signal that the bank as the creditor holding the mortgage right must be prioritized. For executions that can be carried out directly without any assistance from the court, this execution is called parate execution (direct execution). In Subekti's opinion regarding parate execution is to carry out alone or take what is rightfully his own, in the sense that without intermediary judges,²The basis for carrying out direct execution or parate execution is from article 6 that has given authority to the mortgage holder to sell the object of mortgage on his own power through a public auction if the debtor has broken a promise or default, this authority is strengthened by a promise in the Deed of Bonding Mortgage (APHT), which explains that: "the holder of the first mortgage right has the right to sell on his own authority the mortgage object if the debtor defaults or defaults". The execution of the auction on the part of the bank must submit an application for the execution of the mortgage rights in writing in advance to the State Wealth and Auction Service Office (KPKNL), accompanied by documents for the auction requirements, namely in the form of:

- a. Evidence that the debtor has broken a promise (default), by attaching the first to the third warning letters.
- b. Copy of detailed proof of the amount of debt that must be met by the debtor.
- c. Copy of credit agreement.
- d. Copy of Mortgage certificate.
- e. Copy of Property Rights Certificate (SHM) as proof of ownership of the right to carry out an execution auction conducted by the State Assets and Auction Service Office (KPKNL), which is in accordance with the Minister of Finance regulation Number 93/PMK.06/2010 regarding auction implementation instructions which states that the Wealth Service Office State and Auction (KPKNL), is a government agency under the Directorate General of State Assets at the Ministry of Finance whose job is to organize auctions.

4. Conclusion

Settlement of bad credit through the execution of guarantees of mortgage rights based on the deed that has been made by a notary has permanent legal force. The implementation of auction execution is the same as a court decision that has permanent legal force, because the certificate of mortgage rights has stated an irah-irah which reads "For the sake of Justice Based on Belief in the One and Only God". However, for certain circumstances, the executive power of the mortgage right in the event of a natural disaster or landslide, the mortgage right becomes null and void due to the destruction of the mortgage that is used as collateral. Meanwhile, in the case of making an SKMHT which is not accompanied by an

²Subekti, Implementation of Engagement, Real Execution and Forced Money, In: Discovery of Law, and Solving Legal Problems, (Jakarta Judicial Technical Development Project, MARI, 1990), p. 69.

APHT, the executorial powers are also abolished due to the invalid implementation of the mortgage rights in question. Obstacles that occur in the process of resolving bad loans are debtors with bad intentions where according to the results of evaluation and identification carried out by creditors, it is known that the debtor is actually able to fulfill his obligations to complete his credit to the bank as a creditor, but the debtor deliberately does not resolve his credit problems or deliberately run away. Also, the debtor experiences economic problems, where the debtor cannot manage his business resulting in a failure which causes the debtor to have difficulty fulfilling his obligations to resolve his credit problems to the bank as a creditor. As well as the settlement of bad loans that must be carried out in the future is still referring to Act No. 10 of 1998 concerning Amendments to Act No. 7 of 1992 concerning Banking, 26 Bank Indonesia Regulation Number 14/15/PBI/2012 concerning Assessment Quality of Commercial Bank Assets and provisions on the banks themselves. Because the settlement of bad credit that is currently being carried out, namely by using guarantee execution by auction by the District Court and the KPKNL, is felt to be quite efficient, because banks in choosing collateral for a credit loan, choose a guarantee that can be executed with permanent legal force, namely with mortgage rights, which is easy to execute and provides legal certainty to interested parties.

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