

Legal Protection Of Creditors In Credit Agreements With Guarantee Of Land Rights

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ABSTRACT

Material guarantees have the most important and strategic position in bank lending. The collateral material that is most requested by banks is in the form of land because economically the land has favorable prospects. With the enactment of the 1996 Mortgage Law, mortgages regulated by the Civil Code and creditverbands were previously used to bind land as collateral for debts. Law Number 4 of 1996 concerning mortgage rights over land and objects related to land has provided legal protection to creditors, it is explained that agreements that create debt-receivable relationships that are guaranteed to be paid off can be made in 2 (two) forms, namely either in the form of a private deed or an authentic deed, depending on the legal provisions governing the material of the agreement.

ABSTRAK

Jaminan kebendaan memiliki posisi paling penting dan strategis dalam penyaluran kredit perbankan. Bahan agunan yang paling banyak diminta oleh perbankan berupa tanah karena secara ekonomi tanah tersebut memiliki prospek yang menguntungkan. Dengan berlakunya Undang-undang Hak Tanggungan tahun 1996, hipotik yang diatur dalam KUHPerduta dan creditverbands sebelumnya digunakan untuk mengikat tanah sebagai jaminan utang. Undang-undang Nomor 4 Tahun 1996 tentang hak tanggungan atas tanah dan benda-benda yang berkaitan dengan tanah telah memberikan perlindungan hukum kepada kreditur, dijelaskan bahwa perjanjian yang menciptakan hubungan piutang-piutang yang dijamin akan dilunasi dapat dilakukan dalam 2 (dua) bentuk, yaitu baik berupa akta di bawah tangan maupun akta otentik, tergantung pada ketentuan hukum yang mengatur materi perjanjian.

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I. INTRODUCTION

Material guarantees have the most important and strategic position in bank lending. The collateral material that is most requested by banks is in the form of land because economically the land has favorable prospects. The guarantee that is considered by banking institutions to be the most effective and safe is land with mortgage guarantees. This perspective is based on the ease of identifying the object of the mortgage, as well as being clear and certain in its execution. Another perspective that secured debt with mortgages must be paid in advance of other bills with the money from the auction of land which is the object of the mortgage. In its development with the issuance of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, all objects related to debt on land are regulated in this law. The Mortgage Law (hereinafter referred to as UUHT) which was promulgated on April 9, 1996 through the State Gazette of the Republic of Indonesia Year

1996 Number 42, is an advancement in the development of Agrarian Law in Indonesia. With the enactment of the law, since then all matters relating to mortgage rights over land have been carried out according to the provisions of Law no. 4 of 1996, this also means the order of Article 51 of the Basic Agrarian Law which orders the making of a law Mortgage rights have been implemented with this law.

Mortgage guarantee institutions are used to bind the object of debt guarantee in the form of land or objects related to the land in question. With the enactment of the 1996 Mortgage Law, mortgages regulated by the Civil Code and creditverbands that were previously used to bind land as collateral for debt, can no longer be used by the community to bind land. The binding of the object of debt guarantee in the form of land is fully carried out through the mortgage guarantee institution. Law No. 4 of 1996 concerning Mortgage Rights, hereinafter referred to as UUHT provides the definition of "Security Rights on land and objects related to land", hereinafter referred to as "Mortgage Rights", as regulated in Article 1 paragraph (1) UUHT as follows : " Mortgage Right is a security right that is imposed on land rights as referred to in Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or not including other objects which are an integral part of the land, for settlement of debts certain creditors, which gives priority to certain creditors over other creditors.

The problem with land guarantees sometimes occurs in everyday life, such as when the creditor will take the collateral for the land from the debtor's hands who have been negligent in carrying out their obligations, but the rights to the collateral land are not in the hands of the debtor.

The existence of legal rules regarding the implementation of the imposition of Mortgage Rights in a credit agreement aims to provide legal certainty and protection for all parties in utilizing land and objects related to land as credit guarantees. For this reason, the practice of binding credit with mortgage guarantees in banking activities should also be carried out in accordance with what has been regulated in UUHT. In connection with the above problems, the authors are interested in conducting research in the form of a thesis entitled "Legal Protection for Creditors in Credit Agreements". With Guaranteed Mortgage ".

II. RESEARCH METHOD

Based on the background of the problems described above, the problems in this study are as follows Has Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land provided legal protection to creditors? What is the concept of legal protection for creditors when the debtor defaults in a credit agreement with mortgage guarantees according to Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land?.

III. RESULT AND DISCUSSION

Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land Has Provided Legal Protection to Creditors

Based on the Elucidation of Article 10 of Law Number 4 of 1996 it is explained that an agreement that gives rise to a debt-receivable relationship whose repayment is guaranteed can be made in 2 (two) forms, namely in the form of an underhand deed or an authentic deed, depending on the legal provisions governing the subject matter of the agreement. that. The form of legal protection given to creditors according to the provisions of this Mortgage Law is in the form of the credit agreement itself.

This credit agreement serves as evidence and provides limitations regarding the rights and obligations of each party. In order for the credit agreement to guarantee the repayment of the creditor's debt, a guarantee binding process must be carried out with a clause for granting Mortgage Rights if the object guaranteed is in the form of fixed objects, namely land rights. Land rights are widely used as collateral because in general they have a value or price that tends to increase every year.

After the process of binding the guarantee with the clause of granting Mortgage by making a Deed of Granting Mortgage by the Land Deed Making Officer (PPAT) which contains promises that protect creditors, so that the credit agreement can guarantee the repayment of creditors' receivables, it is necessary to carry out the process of imposing Mortgage Rights in the form of The Deed of Rights is carried out in 2 (two) stages, namely through the registration process and issuance of Mortgage Rights in the form of Mortgage Certificates. As proof of the existence of Mortgage Rights, the Land Office issues Mortgage Certificates which have executorial powers as the basis or basis for execution if the debtor defaults in the future.

The form of legal protection given to creditors when the debtor defaults according to Article 10 of Law Number 4 of 1996 is in the form of the credit agreement itself which is contained in written form, which is either a private deed or an authentic deed. According to the author, what guarantees the creditor's right to recover his receivables when the debtor defaults is the credit agreement with an authentic deed. This authentic deed has the advantage that a Grosse Deed of Debt Recognition can be requested which has executive power and becomes the basis for execution if the debtor is in default. However, based on the General Elucidation Number 9 and the Elucidation of Article 14 paragraph (2) of the Mortgage Law, a Land Rights Certificate has been issued as a substitute for the Grosse Debt Recognition Deed which has the same function.

This authentic deed is made by the parties in the presence of an authorized official, namely a notary through the process of binding a credit agreement with a guarantee of giving Mortgage Rights first, then a Deed of Granting Mortgage (APHT) is made by the Land Deed Making Officer (PPAT) which contains promises to guarantee the rights of creditors in obtaining repayment of their receivables and limit the authority of the debtor, and the next stage is carried out, namely the process of imposing Mortgage through the registration stage of Mortgage at the Land Office and as evidence of the existence of Mortgage, the issuance of a Mortgage Certificate which has the irrah-Irah "for the sake of justice FOR JUSTICE BASED ON THE ONE GOD ALMIGHTY", where this certificate becomes the basis or basis for execution if the debtor refuses to pay off his debt at a later date.

One of the characteristics of Mortgage Rights is that as a strong land guarantee institution, it is easy and certain in its execution. Based on General Elucidation number 9 of Law Number 4 of 1996, that although in general the provisions regarding executions have been regulated in the applicable Civil Procedure Code, it is deemed necessary to specifically include provisions regarding the execution of Mortgage Rights in Law Number 4 of 1996, namely regulating the parate execution institution as referred to in Article 224 HIR and Article 256 Rbg.

The execution of this Mortgage object is a form of legal protection given to the creditor if the debtor defaults. Executions based on the provisions contained in Law Number 4 of 1996 are divided into 3, namely:

- a. Parate Executie or Auction without going through the Court. The provisions in Article 6 of this Law read: "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 attachment of the right to sell on its own power which is guided by the Elucidation of Article 6 of Law Number 4 of 1996, namely:
 - a) The right to sell the object of the Mortgage on its own power is a manifestation of the position of priority or the right of preference owned by the holder of the first Mortgage, if there is more than one holder of the Mortgage.
 - b) The right to sell on its own power will only be attached if:
 - 1) It is expressly agreed in the Deed of Granting Mortgage, or based on a "promise" or "clause" given by the debtor to the creditor, that if the debtor breaks his promise, the creditor as the holder of the Mortgage has the right to sell the object of the Mortgage through a public auction without the consent of the lender Mortgage rights or without asking for a determination from the Head of the District Court,

but can directly request an auction to the Office of Sales of State Assets and Auction (KPKNL).

- 2) The terms of selling on their own power may only be carried out by the "first" mortgage holder, while the second, third, and so on are not allowed.
- c) From the sale of the object of Mortgage, then:
 - 1) A creditor has the right to take payment of all debts from the proceeds of the first sale, by excluding other creditors.
 - 2) b) If there is any remaining from the sale proceeds, it becomes the right of the mortgagee (debtor).

Article 6 not only regulates the Execution Parate Institution, but also sells on its own authority (Eigenmachtige Verkoop). Based on the provisions of Article 6 of Law Number 4 of 1996, there is a parate character of execution and selling on one's own power (eigenmachtige verkoop), but the implementation is as follows: a) The execution of parate execution is subject to Article 224 HIR and Article 256 Rbg, and if it is not agreed upon in the Deed of Granting Mortgage, then:

- 1) It is carried out through auction sales by requesting the Head of the District Court.
- 2) Requests based on reasons of default.

What is meant by breach of contract is not regulated in Article 6, so the provisions refer to the provisions of Article 1243 of the Civil Code.

The provisions of this article contain confusion if it is related to the Elucidation of Article 6, that Article 6 gives power to the holder of the Mortgage if the debtor is in breach of contract, but it is emphasized in the explanation that the power to sell itself is only attached if it is agreed upon, so that the formulation of this Article seems to be ipso jure (by law) given by law to the holder of the Mortgage, but based on The explanation is also not ipso jure, but must be based on an agreement

- b. Article 14 paragraphs (1), (2) and (3) of Law Number 4 of 1996:

Execution or Auction through Court of Mortgage Certificate.

The provisions in Article 14 reads: Paragraph (1) : "As evidence of the existence of a Mortgage Right, the Land Office issues a Mortgage Certificate in accordance with the applicable laws and regulations". Paragraph (2) : "The Certificate of Mortgage as referred to in paragraph (1) contains rah-irah with the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD". Paragraph (3): "The Mortgage Certificate as referred to in paragraph (2) has the same executorial power as a court decision that has obtained permanent legal force and is valid as a substitute for grosse acte hypotheek as long as it handles land rights". Irah-irah which is stated on the Mortgage Certificate and in the provisions of this paragraph, is intended to confirm the existence of executorial power in the Mortgage Certificate, so that if the debtor is in breach of contract or defaults, it is ready to be executed as is the case with a court decision which has permanent legal force, through procedures and by using parate executive institutions in accordance with the provisions of the Civil Procedure Code; The Mortgage Certificate, in addition to functioning as evidence of the existence of the Mortgage Right, is also useful as a basis for execution if the debtor is in default, so that the creditor holding the Mortgage (first) can sell the object of the Mortgage concerned to take repayment of the receivables from the sale of the Mortgage object. which is expected to obtain the highest price in the auction; Through the executorial title, Mortgage holders, namely banks, are given the right to auction without going through a complicated procedure, namely by submitting an application to the Head of the District Court by submitting evidence that the debtor broke his promise and simply submits a Mortgage Certificate as the basis for the execution, as well as on the condition that the receivables burdened with the Mortgage are ripe for collection

- c. The sale of Mortgage objects through a public auction carried out based on an execution ordered by the Head of the District Court or by the State Receivable Affairs Committee (PUPN) or the State Property Sales and Auction Office (KPKNL), if it is not sufficient to pay off the debtor's debt, the remaining debt can be billed by the creditor by filing a lawsuit against the debtor through the District Court at the same time requesting that the debtor's assets be confiscated with collateral confiscation, and that the confiscation is requested to be declared valid and valuable. It can also be included in the petitum so that the decision is declared enforceable first, even though the debtor makes a verzet, appeal or cassation. In the event that the debtor turns out to be poor after the land encumbered with the Mortgage Rights is auctioned off, the remaining debt can still be collected within 30 years. Based on General Elucidation Number 9 and Elucidation of Article 14 paragraph (3) of Law Number 4 of 1996, that the Mortgage Certificate is valid and serves as a substitute for grosse acte hypotheek or grosse deed of recognition of debt as referred to in Article 224 HIR or Article 258 Rbg. The Mortgage Certificate is a copy of the Mortgage Land Book and a copy of the Mortgage Deed, which is sewn into one document, then submitted to the Mortgage Holder. Whereas the banking sector no longer requires a gross deed of recognition of debt as the basis for execution if the debtor is in breach of contract. But it is enough to use a Mortgage Certificate which has executorial power to execute the Mortgage

Concept of Legal Norms concerning Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land

- a. The Position of the Creditor in the Credit Agreement With Guaranteed Mortgage
Article 1 point 1: Giving priority or preference to the holder of Mortgage Rights (droit de preference). The Mortgage Law states that the meaning of Mortgage is: "Security Right to land and objects related to Land, hereinafter referred to as Mortgage Right is the right to land as referred to in Law Number 5 of 1960 concerning Basic Regulations. Agrarian matters, including or not including other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors. The provisions in the article mean that if the debtor is in breach of contract, the creditor as the holder of the Mortgage has the right to sell the object of the Mortgage which is the guarantee for the settlement of the receivables through a public auction according to the provisions of the relevant legislation, with prior rights over other creditors, where the position the priority does not reduce the preference for state receivables according to the applicable legal provisions. Preference creditor rights are claims rights which by law are classified as privileges, and the claims are referred to as priority claims or preference claims, while the creditors are called preference creditors.
- b. Weaknesses of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land
In the process of granting credit carried out by the bank as a creditor to the debtor, the possibility of risks such as failure or congestion in paying off debt by the debtor is very large. So that the required material guarantees are required by the bank to the debtor to guarantee the repayment of the credit. The most widely used collateral is land rights, because the value or price tends to increase. The guarantee institution that is considered effective and safe by banking institutions is Mortgage, this is because it is easy to identify the object of Mortgage and it is clear and easy to carry out its execution, and must be paid in advance of other bills with money from the auction of the Mortgage object, and a certificate. Mortgage has executorial power. Legal protection is given to creditors through Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land which came into force on April 9, 1996. Article 11 paragraph (2): concerning Promises stated in the Deed of Granting Mortgage right. Where all the promises contained in this Article are not absolute in

providing legal protection to creditors, but only some promises that really provide protection for creditors if the debtor defaults. The weaknesses of Law Number 4 of 1996 are.

- a) A promise that limits the authority of the Mortgage Giver to lease the object of the Mortgage and/or determine or change the term of the lease and/or receive the rent in advance, except with prior written approval from the holder of the Mortgage;
- b) A promise that limits the authority of the mortgagee to change the form or arrangement of the object of the mortgage, except with prior written approval from the holder of the Mortgage;
- c) A promise that gives authority to the Mortgage holder to manage the Mortgage object based on the determination of the Head of the District Court whose jurisdiction covers the location of the Mortgage object if the debtor is seriously in breach of contract;
- d) A promise that gives authority to the holder of the Mortgage to save the object of the Mortgage, if it is necessary for the execution or to prevent the nullification or cancellation of the right which is the object of the Mortgage due to non-fulfillment or violation of the provisions of the law;
- e) Promise that the holder of the first Mortgage has the right to sell on his own power the object of the Mortgage if the debtor is in breach of contract;
- f) Promise that the mortgagee will not relinquish his rights to the object of the mortgage without prior written approval from the holder of the mortgage;
- g) The promise that the holder of the Mortgage will receive all or part of the compensation received by the Provider of the Mortgage for the settlement of his receivables if the object of the Mortgage is relinquished by the giver of the Mortgage or his rights are revoked for the public interest;
- h) Promise that the holder of the Mortgage will receive all or part of the insurance money received by the Provider of the Mortgage for the settlement of his receivables, if the object of the Mortgage is insured;
- i) The promise that the grantor of the Mortgage will vacate the object of the Mortgage at the time of execution of the Mortgage.

The provisions in Article 11 paragraph (2) contain the promises contained in a Deed of Granting Mortgage Rights (APHT), where These promises are a form of legal protection for Mortgage holders (creditors), especially when the debtor defaults or is in breach of contract. The legal protection is in the form of a promise that limits the authority of the Mortgage Provider (debtor) not to take actions that harm the Mortgage Holder (creditor) or a promise that must be made if the debtor defaults, as well as a promise that gives authority to the Mortgage Rights holder to do certain things.

IV. CONCLUSION

Law Number 4 of 1996 concerning mortgage rights over land and objects related to land has provided legal protection to creditors, it is explained that agreements that create debt-receivable relationships that are guaranteed to be paid off can be made in 2 (two) forms, namely either in the form of a private deed or an authentic deed, depending on the legal provisions governing the subject matter of the agreement. The form of legal protection given to creditors according to the provisions of this Mortgage Law is in the form of the credit agreement itself. In order for the credit agreement to guarantee the repayment of the creditor's debt, a guarantee binding process must be carried out with a clause for granting Mortgage Rights if the object guaranteed is in the form of fixed objects, namely land rights. Land rights are widely used as collateral because in general they have a value or price that tends to increase every year. The concept of legal norms regarding law number 4 of 1996 concerning mortgage rights over land and objects related to land. The position of the creditor in a credit agreement with a mortgage guarantee is to give priority to the holder of the mortgage (droit de preference). The weakness of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land is Article 11 paragraph (2): concerning Promises contained in the Deed of Granting

Mortgage. Where all the promises contained in this Article are not absolute in providing legal protection to creditors, but only some promises that really provide protection for creditors if the debtor defaults.

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