



Legal Protection of Creditors in Credit Agreements with Liability Guarantee

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Abstract

Credit generally functions to facilitate business activity and, especially for economic activities in Indonesia, plays a vital role in its position both for production businesses and private businesses that are developed independently because they aim to improve the community's standard of living. Banks as financial institutions that produce financial services that have helped fulfill the need for funds for economic activities by providing loans, among others through bank credit, in the form of credit agreements between creditors as lenders or credit facilities with debtors as debtors. The problem is raised in legal protection for creditors when the debtor defaults and what sanctions the creditor gives when the debtor defaults. The aim is to find out the legal guardian for creditors in credit agreements and what sanctions are given by creditors when the debtor defaults. This study uses quantitative methods, namely methods based on the philosophy of positivism. This method is used to examine a particular population or sample. Sampling techniques are generally carried out by random (data collection). Creditors obtain legal protection when the debtor defaults by Article 51 of Law Number 5 of 1960 and Law no. 4 of 1996. The creditor can impose sanctions on the debtor when the debtor defaults in Article 20 paragraph (1) of the Mortgage Law. The result of this research is that a vital guarantee right institution has been provided and can be charged to land rights, namely Mortgage Rights as a substitute for the Hypotheek and Credit Verband Institutions. For this reason, I suggest to readers in particular and society in general that we should follow the existing and applicable laws and regulations in Indonesia every time we take action.

Keywords: Legal Protection, Creditors, Credit Agreements, Mortgage Guarantees

A. Introduction

Activity borrowing money or who is more known by the term credit in the practice of life every day is not is familiar. Even the credit terms are known not only by the urban community but also to the people of the countryside. Credit generally functions to facilitate business activity. Especially for economic activities in Indonesia, it plays a vital role in its position, both for production businesses and private businesses that are developed independently because they aim to improve the community's standard of living.

Articles 3 and 4 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking state that the primary function of Indonesian banking is to collect and distribute funds from the public to support the implementation of national development towards improving people's welfare. In doing business, the Bank collects funds from the people in the form of demand deposits, time

deposits, certificates of deposit, savings, and or another equivalent to it. In this case, the Bank also distributes funds from the public by way of Credit in a bank credit business.

Bank credit has been used and practiced by the community for decades to improve their lives. Article 1 number 11 of Law No. 10 the Year 1998 on the Amendment of Act No. 7 of 1992 concerning Banking formulate the notion of Credit: "Credit is the provision of money or bills that Who can compare with that based on agreements and loans borrowed between the Bank and the others that require the borrower to repay the debt after a certain period with interest.

According to CH. Gatot Wardoyo, in his writing entitled: "Around the Credit Agreement Clauses that the agreement has several functions including:

1. The credit agreement has a function as the main agreement. The credit agreement determines whether or not the deal is canceled following it—for example, binding collateral.
2. The credit agreement serves as evidence regarding the boundaries of rights and obligations between debtors and creditors.
3. The credit agreement serves as a tool for monitoring credit.

Other functions of credit guarantees in the context of granting Credit with the seriousness of the debtor to fulfill its obligations to pay off the Credit as agreed and use the funds it has appropriately and carefully, which is expected to encourage the debtor to pay off his debts to prevent the disbursement of credit guarantees which may not be desired because they have a higher value (price) compared to the debtor's debt to the Bank.

The issues raised are what form of legal protection for creditors when the debtor defaults and what sanctions are given when the debtor defaults.

B. Approach Method

This research uses descriptive analysis research using qualitative methods. Researchers also want to examine a phenomenon that Legal Protection of Creditors in Credit Agreements with Liability Guarantee, qualitative research is aimed at a very detailed and detailed study where the results of the research are studied in depth and then interpreted clearly. There are two sources of data used in this study, where the data includes primary data and also secondary data, then the facts of the findings are described in a very easy form of discussion so that researchers can find a complex and structured understanding in a directed manner.

C. Result and Discussion

Forms of Legal Protection for Creditors when Debtors Default In the context of increasing national development, which focuses on the economy, the actors include the government and the community as individuals and legal entities, vast amounts of funds are needed, so that with the increase in development activities, also increased the need for the availability of funds, most of which were obtained through Credit.

Financial institutions that produce financial services are banking institutions. In the bookkeeping of bank credit, it must be based on an agreement or loan agreement,

or in other terms, it must be preceded by a written credit agreement, either with a private deed or a national deed. The credit agreement here has a function as a guide for the Bank in planning, implementing, organizing, and supervising creditors carried out by the Bank so that the Bank is not harmed and the interests of customers who entrust their funds to the Bank are guaranteed as well as possible. Therefore, when providing Credit, the Bank must ensure that all juridical aspects related to Credit have been completed and have provided adequate protection for the Bank.

1. Guarantee Right

Based on the provisions in Article 51 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, it is stated that a vital guarantee right institution has been provided and can be imposed on land rights, namely Mortgage as a substitute for hypoyheek and creditverband institutions (Agrarian Law, 2003: 74).

Mortgage Guarantee Agency this Its existence has been recognized through Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land and has made the interests of debtors and creditors obtain legal protection from the government. The primary purpose of the enactment of the Mortgage Law, in particular, is to provide legal protection for creditors if the debtor commits an unlawful act in the form of default (Supriadi, 2010: 179).

Based on the formulation contained in the Banking Act regarding credit agreements, Who can conclude that the basis of the credit agreement is in the loan agreement. This loan agreement has a broad meaning that an object is an object that is used up.

From the explanation above, it is clear that the creditor can take firm action against the debtor if the debtor is in default because such provisions have been stated in Articles 1131 and 1132 of the Civil Code, which reads: "All property of the debtor (the debtor) whether moving or immovable, both existing and those that will exist in the future is the responsibility of all individual engagements" (Subekti and Tjikrosudibio, 2008: 291).

Legal protection against creditors is also contained in Act No. 4 of 1996 on Mortgage Over Land along with the work that has been there or aka tone of objects relating to which is a unity with the land and make the interests of land that, and that is a debtor or The creditor gets the property of the holder of land rights whose legal protection from the burden is strictly enforced by the government. The primary purpose is stated in the Deed of Granting the enactment of the relevant Mortgage Rights Act. This dependent, in particular, gives if the building, plants, and the results of legal protection for the work party as referred to in the creditor if the holder does not own the debtor party paragraph (4) against the Law in the form of land rights, the imposition of default rights. Liability for things.

3.2 Law of the Republic of Indonesia Number 4 of 1996

Based on the Rights Act of dependents, objects that Who can load with Encumbrance are right on the ground and related to the land.

Rights on land that may be charged Encumbrance is:

- a) Right of ownership;
- b) Cultivation Rights;
- c) Building rights.

In addition to the rights on land as referred to in paragraph (1), Hak Pakai on the ground Country according to applicable provisions shall be registered and by nature transferable can also be burdened Mortgage.

Encumbrance can also charge on the right on land and buildings, plant, and the work that has been there or will there is a unity with the ground, the and which belong to the land-rights holders who deducted expressly stated in the Deed Granting Mortgage that concerned. Suppose buildings, plants, and works, as referred to in paragraph (4), are not owned by the holder of the rights over the land. In that case, the imposition of Encumbrance on these objects only can be done by signing and on the Deed Granting the Right Mortgage concerned by their owners or were given power for that by him with an authentic deed.

Who may burden an object of Mortgage with more than one Mortgage to guarantee the repayment of more than one debt. If an object of Mortgage is saddled with more than one Mortgage, the rank of each Mortgage is determined according to the date of its registration at the Land Office. The rating of the Mortgage registered on the same date is determined according to the date of the issuance of the relevant Mortgage Granting Deed.

In the Mortgage, legal subjects become the Mortgage related to the agreement that gives the Mortgage. In a Mortgage Agreement two parties bind themselves, namely as follows:

- a) The grantor of the Mortgage is the person or party who guarantees the object of the Mortgage.
- b) Mortgage holders are people or parties who receive Mortgage Rights as collateral for the receivables they provide.

The Mortgage Law contains provisions regarding the subject of Mortgage in Article 8 and Article 9, namely as follows:

The giver of the Mortgage is an individual or legal entity that has the authority to take legal action against the object of the Mortgage in question. The power to take legal action against the thing of the Mortgage as referred to in paragraph (1) must be with the Mortgage provider at the time of registration of the Mortgage. Mortgage holders are individuals or legal entities domiciled as debtors (Adrian Sutedi, 2010: 54).

By the nature of the accessor of the Mortgage, the existence of the Mortgage depends on the presence of receivables that are guaranteed to be paid off. If the receivable is written off due to settlement or other reasons, the Mortgage concerned will automatically be deleted as well.

In addition, the Mortgage holder can relinquish their Mortgage Rights, and the land rights can be erased, which results in the cancellation of the Mortgage Rights.

Land rights can be deleted, among others, due to matters as referred to in Article 27, Article 34, and Article 40 of Law Number 5 of 1960 concerning Basic Agrarian Regulations or other statutory regulations. Suppose the Building Utilization Right, or Use of Land Right, which is made the object of the Mortgage Right, expires and is extended based on the application submitted before the expiration of the said period. In that case, the Mortgage Right remains attached to the land right in question.

Default is a legal fight carried out by the debtor to the creditor when there is a credit term agreement. The debtor fails to fulfill the agreement, does not submit or pay within the specified time, or does not act as promised within the specified grace period.

Debtors who try to evade credit returns or are negligent in the credit return agreement or try to prevent the return of Credit they have received through ordinary legal remedies or extraordinary legal remedies. This is the Act of an irresponsible debtor so that the creditor takes action in the form of sanctions aimed at the debtor, both light sanctions such as taking guarantees from the debtor or giving strict sanctions if the debtor is still unable to pay off his debt.

The effort taken by the creditor is to apply to the district court based on default. It's just that the process of settling civil cases in the district court until there is a permanent and definite court decision (in tracht van Sewisjde) usually goes through 3 (three) levels of justice, namely: a) the District Court as the first-level court, b) the High Court as the first level court appeal, and c) the Supreme Court.

According to Article 20, upon the agreement of the giver and holder of the Mortgage, it can be carried out under the hands if, in this way, the highest price will be obtained that benefits all parties. The implementation of the sale as referred to in paragraph (2) can only be carried out after one month has passed since the notification in writing by the giver and or the holder of the Mortgage to interested parties is announced in at least two newspapers circulating in the area concerned and or local mass media, and neither party expressed any objections.

Every promise to execute the Mortgage in a way that is contrary to the provisions in paragraph (1), paragraph (2), and paragraph (3) for the sake of the Law. Until the announcement for the auction is issued, the sale, as referred to in paragraph (1), can be avoided by paying off the debt guaranteed by the Mortgage and the execution costs that have been incurred.

If the debtor injury appointments, object Encumbrance sold through public auction by the way specified in the legislation that applies and holders Encumbrance take the whole or part of the proceeds to the repayment of loans, with the rights of creditors precede rather than the other. This is called Mortgage execution.

If speaking of execution, it is necessary to explain more that execution about Mortgage is not included in the definition of what is called accurate execution. And even if we talk about actual executions, the real executions known in H.IR are only " real executions in the presence of an auction." While understanding the actual execution in the sense that we take oper of system Rv, Jurisprudence can still be used if necessary.

Execution in conjunction with Right Mortgage execution is not accurate. However, it means the sale by way of auction object Encumbrance, which then results of placement paid to creditors Mortgage holders, which, if there is the rest, is returned to the debtor.

Suppose the credit agreement has been fully complied with as well as possible, or in other words, the debtor has paid off the principal loan along with interest, fees, and additional costs. In that case, the guarantee agreement automatically becomes invalid.

However, when a negligent debtor repays the loan at maturity and the creditor/bank tells the debtor to repay the loan as soon as possible and if the warning that by asking help District Court, it strikes so-called summative or subpoena.

If the debtor has received a warning and then pays off the loan, then the execution of the guarantee is no longer needed. On the other hand, if the debtor has been reprimanded, the debtor still does not want to pay the loan, the creditor or Bank starts trying to execute the credit guarantee.

2. Executorial Power of Mortgage Certificate

Encumbrance Certificate as a sign of evidence of any Encumbrance contains rules with the words "For the sake of justice Based on God." The Mortgage Certificate has the same executorial power as a court decision which has permanent legal force and is valid as a substitute for the Grosse Acte Hypotheek as far as land rights are concerned. The rules contained in the Mortgage certificate are intended to confirm the existence of executorial power on the Mortgage certificate so that if the debtor breaks his promise, it is ready to be executed, as is the case with a court decision that has permanent legal force.

One of the characteristics of a Mortgage is that it is easy and confident in its execution if, at one time, the debtor breaks his promise. In article 20 of the Mortgage Law, it is stipulated that if the debtor fails his contract, then based on the rights that exist in the Mortgage holder, namely:

First, the promise to sell the Mortgage object on its power, through a public auction without requiring further approval from the Mortgage provider (explanation of Article 6 of the Mortgage Law) and the rules contained in the Mortgage certificate, which is an executorial title of equal strength. With a Court Decision that already has permanent legal force, the creditor can execute the Mortgage Rights.

As explained in General Elucidation point 9, the transitional provisions provide firmness. During the transitional period, the conditions of the procedural Law above apply to the execution of the Mortgage, with the submission of the Mortgage certificate as the basis for its implementation.

In addition to the two methods above, it is also possible to execute the Mortgage by selling under the hands, as long as this is agreed upon by the holder and the grantor of the Mortgage by fulfilling certain conditions. The affirmation that the Mortgage Certificate is a substitute for the Grosse Acte Hypotheek, is intended to equalize the perception of one of the documents that Who must submit for the execution of the Mortgage, which previously often led to differences of opinion and perception regarding the procedure for the performance of the Mortgage.

A mortgage is indeed designed as a strong guarantee right, with the characteristic of "easy and sure" execution. However, in practice, this is not the case. Several provisions of the UUHT are not firm, incomplete. They ignore the configuration of regulations in the applicable legal system (including the many legal remedies that can be misused to suspend the auction of execution of Mortgage objects), thus triggering uncertainty. To limit these obstacles, it is necessary to have additional provisions, especially those that emphasize that the auction of Mortgage objects based on the execution part is carried out without court fiat. As for what is carried out based on the executorial title of the Mortgage Certificate, it cannot be suspended at all unless there is a criminal element.

If a credit is tied with Mortgage Rights, then if the debtor (customer) breaks the promise, Who can execute the land used as collateral by force. Banks do not need to go to court, which takes a long time, a lot of effort, and expensive costs. The Bank can directly ask the court to execute the collateral for other auction sales. As the basis for the request for execution of collateral by the Bank, the mortgage certificate has executorial power. It is equated with a judge's decision which has permanent legal force.

The executorial transfer from gross mortgage deed to mortgage certificate and then to Mortgage certificate is a deviation from Article 224 of the HIR, which is coercive. Khoidin confirmed this opinion. Although Law approved the transfer, it is also inappropriate because Law no. 4 of 1996 is a material law, not a ceremonial law. Material law regulates rights and obligations, while formal Law is imperative, which governs procedures for implementing material law.

According to Article 224 of the HIR, a gross deed of mortgages and debt securities made before a notary in Indonesia, in which the sentence For Justice Based on the One Supreme Godhead is used at the head has the same power as the judge's decision. The Regulation on the execution of the gross Deed in Article 224 of the HIR is intended to facilitate activities in the economic sector, namely, so that business actors can resolve disputes over debts and bad loans quickly and accurately.

In addition, Article 224 HIR also aims to reduce the burden on judges in resolving debt disputes because there is no need to examine cases through trial to reduce the accumulation of points in the judiciary. Case congestion that results in inefficiency and a high-cost economy is highly disliked by business actors who prioritize effective and efficient principles by keeping production costs as low as possible.

3. The Mortgage is declared bankrupt.

It has been regulated in Article 21 UUHT, which states that if the mortgage provider is declared bankrupt, the mortgage holder remains authorized to exercise all the rights he has obtained according to the provisions of this Law. About the position of the Mortgage holder against the Bankruptcy of the Mortgage Provider, the part of the Mortgage Holder due to the Bankruptcy of the Mortgage Provider is further regulated by Law Number 4 of 1998 concerning Bankruptcy (as replaced by Law No. 37 of 2004 concerning Bankruptcy and PKPU).

Article 56A of the Bankruptcy Law states that the preferential right of creditors holding Mortgage Rights to execute land rights is suspended for a maximum period of 90 days from the date of the bankruptcy decision. Even though the execution is stopped, the curator cannot transfer the land rights. Bankruptcy assets that the curator can use or sell are limited to inventory and movable goods (current assets) even though the bankrupt assets are encumbered with material collateral rights.

It is known that Mortgage aims to guarantee the debt given by the Mortgage holder to the debtor. If the debtor is in default, the land (land rights) burdened with the Mortgage is entitled to be sold by the Mortgage holder without the approval of the Mortgage Provider, and the Mortgage Provider cannot express objections to the sale.

To prevent the sale from being unfair, the sale of the rights pledged as collateral for the Mortgage shall be carried out by auction. This is by the provisions of Article 20 paragraph (1), which in principle states: the object of the Mortgage is sold through a public auction according to the procedure specified in the laws and regulations for the settlement of the debt of the holder of the Mortgage with the right to precede other creditors.

Laws concerning Mortgage on land and objects related to land include:

In principle, every execution must be carried out through a public auction because, in this way, it is hoped that Who can obtain the highest price for the object of Mortgage.

The creditor has the right to take payment of the guaranteed receivables from the sale of the Mortgage object. In this case, the proceeds from the sale are more significant than the receivables, which are as high as the value of the Mortgage; the rest becomes the right of the mortgagee.

What is meant by the date of written notification is the date of delivery of registered mail, date of receipt by courier, or date of facsimile delivery. If there is a discrepancy between the notification date and

As referred to in this paragraph, the announcement date, the period of one month, is calculated from the last date between the two dates. To avoid the auction of the object of Mortgage, Who can make debt repayment before the auction announcement is issued.

The provisions in Article 14 that must be considered are that the Grosse acte hypotheek, which functions as proof of the existence of the hypotheek, in the Mortgage Right is a certificate of Mortgage. As for what is meant by statutory regulations that do not yet exist, are statutory regulations that specifically regulate the execution of Mortgage Rights as a substitute for the special provisions regarding the performance of the Mortgage on land mentioned above. As explained in General Elucidation point 9, the transitional provisions in this article provide firmness. During the transition period, the conditions of the procedural Law above apply to the execution of the Mortgage, with the submission of the Mortgage certificate as the basis for its implementation.

One of the characteristics of a substantial Mortgage is that it is easy and confident in its execution if the debtor breaks his promise. Although, in general, the provisions regarding commissions have been regulated in the applicable Civil Procedure Code, it is deemed necessary to include precisely the requirements regarding the execution of Mortgage Rights in this Law, namely those governing parate executive institutions as referred to in Article 224 of the Indonesian Regulation. In addition, the Mortgage Certificate is stated as a substitute for the Grosse acte Hypotheek, which for the execution of the Mortgage on land is stipulated as a condition in carrying out the provisions of the second article of the Regulation above. For there to be a unified understanding and certainty regarding the use of these provisions, it is further emphasized in this Law that as long as no laws and regulations are governing it, the rules regarding the execution of the Hypotheek as regulated in the two Regulations shall apply to the performance of the Mortgage Rights. Agricultural Law: 106).

My analysis can conclude that the form of legal protection for creditors when the debtor is in default already exists in the Laws and Regulations Number 4 of 1996 concerning Mortgage Rights. As the author of this article, I strongly agree with the existence of the Act because then the creditors will feel protected because they have received legal protection if the debtor commits an unlawful act in the form of default. This Regulation is also strengthened by the Civil Code, which states that the creditor can take firm action against the debtor if the debtor defaults as stated in Articles 1131 and 1132.

The sanctions gave by the creditor when the debtor defaults are also outstanding to do because then people who carry out lending and borrowing transactions between the debtor and creditor will be regulated by the Mortgage Law. This means that the

debtor will be more careful not to be negligent with the agreement so that there is no term for taking legal action when there is a credit agreement.

D. Conclusion

From all the descriptions discussed in the previous chapter, Who can conclude that legal protection for creditors is contained in Law Number 4 of 1996 concerning Mortgage Rights on Land and objects related to land and makes the interests of debtors and creditors legal protection from the government. The primary purpose of the enactment of the Mortgage Law, in particular, is to provide legal protection for creditors if the debtor violates the Law in the form of default.

If the party debtor is irresponsible, then the creditor can take action in the form of sanctions aimed at the debtor, both light sanctions such as taking guarantees from the debtor or giving strict sanctions if the debtor is still unable to pay off his debt. This is also contained in Article 20 paragraph (1) of the Mortgage Law.

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