

The Loan Application with Land Certificate Guarantee

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Abstract. *Certificates on land as collateral for one's debt, in fact, must be able to replace a debt. But in reality, the guarantee cannot be executed as a substitute for someone's debt. This writing using legal protection theory which is the protection of the dignity and worth, as well as the recognition of human rights owned by legal subjects based on general provisions from arbitrariness or as a collection of rules or rules that will be able to protect something else. That the discussion of the article focuses on: How to apply for a loan with a land certificate as collateral? The purpose of writing this journal is to find out how to apply for credit with land certificates as collateral. This study uses a normative juridical approach, with analytical descriptive specifications. Data obtained by literature study. The conclusions obtained from the writing are: collateral is the ability of the debtor to fulfill or pay off his debt to the creditor, which is carried out by holding certain objects of economic value as dependents on the loan or debt received by the debtor to his creditor. Indeed, a certificate can be used as collateral for a debt, but this cannot be done, because the debt agreement is not followed up with a mortgage agreement.*

Keywords: Debt; Guarantee; Mortgage.

1. INTRODUCTION

General Explanation of the Law of the Republic of Indonesia number 30 of 2004 concerning the Position of a Notary, that the 1945 Constitution of the Republic of Indonesia expressly stipulates that the Republic of Indonesia is a state of law. The principle of the rule of law guarantees certainty, order and legal protection which is based on truth and justice. While certainty, order and legal protection demand, among other things, that legal traffic in people's lives requires evidence that clearly determines the rights and obligations of a person as a legal subject in society¹.

Authentic deeds as the strongest and most complete evidence have an important role in every legal relationship in people's lives. Various business relationships, activities in the fields of banking, land, social activities, and others, the need for written evidence in the form of authentic deeds is increasing in line with the growing demands for legal

¹ Ngadino, (2019), *Tugas dan Tanggung Jawab Jabatan Notaris di Indonesia*, Semarang: Universitas PGRI Press, p.3.

certainty in various economic and social relations, both at the national, regional and global levels. Through an authentic deed that clearly determines rights and obligations, guarantees legal certainty and at the same time it is hoped that the occurrence of such disputes cannot be avoided, in the dispute resolution process, the authentic deed which is the strongest and most complete written evidence provides a real contribution to the settlement cheaply and quickly.

A notary is a public official who is authorized to make an authentic deed as long as the making of a certain authentic deed is not reserved for other public officials. Making authentic deeds is required by laws and regulations in order to create certainty, order and legal protection. In addition to the authentic deed made by or before a Notary, not only because it is required by laws and regulations, but also because it is desired by the interested party to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for interested parties at the same time for society as a whole.²

The definition of a Notary in the Civil Law System as regulated in Article 1 Ord, stbl/ 1860 Number 3 concerning the Position of a Notary in Indonesia came into force on July 1, 1860 which was later translated by Soegondo Notodisoedo (1993) stating that the definition of a Notary is as follows: Notary is a public official , in particular (the only one) who has the authority to make authentic deeds regarding all actions, agreements, and decisions required by general legislation to be desired by the interested parties that it is stated in an authentic letter, guaranteeing the date, keep deeds and issue grosses, copies (derivatives) and quotations thereof, all of that if the making of such deeds or specializes it or is devoted to other officials or people."³

Islam has arguments regarding the performance of Notaries which are regulated in *Surah Al Baqarah* verse 282 and verse 283. The verse (282) means, among other things, as follows "O you who believe! If you do debts for a specified time, you should write them down. And let a writer among you write it correctly. Let the writer not refuse to write it down, as Allah has taught him, so let him write it down. Whereas in verse (283) which means, among other things, as follows: "And if you are on a journey while you do not find a writer, then there should be collateral held. However, if some of you believe in others, let the one who is trusted fulfill his mandate (his debt) and let him fear Allah, his god. These verses regulate human covenants and debts. Allah explains that if someone owes a debt, it must be written by a recorder. The request for recording must be fulfilled (*wa laa ya'ba katibun an yaktuba kama 'allahullah... / don't let the note taker refuse to write it down as Allah has taught him*).⁴ In addition, the basic activities of a Notary as contained in QS. Al Maidah verse (1), which means "O you who believe, fulfill those contracts, Allah sets the laws according to His will.

The law of engagement as regulated in book III of the Civil Code has an open system. The purpose of an open system is that people can enter into an engagement that is

²Ibid.

³ A Chuasanga, Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> and Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. JURNAL AKTA: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

⁴ Handoko. Widhi, (2019), *Dominasi Negara terhadap Profesi Notaris, Antara Ide dan Relaitas*, Bogor: PT Roda Publika Kreasi, p.21.

based on any agreement, agreement and whatever content they want, whether regulated by law or not regulated by law. This is called the principle of freedom of contract. However, this freedom is limited by general restrictions, namely as regulated in article 1337 of the Civil Code. Article 1337 of the Civil Code states that "a cause is prohibited, if it is prohibited by law, or if it is against decency, or with public order, and is still limited by Article 1254 of the Civil Code,⁵ means that it must be implemented and must be ethical. Meanwhile, the definition of engagement is not regulated in the Civil Code, but this definition is given by science, namely: a legal relationship in the field of property between 2 (two) or more people, where one party is entitled to something and the other party is obliged to something.⁶ Regarding the conditions for the validity of an agreement, (4) four conditions are needed, namely: the agreement of those who bind themselves, the ability to make an engagement, a certain thing and a lawful cause.⁷

Land rights and objects related to land, hereinafter referred to as mortgage rights are security rights that are imposed on land rights, including or not following other objects that are an integral part of the land. ⁸According to article 1 point (1) of Law no. 4 of 1996 concerning Mortgage Rights on Land and objects related to land, hereinafter referred to as Mortgage Rights are "guaranteed rights imposed on land rights as referred to in Act No. 5 of 1960 concerning Basic Agrarian Regulations, following or not following 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.⁹ The meaning of the provisions of Article 1 point (1) can be concluded that Mortgage Rights are collateral rights over land for the settlement of certain debts which give priority to certain creditors over other creditors.

Credit agreements that occurred in 2015 to 2017 in Purbalingga Regency, where 171 debtors were at PT "B" CP, by the finance department of CV "C" on orders from the leadership of CV "C" and PT "BCT", on behalf of employees of CV "C" and PT "BCT", which turned out to be not all employees of the two companies, only 82 (eighty two) people were employees of the company / foundation, while the remaining 89 (eighty nine) people were borrowed names.

Whereas in the credit agreement, 171 debtors were granted "BG" credit facilities in stages, with a credit range of IDR 60,000,000.00 (sixty million) to IDR 500,000,000.00 (five hundred million rupiah), with a loan term of an average of 5 (five) years. The loan was made to meet the needs of the company, namely CV "C" and PT "BCT", while the 89 (eighty nine) debtor was only given a fee by the treasurer of CV "C", as a form of gratitude, ranging from IDR 3,000 .000,00 (three million) to IDR 5,000,000.00 (five million rupiah). As a result of the actions of the treasurer and leadership at CV "C" and

⁵ R. Subekti and R. Tjitrosudibio, (1992), *Kitab Undang-Undang Hukum Perdata*, Jakarta: Balai Pustaka, p. 326.

⁶ Patrik. Purwahid, (1982), *Asas-asas hukum Perikatan*, Semarang: Faculty of Law Universitas Diponegoro, p.2.

⁷ Op.cit., p.339.

⁸Asyhadie. Zaeni, Kusumawati, Rahma, (2018), *Hukum Jaminan di Indonesia*, Depok: Rajawali Pers, p.189.

⁹ Meliala Djaja, (2019), *Perkembangan Hukum Perdata tentang Benda dan Hukum Perikatan*, Bandung: Nuansa Aulia, p. 163.

PT "BCT" it caused state losses of around IDR 28,000,000,000.00 (twenty eight billion rupiah).

The author's interest in raising this thesis, because in the "BG" Credit Agreement, the debtor who applies for credit, is required by the Branch Manager of PT "B" CP to provide land certificate guarantees, because the leadership already has suspicions about the ability of CV "C" (on 171 debtors).), however, the guarantee of the land certificate which is used as collateral, is not in the name of the debtor and the guarantee of the land certificate is not bound by the Mortgage Rights, so that execution cannot be carried out if the debtor does not have the ability or ability to pay credit loans and result in state losses as mentioned above¹⁰.

2. RESEARCH METHODS

In accordance with the title and problems that will be discussed in this research, the research specifications are carried out descriptively-analytical, namely by describing the applicable laws and regulations associated with legal theories and the practice of implementing positive law related to the problem.¹¹

3. RESULTS AND DISCUSSION

3.1. Position Case

That from 2015 to 2017, 2 (two) Account Officers (AO), those who did, who ordered to do and who participated in doing the deed together with a Branch Manager, an Assistant Manager and 3 people from the private sector, located at the PT. "B" CP, has disbursed 171 (one hundred and seventy one) "BG" credit facilities. by verifying and proposing incorrect or falsified data to the Branch Manager of PT "B" CP, where:

- a. "BG" credit is given to: 82 debtors recognized by the management of CV "C" Group as employees with a total ceiling of around IDR 14,000,000,000.00. (fourteen billion)
- b. 89 debtors who were recognized by the management of CV "C" Group were recognized as employees (in fact only borrowed names) with a total ceiling of around IDR 14,000,000,000.00.

Thus causing state losses of around IDR 28,000,000,000.00 (twenty eight billion rupiah).

That after the cooperation agreement between PT "B" CP and CV "C" Group (private/debtor), CV "C" Group followed up by: 171 prospective debtors collecting complementary documents for "BG" credit application, namely: photocopy KTP, KK and passport photos of husband and wife, while other documents are completed by the

¹⁰ Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). Code of Ethics and Position of Notary in Indonesia. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536> and Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

¹¹Hanitijo.S.Ronny, Op.Cit, p. 97-98.

treasurer / accounting CV Cahaya) including: Employee Decree, recommendations from the leadership, a list of salary details signed by the leadership, a stamped statement letter from the treasurer stating the ability to cut salaries employees every month for credit installments, as well as land certificate guarantees without being followed up with the Deed of Granting Mortgage Rights (APHT). Thus, when debtors cannot pay off their debts, the bank cannot execute land certificates that are used as debt collateral.

3.2. Legal Protection

According to Philipus M. Hadjon, legal protection is the protection of the dignity and worth, as well as the recognition of human rights owned by legal subjects based on general provisions from arbitrariness or as a collection of rules or rules that will be able to protect something else.¹²

Philipus M. Hadjon stated that there are two kinds of legal protection facilities, namely: preventive legal protection facilities and repressive legal protection facilities.

a. Preventive Legal Protection Means

In this preventive legal protection, legal subjects are given the opportunity to submit their objections or opinions before a government decision gets a definitive form. The goal is to prevent disputes from occurring. Preventive legal protection is very meaningful for government actions based on freedom of action because with the existence of preventive legal protection the government is encouraged to be careful in making decisions based on discretion. In Indonesia, there is no specific regulation regarding preventive legal protection.

b. Means of Repressive Legal Protection

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia belongs to this category of legal protection. The principle of legal protection against government actions rests and originates from the concept of recognition and protection of human rights because according to history from the west, the birth of concepts regarding the recognition and protection of human rights is directed at limiting and placing obligations on society and the government. . The second principle that underlies legal protection against acts of government is the rule of law. Related to the recognition and protection of human rights,¹³

Legal protection for the dignity of prospective debtors has actually been carried out from the beginning, by verifying the data of prospective debtors. However, in its implementation in the field, the CV "C" Group has conditioned employees or people whose names or ID cards are borrowed to claim to be employees of CV "C" Group, by saying that they are permanent employees and confirming the data. The fictitious ones given by the management of CV "C" include, among others: a marked up salary, an identity that recognizes as an employee, and states that their salary is through PT "B". Meanwhile, from the CV "C" Group, attaching a land certificate document that does not

¹²Kansil. CST, loc.cit.

¹³ <http://siat.ung.ac.id> >graduation, accessed on September 10, 2021, at 18:05

belong to the prospective debtors, but is in the name of another person without the power of the actual owner, only a small number of them use land certificates in the name of the debtor himself. The initiator of PT "B" with the trust capital of the management of CV "C" Group, just confirmed the data provided to them, without asking them periodically by visiting the work locations of prospective debtors and not asking for the actual nominative list, the number of permanent employees from the CV.

Preventive legal protection given to customers to be able to understand the contents of the standard agreement before signing or agreeing to it so that the debtor is not harmed in the future, considering that the credit agreement was made with a standard agreement, in which the credit agreement was made unilaterally by the bank and the debtor did not participate in the making the credit agreement, so that the debtor is difficult to understand the contents of the agreement.¹⁴

The Debtor is usually considered a weak party, has the right to be given an explanation by the Creditor about the things contained in the contents of the agreement, including: the amount of the loan, the amount of interest rates and carried out in the same way or there is an increase in interest rates, the type of insurance.

Preventive forms of legal protection have been regulated in Article 8 (1) of the Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Act No. 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) "in providing credit or financing based on Sharia Principles, Commercial Banks are required to have confidence based on in-depth analysis of the Debtor Customer's intention and ability and ability to pay off its debts or return the said financing in accordance with the agreement". Article 8 paragraph (2) states "Commercial Banks are required to have and apply credit and financing guidelines based on Sharia Principles, in accordance with the provisions stipulated by Bank Indonesia.

Article 11 paragraph (1) of the Banking Law states "Bank Indonesia shall stipulate provisions concerning the maximum limit for granting credit or financing based on sharia principles, providing guarantees, placing investment in securities or other similar matters, which may be made by banks to borrowers or a group of borrowers related parties, including companies in the same group as the bank concerned. ¹⁵

4. CONCLUSION

The agreement made by the creditor and debtor creates rights and obligations for both parties fairly. The stages that must be met by the debtor in applying for credit are usually as follows: 1) There has been an understanding between the two parties with the issuance of the Cooperation Agreement. 2) The Debtor attaches the credit requirements documents. 3) If there are additional types of collateral, they should follow the implementation guidelines, including the binding. Repressive legal protection is legal protection against a problem that has become a case. The passage of time for granting credit to debtors has experienced problems and has even experienced a loss, for that reason, the creditor from PT "B" has clarified to the management of CV "C"

¹⁴ repository.um-surabaya.com.ac.id, accessed on 12 September 2021, at 17:45

¹⁵ Act No. 6 of 2009 concerning Bank Indonesia and Law of the Republic of Indonesia no. 21 of 2008 concerning Islamic Banking

Group and marketing from PT "B" to be held accountable.

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