

The Notary Role of Binding Guarantee on Land Rights in Credit Take Over Between Different Banks

Suyitno¹, Nizar Anwar² and Anis Mashdurohatun³

Abstract. This study aims to: 1) to analyze the role of the notary on the binding guarantees the right to land in the credit of take over between different banks. 2) to analyze the mechanism of binding process guarantees the right to land in the credit take over between different banks. The data used in this study are primary data, secondary data and data tertiary to support the process of this research, which was then analyzed by descriptive analysis method.

Based on the results of data analysis can be concluded that: 1) relating the fine refinance loan, then the role of the Notary / PPAT should be promoting the principle of "Caution", because practice is very prone to take over the occurrence of consequences Particularly in binding legal guarantees and the imposition of Mortgage. 2). Take Over of credit can be done by way of subrogation, as well as a guarantee in the form of mortgage can be switched by-law without the need for plug. This is regulated in Article 16 Paragraph (1) of Act No. 4 of 1996 on Mortgage. But in practice, many banks are willing to take risks on lending without a guarantee that the imposition of Rights is not perfect dependents.

Keywords: Role of the Notary; Binding Guarantee; Land rights; Credit Take Over

1. Introduction

The development potential of micro, Small and Medium Enterprises (UMKM) in Indonesia is inseparable from the support of banks in lending to the UMKM. Lending is an activity of the bank (lender) who distribute the funds to the debtor. The distribution of funds is an activity of selling funds collected from people who are known to lending.⁴

Along with the diverse needs of the community, the banks make offers to customers who have received credit facilities from other banks. Do deals with various strategies such as a lower interest rate offered or by the addition of deals ceiling (principal debt) is quite large, so it felt to be more advantageous if the credit facility was transferred to another bank. In the event of banking known as the term refinance loans.

Credit Take Over is the provision of credit facilities / loans by a financial institution (bank / non bank) which aims to repay debt obligations of the debtor in a particular bank with the Take Over of the collateral to be collateral for the credit facilities. Take Over reasons, among others:⁵

- To obtain additional credit or loans
- To obtain a lower interest rate and reduce the amount of the installment.
- Dissatisfaction service at the beginning of financial institutions where credit is obtained in advance.

¹ Student of Master of Notary Law, Faculty of Law UNISSULA, email Afazqeis2014@gmail.com

² Students of Master of Law, Faculty of Law, Universitas Islam Sultan Agung email nizaranwar23@gmail.com

³ Lecturer of Faculty of Law Unissula Semarang

⁴ Igantius Ridwan Widyadharma, 2007, *Hukum Sekitar Perjanjian Kredit*, Semarang: Badan Penerbit Universitas Diponegoro, p. 1.

⁵ Salim, 2004, *Perkembangan Hukum Jaminan di Indonesia*, Jakarta: PT. Raja Grafindo Persada, p 28.

Events Take Over in the Book of the Civil Law also known as "subrogation"⁶ in article 1400, the definition of subrogation, namely: "Replacement of the rights of the creditor by a third party to pay creditors and third parties in the context of the discussion named creditor recently, while lenders provide a copy of the guarantee rights to land property rights of the debtor on request debtor to the new creditor hereinafter referred to as the initial creditor."⁷

In relation to the implementation of the refinance loans on collateral in the form of a plot of land rights, then the guarantee will lead to a result of the laws that arise loading as security rights, as in the development of legal guarantees contained special arrangement guarantees the right to land is regulated in Act No. 4 of 1996 on Mortgage.

To guarantee the repayment of the loans on the guarantees given by the debtor held legally binding formal review by lenders / banks. The nature of the binding agreement that guarantees lazimnya be constructed as accesoir agreement, ie the agreement associated with the principal agreement, the credit agreement.⁸

The binding guarantees can be made by authentic deed or by deed under hand. In the banking world, the authentic act is generally made by and the presence of a notary. With the help of a notary, the bankers will not have to worry anymore about the possibility of mistakes binding on assurances received from potential debtors on its lending. Because notary office whose existence is desired in order to realize the legal relationships between subjects are civil law.

This is in accordance with the duties, functions and authority of the notary as stipulated in Act No. 02 of 2014 amendments to the Act No. 30 of 2004 concerning Notary Article 15 Paragraph (1) of the authority of the Notary. because the notary is authorized to make an authentic deed form capable of providing legal protection to parties who enter into agreements.

In the process of Take Over happened to this problem, the debtor applying for a loan to a new lender with the objective to use to pay off the remaining debt to the previous creditor and the rest of the credit will be blocked until the certificate on behalf of the debtor may be issued and will be handed over to a new lender as collateral on credit. While the signing of the loan agreement between the Debtor and Creditor New Notary / PPAT only holds a copy of the certificate submitted as evidence of collateral Land Rights Property rights of the debtor, since the debtor still has a debt / credit with the lender long that the collateral can not be issued by the previous creditor.

Here, the role of a notary / PPAT is needed in Take Over transaction process which plays a role in the binding guarantees process to ensure the legal protection of both parties as well as third parties. Deed Take Over This credit agreement before a Notary / PPAT, so that the deed of an authentic act which has the strength of evidence is perfect.

In Article 54 paragraph (1) of the Regulation of National Land Agency No. 01 of 2006 that before a deed regarding the actions of law as referred to in Article 2 letter a to g, then PPAT shall check the suitability of the validity of the certificate and other records at the office of the local Land to explain the purpose and objectives.

In the case of refinance loans are not regulated in the legislation specifically, but there is a correlation and linkage with the process and stages in binding guarantees as security rights and checking certificates guarantee the land rights and in terms of a deed of credit which has been set in legislation provision of credit outstanding.

Another thing to note is the status of collateral in refinance loans have insecurity, among

⁶ Suhanoko dan Endah Hartati, 2005. *Doktrin Subrogasi, Novasi, dan cessie*, Jakarta: PT. Kencana Prenada Media Group, hlm.3.

⁷ Indonesia, 2007, *Kitab Undang-Undang Hukum Perdata Burgerlijk Wetboek*. Bandung: PT.Citra Umbar, p, 360.

⁸ Rasjim Wiraatmadja , 1984, *Pengikatan Jaminan Kredit Perbankan*, Jakarta: PT. Bank NSIP, p.9.

other collateral can not be tied together perfectly, because the collateral was pledged on the loan will be repaid. On the other hand the creditor may not issue a letter of credit payment of *Roya* absence.

Take Over a glimpse of this mechanism seems no problem. But "precautionary principle" is needed from a notary public / PPAT in Take Over this process, because in fact in the process of Take Over this there are things that can be a source of problems.

This study aims to: 1) to analyze the role of the notary on the binding guarantees the right to land in the credit take over between different banks. 2) to analyze the mechanism of binding process guarantees the right to land in the credit take over between different banks. The data used in this study are primary data, secondary data and data tertiary to support the process of this research, which was then analyzed by descriptive analysis method.

Research methods

The method used in this research is descriptive analysis approach. Descriptive analysis is a method used to describe or to a problem that analyze research results. Descriptive analysis approach in this study, is the approach in terms of legislation and legal norms relating to this issue.

2. Results and Discussion

2.1 The Notary Role In The Binding Guarantees The Right To Land In The Credit Take Over between Different Banks.

The role of the Notary in the services sectors are as officers authorized by the State to serve the community in the areas of civil, especially the manufacture of an authentic deed. This is similar to what is mentioned in article 1, paragraph (1) of Act No. 02 of 2014 on the change of Act No. 30 of 2004 concerning on Notary (UUJN) which states: "Notary is a public official authorized to make an authentic deed and other authorities referred to in the law of this invitation. "

In the event of the Credit Take Over process between different banks, then the role of a notary public / PPAT is needed in the transaction process of Take Over that contribute to making the deed of credit agreement between the two parties and the binding process guarantees Landrights to make a Power of Attorney Providing Mortgage (SKMHT) to ensure the legal protection of both parties as well as third parties prior to making Deed of Credit Agreement between the two sides. Mortgage Giving Power of Attorney was created with the aim to bridge the bonding process guarantees that in this case the collateral (original certificate) are still in the previous creditors because the debtor has not paid off the remainder of the debt so banks can not issue a letter of *Roya* on credit.

Before a Notary makes a Power of Attorney Granting to guarantee the land certificate, then Notary/PPAT shall advance to check the legality of the validity among others, to determine the extent of the relevant land certificate is an original document (valid) or problems with reference to its provisions. Her research is to confirm keinstansi were published and interviews with land owners.⁹

Certificates that have been examined in suitability with the lists at the office of the local Land is returned to the PPAT concerned on the same day as the day we checked, it was a preparation that must be done by PPAT as stipulated in Article 97 Regulation of the Minister of State for Agrarian Affairs / Head of National Land Agency No. 3 of 1997 on the

⁹ Andian Sutedi, 2010, *Hukum Hak Tanggungan*, Jakarta: Sinar Grafika, p.178-179.

Implementation of Government Number 24 of 1997 on Land Registration.¹⁰

The binding guarantees can be made by authentic deed or by deed under hand. In the banking world, the authentic act is generally made by and the presence of a notary. With the help of a notary, the bankers will not have to worry anymore about the possibility of mistakes binding on assurances received from potential debtors on its lending.

Act No. 4 of 1996 also stipulates that provisions for binding soil or objects relating to the land is used as collateral. When all the provisions of the binding of a debt security as defined by the law are met, namely to create a Deed Granting Mortgage Notary / PPAT and then register it to the local land office that issued the Certificate Right dependents, objects guarantee that credit can be said to have been tied perfect.¹¹

3.2. Binding Mechanism Guarantees The Right To Land In The Credit Take Over Between Different Banks.

Take over the credit occurs when a third party gives credit / financing to debtor which aims to repay debtors to creditors early, so the new loans to borrowers such third party's position replaces the initial creditor position. While the mechanism of refinance loans between banks is starting debtor through the services of a Notary / PPAT to reapply for credit towards a new lender to make a statement in this case is called Notary Covernote / PPAT to be submitted to the new lender to provide approval for the credit application for the purpose of paying off credit on the creditor initial.

In the case of Take Over the different interbank credit constraints often found in the implementation process. Constraints in practice often faced by notary / PPAT is:¹²

- Original certificate difficulties checks at the land office before the Take Over.
- Statement letter write-off or *Roya* record encumbrance of the bank (old lender) often can not be issued simultaneously at the time of the Take Over debt / credit do.
- Confusion about allowed / not Notary / PPAT make a Power of Attorney Imposing Mortgage (SKMHT) where the *Roya* has not been given by the bank (old lender) at the time of payment in full to the bank (old lender) has been performed.
- Almost no absence or lack of good cooperation between the banks in terms of the Take Over Debt / Credit (Take Over).

According the opinion of Abdullah Hamid, the construction of the existing law is not adequate to meet the needs of the practice in the banking world, especially in the Take Over of the different bank loans. So that the solutions provided to bridge the binding guarantees in the event of legal that is by using the Power of Attorney Imposing Mortgage (SKMHT). However, prior to its implementation should be ensured in advance about the certainty of the previous bank (previous creditor), will issue a letter *Roya* on the same date as the binding of these guarantees. And still carry out checks on the guarantee certificate at the land office, although forced to use informal checking process, the "check voyeur".¹³

In the regulation of Minister of Agrarian Affairs / Head of National Land Agency No. 3 of 1997 Article 97 paragraph (1) Before executing a deed regarding the removal or imposition of land or property rights to the apartment units through the Power of Attorney Imposing

¹⁰ *Ibid*, p.179.

¹¹ M. Bahsan, 2007, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Jakarta: PT. Raja Grafindo Persada, p.121.

¹² Herlin Budiono, 2015, *Kumpulan Tulisan Hukum Perdata di bidang Kenotariatan*, Bandung: PT. Citra Aditya Bakti, p. 143.

¹³ Kiki Rezeki Amelia, 2015, *Pengikatan Jaminan Hak Atas Tanah Dalam Take Over Kredit*, Palembang: Tesis Unsri, p.95.

Mortgage or Deed Granting Mortgage, Notary and PPAT required prior to check or checks at the local land Office on the suitability of land certificates or ownership of apartment units to be used as collateral by registered through SKPT (Certificate Of Land Registry) in the local land Office that is useful to know information about the land certificate.

This is regulated in article 2, paragraph (2) Regulation of the National Land Agency No. 01 of 2006. The checking of the authenticity and condition of the certificate that will be pledged an absolute right not to be skipped by legal practitioners, especially the notary and / or Officer deed land (PPAT) before making a binding guarantee of a land and / or buildings. At that point it can be seen certificate conditions concerning, among other things:

- Whether the land is not in dispute that cause it to be blocked by the parties to the dispute?
- Is the land title certificates are genuine and never duplicated illegally?
- Do tenure, which own decision Court case has reached the stage of "incraht" (having binding legal force)
- Whether the certificate is not pledged to other banks to ensure a certain debt?¹⁴

The provisions concerning the inspection prior to the Land Office is the implication so that the interest of the assignee of dependents covered, when it turns out land title certificates submitted to the PPAT the data stored on the certificate does not match the existing data on land book rights over land to the Land Office, or turns certificate presented is not a document issued by the Land Office concerned.

But if there happen checking the certificate is hard to do, then forced the borrowers have to pay the remaining debt (out standing) on the creditor early advance, either use the money the debtor personally or with a credit application on the new lender can be redeemed early through Notary Covernoote/ Notary Certificate / PPAT to the new lender to immediately unfreeze credit, this covernoote is as authentic evidence of the seriousness of the debtor in conducting credit agreement.¹⁵

After Notary / PPAT conduct an examination of the original certificate in the local Land Office, the Notary / PPAT can give Power of Attorney Imposing Mortgage (SKMHT), only then can perform the maintenance *Roya* Mortgage by letter *Roya* initial credit, because Mortgage lenders beginning to be *Roya* first and then loaded new Encumbrance third parties except for the sake of it switch because dependents on rights, Subrogation, inheritance or other reasons that are not needed are installed *Roya*. After *Roya* letter issued by the bank, then the parties may conduct the signing of the Deed of Credit Agreement new car through Take Overs.

Lastly after *Roya* maintenance phases on Mortgage then proceed with the signing of the Deed Granting Mortgage (APHT) for the benefit of third parties. Another thing to note is the status of collateral, the loan has a vulnerability to take over, among other collateral can not be tied together perfectly, because the collateral was pledged on the loan will be repaid. On the other hand, the creditor may not issue a letter of credit *Roya* without any payment. However, the Take Over loans made by banks in this study, only for the provision of new credit facilities to borrowers, to make payment of the remaining debt in other banks, and excess funds could be used by the debtor for other needs.

The binding guarantees in Take Over loans at different banks should be done after the original certificate and a letter has been submitted to the notary *Roya* / PPAT followed by Deed Granting Mortgage (APHT). Although the method is considered less guarantee the

¹⁴ Irma Devita Purnamasari, 2011, *Kiat-Kiat Cerdas , Mudah, dan Bijak Memahami Masalah Hukum Jaminan Perbankan*, Bandung: Kaifa, p.60.

¹⁵ Herlien Boediono, Op, cit. p. 12.

interests of the bank for payment of the remaining debt by the banks is not immediately followed by the deed of credit agreement and binding guarantee.

In such case, provided that at the time of loading the next Encumbrance can be obtained proof of the keel and *Roya* letter from the bank that previously held the Encumbrance of land and / or buildings, it would be no problem.

3. Closing

3.1. Conclusion

The fine related to refinance loan, then the role of the Notary / PPAT should be promoting the principle of "Caution", because practice is very prone to take over the emergence of legal consequence. Especially in binding guarantees and the imposition of Mortgage that must be recorded in SKMHT that the assignment is not perfect (the guarantee is still on the previous creditor), it is not in accordance with the applicable juridical in the stages of the binding guarantees process of land.

Take Over of credit can be done by way of subrogation, as well as a guarantee in the form of mortgage can be switched by-law without the need for plug *Roya*. This is regulated in Article 16 Paragraph (1) of Act No. 4 of 1996 on Mortgage. But in practice, many banks are willing to take risks on lending without a guarantee that the imposition of Rights is not perfect dependents.

3.2. Suggestion

The binding guarantees in Credit Take Over at different banks should be done after the original certificate and a letter has been submitted to the notary *Roya* / PPAT followed by Deed Granting Mortgage (APHT). Although the method is considered less guarantee the interests of the bank for payment of the remaining debt by the banks is not immediately followed by the deed of credit agreement and binding guarantee.

4. Bibliography

- [1] Igantius Ridwan Widyadharna, 2007, *Hukum Sekitar Perjanjian Kredit*, Semarang: Badan Penerbit Universitas Diponegoro
- [2] Salim, 2004, *Perkembangan Hukum Jaminan di Indonesia*, Jakarta: PT. Raja Grafindo Persada.
- [3] Suhanoko dan Endah Hartati, 2005, *Doktrin Subrogasi, Novasi, dan cessie*, Jakarta: PT. Kencana Prenada Media Group.
- [4] Rasjim Wiraatmadja, 1984, *Pengikatan Jaminan Kredit Perbankan*, Jakarta: PT. Bank NSIP.
- [5] Andian Sutedi, 2010, *Hukum Hak Tanggungan*, Jakarta: Sinar Grafika
- [6] M. Bahsan, 2007, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Jakarta: PT. Raja Grafindo Persada.
- [7] Herlin Budiono, 2015, *Kumpulan Tulisan Hukum Perdata di bidang Kenotariatan*, Bandung: PT. Citra Aditya Bakti.
- [8] Kiki Rezeki Amelia, 2015, *Pengikatan Jaminan Hak Atas Tanah Dalam Take Over Kredit*, Palembang: Tesis Unsri
- [9] Irma Devita Purnamasari, 2011, *Kiat-Kiat Cerdas , Mudah, dan Bijak Memahami Masalah Hukum Jaminan Perbankan*, Bandung: Kaifa.
- [10] Indonesia, 2007, *Kitab Undang-Undang Hukum Perdata Burgerlijk Wetboek*. Bandung: PT. Citra Umbar,.
- [11] Indonesia, 1996, the Law of the Republic of Indonesia Number 4 of 1996 on Mortgage, TLN, RI, No. 3632.
- [12] Indonesia, of Notary Law, Act No. 117 LN 02 of 2014. of 2014.TLN No.4432.