

Execution of Recognition of Grosse Documents Made Payable Notary

Rekowarno¹

Abstract. This study, entitled: Implementation of Execution of Deed of Acknowledgment of Debt Grosse Created Notary, the problems of this study are 1) How is the execution of the Deed of Acknowledgment of Debt Grosse made Notary? 2) What are the barriers and solutions in the execution of the Deed of Acknowledgment of Debt Grosse made Notary? The method used in this research using normative juridical approach, which includes research principles of law, the legal systematics, synchronization of law, legal history and comparative law. The results using this method Sociological Juridical conclude that: 1) Execution of a debt recognition grosse deed as authentic deeds in the lending agreement, can only be carried out under the leadership of Chairman of the Court (court fiat) local. Not that grosse deed of acknowledgment of debt which includes the phrase, "As Justice Based on God" the legal force equivalent Court decision that has binding can be carried out executions without trial fiat (parate execution). Precisely because equated with court decisions that have permanent legal force, the implementation of the execution must be at the behest and under the leadership of Chairman of the Court, 2) Barriers execution grosse deed of acknowledgment of debt arose because of noncompliance with formal requirements, the form must be as specified by the Act and the terms of material, which is the amount of debt must be certain or uncertain, the deed must be an acknowledgment of debt unilaterally from the debtor, and not to be confounded with the grosse deed mortgages. These problems can result grosse deed recognition execution request Debt can not be accepted by the President of the Court State and cause grosse deed of recognition The debt does not have the power executorial,

Keywords: Execution Grosse, Deed of Acknowledgment of Debt, Notary.

1. Introduction

In Debt Agreements between creditors and debtors often have their bad loans caused by the weakness of the creditor / bank itself. The weakness that is often experienced, particularly in assessing the principle of guarantee (collateral)², Including knowledge concerning the creditors of the Civil Law Studies, which is associated with the credit

¹ Student Masters (S-2) of Law Faculty of Law UNISSULA email rekowarno@gmail.com

² Guarantee (collateral), here means a guarantee of wealth that can be tied up as collateral, to the certainty of repayment behind the day, if the recipient does not pay off credit debt. The guarantee can be also people presents itself to guarantee the payment of the credit receiver (borgtocht). This assurance factor is the factor of security for loans. Total Assessed values of collateral typically be higher than the amount of credit granted. Added to the loan amount and the interest is also taken into account the costs arising from the credit. Or in other terms must be taken into account other guarantees provided by the applicant (debtor) that can be availed by the Bank in the future if the debtor can not pay the loan, p. 72.

guarantee institution, the institution of confiscation and execution in all its aspects are really complicated, inadequate and even less so. Unintentional mistakes which initially seems simplistic, in practice can be sharp gravel which could be fatal to the credit refund. Delays and sometimes even failure in the execution of the Deed of Acknowledgment of Obligation Grosse dizzying party creditors and increase the burden of thinking of the judges in Indonesia. Not infrequently happens that, because of the execution of jams caused by the act of the debtor, such as obstructing the court clerk and interpreter Auctions, blocking at the District Land Office / Municipality to goods that made the object of debt guarantees, and much more. High Court (PT) as the front guard and the Supreme Court (MA) as the apex institution Indonesian Justice, participated kept busy in giving directions to the Chairman of the Court who led the execution in the terrain is.

Indeed, at the beginning of this debt statement Deed Grosse less populair, but after the court decision limiting the "otherwise enforceable first" (uitvoerbaar bij voorraad)³. Deed Grosse institutions began heating up. Many of the parties turned to the Deed Grosse form, because this form at least provide some advantages, among others: (a) save time; (B) save costs; (C) save energy and mind; and (d) faster creditors money back.

Subsequent developments, the issue of Grosse Deed of Acknowledgment of Debt is increasingly real and interesting to study. So many here and there that makes the topic of seminars and other scientific forums, in the hope of a bright spot and the unity of the perception of this Deed Grosse institutions can be achieved, which in turn will guarantee legal certainty which is coveted by the parties can be realized.

Based on the description above, the writer interested in writing research titled "Execution Implementation Deed of Acknowledgment of Debt The Grosse Created Notary"

Research Methods

The method used in this research is normative juridical approach, which includes research principles of law, the legal systematics, synchronization of law, legal history and comparative law.

The normative research done by researching library materials or secondary data such as legislation, court decisions, legal theories and opinions of legal scholars, so that the analysis used in this penelitian is normative qualitative analysis.

³ With the SEMA No. 06/1975 dated 1 December 1975, reaffirmed by SEMA No. 03/1978 dated 1 April 1978 the Supreme Court called on the judges to not uitvoerbaar bij voorraad verdict, although the terms of Article 180 (1) HIR (ch. 191 (1) RBg been met. Only in matters not can be avoided only (exceptional nature) can be imposed, namely: a. if there is a foreclosure conservatoir the price of the goods seized will not be sufficient to cover the amount being sued; b. if deemed necessary by a guarantee by the applicant execution balanced, with notes : 1) objects should guarantee that is easily stored and used to replace the execution, if the decision in question was not justified later by Judge of Appeal or Cassation; 2) should not receive guarantor (borg) to prevent the entry of a third party in the process; 3) determining the object and the amount is up to the Chairman of the PN; 4) objects collateral recorded in a separate list. Sudikno Mertokusumo, 1988, the Civil Procedure Code Indonesia, publisher of Liberty, Yogyakarta, p. 44.

2. Results And Discussion

2.1. How execution of Deed of Acknowledgment of Debt Grosse created Notary

In addition must meet formal and material, grosse deed of acknowledgment of debt to be carried out the execution, the implementation must also be met with some principles, namely:⁴

- Grosse deed is assesoir.
Grosse deed is an advanced bond born of the principal agreement. In this case the principal agreement is a legal relationship agreement between the debtor and creditor debts. From this the lending agreement, if the party wants them to attach the agreement in the form of grosse deed, with the aim of:
 - Surer guarantee for Creditors parties about compliance debt payments;
 - And simultaneously giving the right to Creditors to ask executorial *Verkoop* , of assets Debtors or on collateral shortly after Debtors in default without going through ordinary civil suit. between grosse deed with the principal agreement related.
- Grosse deed can not be divided.
That the payment of part the amount of debt does not abort the validity and value of the power of execution (Executorial kracht) grosse deed. Principle This is emphasized in Article 1163 KUH Civil Code, applies analogously against all forms of certificates. although The article addressed and regulated in Articles of rules mortgages. this principle also apply by analogy to grosse deed of acknowledgment of debt.
- Grosse deed has a value of power such as the execution of court decisions which has gained legal force permanent.
If all of the terms grosse deed fulfilled, by itself according to the law have the deed grosse the power of execution. Rated power grosse deed execution equals execution inherent strength values the court verdict having permanent legal power.
- Peace the only one who can delaying the execution strength grosse deed, this principle set out in Article 224 HIR / 258 RBg, that only peace may suspend the execution grosse deed.
- Execution grosse deed executed on command and under the leadership of Chief Justice Country. Based on this principle, executorial *Verkoop* against grosse deed executed at the behest and under the leadership of Chairman of the District Court in jurisdiction the debtor (the debtor resides or dwells).

From interviews with the Chairman of the Writers Sleman District Court and District Court Mungkid and State Court Interpreter Mungkid and Savior Surakarta District Court, stated that the Application Grosse Deed of Acknowledgment of Debt carried out by the following procedure:

⁴M.Yahya Harahap. 1988. *Kedudukan Grosse Akta Dalam Perkembangan Hukum di Indonesia*. Media Notariat.

- Creditors or can as the applicant's authorized execution execution petition grosse deed of acknowledgment of debt with grosse deed bring recognition debts that have qualified for the formal and material and supporting documents to the Chairman District Court in which areas The debtor resides / lives or choose his legal residence;
- Chairman of the Court after receiving the application file will then examine grosse deed of recognition debt and coordinate with the Chief Registrar / Secretary of the Court;
- Furthermore, the Chairman of the District Court immediately ordered Sita's Savior call a debtor to do accost by the President of the Court (*Aanmaning*), Aanmaning set in Article 196 HIR which reads as following:
If the defeated party does not unwilling or negligent decisions insufficient contents it well, then the parties won insert request either verbally, that is to Chairman of the State Court in the first paragraph of Article 195, the Chairman summoned the parties defeated it and advised that it suffice that decision in time a maximum of 8 days.
Accost a stage the beginning of the execution. accost occur when the debtor has been in default or not doing his duty. This matter in relation to the running decision is an act and effort conducted by the President of the Court State of the Defendant or the debtor in order to carry out its obligations in time determined by the Chairman Court. In terms of execution grosse deed of acknowledgment of debt, grace the allotted time is over 8 (eight) days. After eight (8) days after the admonition, the debtor must perform its obligations voluntarily. Pengeruan must conducted by the Chairman of the Court if he has already received execution request of the creditors. At the time of aanmaning attended by both parties. On this time the debtor must admit firmly and surely with agreed upon by both sides massive debt with interest. If passed a grace period of 8 (eight) days of the defendant yet also implement its obligations in voluntary, it will be executed;
- if the magnitude of the debt is certain and agreed indeed so, the President of the Court through its commencement, ordered Clerk and Interpreter Sita to do grosse execution deed of acknowledgment of debt the seizure and auction of a material execution against the debtor;
- confiscation of execution provided for in Article 197 paragraph (1) HIR stated, if at a predetermined time has passing, the debtor has not also meet decision or after being called, Debtors can not face, or after came before and after being reprimanded still does not meet its obligations, the Chairman of the Court gave order to warrant that moving goods belonging to the debtor seized. If the goods are moving there or not quite the goods remain the property of the debtor also can be seized and auctioned so it is enough to satisfy the debt. Seizure of executions carried out by clerks or designee and assisted by 2 (two) witnesses as provided for in Article 197 paragraph (2) and (6) HIR and sign the Minutes Sita execution. Confiscation and auction execution This is done by the Registrar together with Savior Sita and assisted by the Office State Assets and Auction (KPKNL). Goods defendant or the debtor seized must be based on information obtained from

creditors, goods Which are to be executed. confiscation This execution should not be prevented by a third party, if prevented then that party must file seizure resistance. Sita executions carried out a number of the debt. If the confiscated immovable such as land or houses were ordered to The village head that was announced in place it was made public in order to know by Penitera registered in the Land District / City and registered The District Court in the book Execution Register Sita. While waiting for the auction, items seized in the hands remain still consumed. Sita execution was not arbitrary all objects belonging to the debtor will be seized, there are some exception of goods that should not be confiscated namely household appliances that concerning lives of someone. case This is because seizure executions by the Court does not aim to turn off a person's life. After the auction is completed and the goods have been sold, the auction results will be handed over to the won the case. If it turns out the proceeds of the auction greater than the amount of the debt, the remainder of the proceeds will returned to the party who has subject to execution (the debtor). All requests execution grosse deed of acknowledgment of debt is uncertain will be accepted, despite having irah-irah "By Justice Based Belief in God Almighty "that which has the power executorial together with the decision of the Court binding (inkracht). There is one exception a grosse deed of acknowledgment of debt can not be accepted, that if the debtor does not recognize the magnitude of debt certainly. If the debtor does not recognize, the application for execution grosse deed of acknowledgment of debt is not accepted by the President of the Court and made Minutes as well as President of the Court orders a new lawsuit is a civil suit usual.

2.2. Barriers and Solutions in Implementing the Deed of Acknowledgment of Debt Execution Grosse Created by Notary

Obstacles and solutions in the execution of the Deed of Acknowledgment of Debt Grosse created by Notary who impede the course of execution of debt recognition grosse deed addressed to the Court that the petition is often grosse deed of acknowledgment of debt even though grosse deed has met the formal requirements, but was refused by the competent court based on various reasons, among others:⁵

- it does not constitute recognition of a unilateral debt;
- the number is uncertain because of the deed of acknowledgment of debt are decided interest and / or penalties;
- based on a written objection from the debtor to the execution of the deed grosse reasons:
 - that the amount is uncertain because of the amount indicated on the certificate of recognition grosse debt has been partially paid with receipts showing payment of the petition creditors. Looking back on the notion deed of acknowledgment of debt referred to in Article 224 HIR, he must declare the amount of money

⁵Shendy Vianni Rangan. 2015. "Pelaksanaan eksekusi Grosse Akta Pengakuan Hutang Dalam Penyelesaian Sengketa Kredit Macet Perbankan". Journal calyptra. Vol. 4 No. 1. Surabaya University of Master. Of Notary

contained should definitely and directly referred to and determined in grosse deed of acknowledgment of the debt if the following provisions of the article above, the consequences that for every mortgage debt of debtors, whether Creditors must contain new debt acknowledgment certificate that waste time, cost, and energy. Though the loan amount stated on the certificate plus grosse predetermined rate can be calculated / determined with certainty at the time of execution of the deed filed grosse, and / or the amount indicated on the certificate grosse applied after deducting the amount proved to have been paid can be calculated with a definitive result, must be interpreted in the amount of certain fixed deed grosse / Sure. It is set in the Supreme Court Decision No. 3917 K / Pdt / 1986 dated 30 September 1988.

- despite its title grosse deed of acknowledgment of debt, it not an admission of debt unilaterally because in grosse deed is mentioned / put agreement is the source of the debt as a purchase agreement and others that give rise to an obligation on the debtor to pay a certain amount of money so that according to the President of the Court which handles the execution petition, grosse deed material does not qualify for granted because it is not a pure debt acknowledgment / unilateral.

In addition to those mentioned above, the issue of debt recognition grosse deed which is still going on is a different interpretation of the Supreme Court Justice amongst themselves, Jurist, Notary and Legal Counsel of creditors about the substance of Article 224 HIR / 258 RBg. This led to the execution of the deed of acknowledgment of debt using grosse be different in each district court. Non-fulfillment of formal requirements and material requirements also led to the debt recognition grosse deed is not accepted by the District Court. Note by the interested parties both debtors and creditors, the petition grosse deed of recognition can not be accepted because when done aanmaning by the Chairman of the Court, when the debtor does not recognize the amount of debt that is certain (fixed loan),

Based on the interviews that have been conducted, problems in the execution of the deed of acknowledgment of debt grosse also arise when there is a resistance executions carried out by a third party with items that become the object of the execution. Third parties claimed that the goods are made the object of his execution. Events like this are not uncommon when the execution is underway. However, the Court made clear that the execution should not be hindered by anyone, if blocked, then that party must file a separate seizure resistance.

3. Closing

3.1. Conclusion

- All requests execution grosse deed of acknowledgment of debt is uncertain will accepted, although the head deed contains the phrase "For the sake of justice by Belief in God Almighty ", which inequate with Court Decision which has binding (inkracht van gewijsde). There is one exception a grosse deed of acknowledgment of

debt can not be accepted, that if the debtor does not recognize the magnitude of debt certainly. If the debtor does not recognize, the application for execution grosse deed of acknowledgment of debt is not accepted by the President of the Court and made Minutes as well as President of the Court ordered the parties to file a new lawsuit is a civil suit ordinary,

- Constraints in the execution of the deed of acknowledgment of debt grosse form of resistance executions carried out by third parties. Third parties claimed that the goods are made the object of his execution. Events like this are not uncommon when the execution is underway. Nevertheless, the Court has provided a solution that the execution should not be hindered by anyone, if blocked, then that party must file a separate seizure resistance,

3.2. Suggestion

Should the terms, implementation, and existing problems can be known by the parties concerned in grosse deed of acknowledgment of debt, so there is no longer a debt recognition grosse deed that will not be accepted. In addition there should be common understanding or the interpretation of Article 224 HIR / 258 RBg, so that the execution of the deed of acknowledgment of debt grosse can walk in accordance with the applicable rules.

4. Bibliography

- [1] M.Yahya Harahap 1988 *Kedudukan Grosse Akta Dalam Perkembangan Hukum di Indonesia* Media Notariat.
- [2] P Vellema 1909 *Het Reglement op het Notarisambt in Nederlansch Oost-Indie Benevens het Tarief van het honorarium* Penerbit Martinus Nyhoff 'S-gravanhage.
- [3] Rekowarno 1991 *Beberapa Masalah Hukum Yang Menghambat Eksekusi Grosse Akta Pengakuan Hutang Yang Dibuat Notaris Di Indonesia Yang Berkepal "Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa"* Surakarta: Fakultas Hukum Universitas Sebelas Maret Surakarta.
- [4] *"Pelaksanaan eksekusi Grosse Akta Pengakuan Hutang Dalam Penyelesaian Sengketa Kredit Macet Perbankan"* Journal calyptra Vol 4 No 1 Surabaya: Surabaya University School of Notary Master.
- [5] Constitution of the Republic of Indonesia of 1945
- [6] Act No 16 of 1985 on the Flats
- [7] Act No 30 of 2004 concerning Notary as amended by Act No 2 of 2014 on the Amendment of the Act No 30 of 2004 concerning Notary
- [8] The draft Civil Code (Burgerlijk Wetboek Gazette 1847 No 23)
- [9] Book of the Criminal Justice Act (Wetboek Van Strafrecht Staatsblad 1915 No 732)
- [10] Notary in Indonesia Regulations (Reglement op het-ambt Notary in Indonesie / Ordinance of January 11 1860) S 1860-3 mb July 1st 1860 (TXVIII-25)
- [11] The updated Indonesia Regulation (RIB / HIR) Stb 44 1941

- [12] Rechtsreglement buitengewesten (RBg) Stb No 227 of 1927
- [13] Government Regulation No 24 of 1997 on Land Registration