

Legal Protection for Creditors Due to Cancellation of Deed of Granting Mortgage Rights (Apht) and Power of Attorney to Charge Mortgage Rights (Skmht)

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Abstract. *The agreement between the bank and the customer will create a relationship involving debts. In banking practice, the bank must ensure that the funds lent protected by legal collateral. Therefore, the role of the Land Deed Official (PPAT) is important to ensure that the mortgage binding process. This is an effort to provide legal protection for creditors. The purpose of this study is to analyze: 1) Legal protection for creditors due to the cancellation of APHT and SKMHT at PT BPR BKK Purwodadi (Perseroda). 2) Judge's considerations in the decision on the lawsuit for the cancellation of APHT and SKMHT at PT BPR BKK Purwodadi (Perseroda) with case number 41/Pdt.G/2023/PN Pwd. This type of research is sociological juridical research. The approach method in this research is a Qualitative approach. The types and sources of data in this research are primary data and secondary data obtained through interviews and library studies. The analysis in this research is descriptive analysis. The results of this study are that legal protection for creditors is realized by ensuring that the credit granting process runs according to applicable provisions, through the creation of a credit agreement in the form of a notarial deed. The legal relationship with Case Number 41/Pdt.G/2023/PN Pwd is a debt-receivable relationship.*

Keywords: Creditors; Legal; Officers; Protection.

1. Introduction

Banking is one of the rapidly growing sectors that can support the national economy and play a major role in national development. Banks have two main functions in accordance with Article 3 of Law Number 07 of 1992 concerning Banking as amended by Law Number 10 of 1998 concerning Banking, namely collecting and distributing public funds. The collection function can be seen when banks distribute funds in the form of deposits such as deposits and savings,

which then the funds that have been collected will be distributed back to the community in the form of loans or credit.¹

Credit is one of the banking products that is in great demand by the public, especially for those who need funds for various purposes. This product can be used by individuals or business entities to obtain financing in the form of loans, either for consumption, investment, or business capital. In Article 1 point 2 of Law Number 10 of 1998 concerning Banking, credit is defined as the provision of money or bills that are equated with it, based on an agreement between the bank and the borrower, with the provision that the funds must be returned within a mutually agreed period of time.²

Providing credit to the public through banking is an economic activity involving two parties, namely the creditor or creditor in this case is the bank and the credit recipient or debtor. In the process of providing credit, the bank as a creditor has a role to provide funds needed by the debtor. In terms of providing credit facilities to debtors must be followed by a written agreement, because the relationship between creditors and debtors is not just a financial transaction, but also includes a strong legal bond.³

The agreement between the bank and the customer will create a relationship involving debts. In this context, the debtor (customer) has an obligation to pay off all debts that have been agreed upon with the creditor (bank) based on the terms and conditions that have been agreed upon by both parties. The credit agreement serves as the main agreement that can cancel or override other related agreements. In addition, this agreement serves as evidence that outlines the limits of rights and obligations between the creditor and the debtor. In the credit agreement, there are provisions regarding the term, collateral, and types of credit and the consequences if there is a dispute or default.⁴

In a credit agreement, the debtor must provide collateral as a form of protection for the creditor to ensure that credit payments continue to run smoothly. If the debtor fails to repay the loan, the creditor has the right to take over the collateral assets as compensation for the losses incurred.

¹Fahrial, 2018, "The Role of Banks in National Economic Development", *Encyclopedia of Journal*, Vol. 1 No.1, p. 179.

² M. Yahya Harahap, 1997, *Several Reviews of Legal Problems*, Second Book, Bandung: Citra Aditya Bakti, p. 210.

³Ahmad Mustain, 2013, *Legal Protection of Creditors Holding Mortgage Certificates Against the Execution of Mortgage Rights at PT. BRI (Persero) Tbk. Cepu Branch Office*, Thesis, Semarang State University, p. 2-3.

⁴Putra, RK 2016, *Lawsuit for Breach of Contract Against the Decision of the Peace Deed at the Semarang District Court Decision Number 436/Pdt.G/2014/PN Smg. Diponegoro Law Journal*, Vol. 05 No. 03, p. 112.

The involvement of the Land Deed Official (PPAT) in the process of granting mortgage rights has an important role in maintaining the validity and legal force of the Deed of Granting Mortgage Rights (APHT) and the Power of Attorney to Charge Mortgage Rights (SKMHT). The deed made by the Land Deed Official (PPAT) in this process has strong legal force and is considered perfect evidence. If the debtor defaults, the PPAT deed becomes perfect evidence for the bank to sue the debtor through legal channels.⁵

In banking practice, banks must ensure that the funds lent are protected by valid collateral. Therefore, the role of the Land Deed Official (PPAT) is very important to ensure that the mortgage binding process is carried out in accordance with applicable laws and regulations. The involvement of the Land Deed Official (PPAT) in the mortgage granting process is very important to maintain the validity and legal force of the Mortgage Granting Deed (APHT) and the Mortgage Encumbrance Power of Attorney (SKMHT). In this case, PT BPR BKK Purwodadi (Perseroda) received a lawsuit to cancel the APHT and SKMHT with an inappropriate time period. The bank previously won a simple lawsuit, so the debtor did not accept the results of the simple lawsuit and filed a new lawsuit.

Based on the background description above, the author is interested in raising the title of the thesis entitled "Legal Analysis of the Lawsuit for Cancellation of APHT and SKMHT at PT BPR BKK Purwodadi (Perseroda) (Study of Court Decision Number 41/Pdt.G/2023/PN Pwd)". The theories used to discuss the problems in this journal are the Theory of Legal Positivism and the Theory of Legal Certainty.

2. Research Methods

The approach method used in this study is a sociological legal approach. The sociological legal approach is an approach that focuses on identifying and conceptualizing law as a real and functional social institution in a real life system. This sociological legal approach emphasizes research that aims to obtain legal knowledge empirically by going directly to the object or going directly to the field. The research specifications used in this study are descriptive analysis. Descriptive analysis research is research that describes applicable laws and regulations associated with legal theories concerning the problem. Data collection methods include observation, interviews, document studies and library materials. This study basically uses qualitative methods to analyze the data obtained. Where it is to describe data in a natural setting with the intention of interpreting the phenomena that occur where the researcher is the key instrument, sampling in the form of data is carried out purposively and snowball, data collection techniques with triangulation (combined), data analysis is inductive / qualitative.

⁵A. Kohar, 2008, *Notary in Legal Practice*, Alumni, Bandung, p. 64.

3. Results and Discussion

3.1. Legal Protection for Creditors Due to Cancellation of Deed of Granting of Mortgage Rights (APHT) and Power of Attorney to Encumber Mortgage Rights (SKMHT) at PT BPR BKK Purwodadi (Perseroda)

The creditor is a banking party, namely PT BPR BKK Purwodadi (Perseroda). Legal protection for debtors is very important to overcome the risk of cancellation of the Deed of Granting Mortgage Rights (APHT) and the Power of Attorney to Charge Mortgage Rights (SKMHT). APHT and SKMHT are important documents that give the creditor the right to execute collateral if the debtor defaults on the credit agreement.

1) Background to the Cancellation of APHT and SKMHT

Based on the results of the interview with Mr. Miftahul Ulum as the Collector Staff of PT BPR BKK Purwodadi (Perseroda), it was obtained that PT BPR BKK Purwodadi had received a lawsuit regarding the cancellation of APHT and SKMHT which were submitted within an inappropriate time period. The chronology of the problem is as follows:⁶

a. Debtor submits credit application

That the debtor submitted a credit application to the debtor based on the Application dated July 1, 2020 amounting to IDR 150,000,000, (one hundred and fifty million rupiah). The Credit Application is an initial application submitted by the Debtor to obtain financing funds, the credit application is submitted to PT BPR BKK Purwodadi (Perseroda) by completing the application form and submitting the required documents, such as KTP, NPWP, pay slip, etc.

b. Feasibility Analysis (Survey) by Creditors

Banks conduct feasibility analysis by direct survey of debtor data to assess creditworthiness. In approving the provision of banking credit to customers, they always consider the 5C principle which consists of:⁷

a) Character: Banks assess the character or personality of prospective debtors, such as integrity, responsibility, and track record in paying financial obligations. The source of information is usually the prospective debtor's credit history or information from a third party.

⁶Interview with Mifahul Ulum, Staff Collector of PT BPR BKK Urwodadi 9Perseroda), November 13, 2024

⁷Okta Rian Basori and Sulistya Dewi Wahyuningsih, 2018. "Analysis of the 5C Principle Assessment in Credit Provision for Non-Performing Loans to Assess the Health Level of Banks at PT BPR Harta Swadiri", *Journal of Applied Management Research (PENATARAN)*, No. 03, Vol. 3, pp. 54-63. url: <https://download.garuda.kemdikbud.go.id/article.php?>

- b) Capacity: Capacity refers to the ability of prospective debtors to repay the credit given. The bank will analyze the income and cash flow of prospective debtors to ensure that they are able to repay the loan and interest on schedule.
- c) Capital: Refers to how much capital contribution the prospective debtor has. This capital shows the commitment and financial ability of the prospective debtor. The greater the capital owned, the higher the debtor's commitment to his business, and this makes the bank more confident in his creditworthiness.
- d) Collateral: Collateral is an asset that can be used as security for the bank if the debtor fails to pay the loan. This asset can be property, vehicles, or other valuable assets that have sufficient value to cover the loan.
- e) Conditions: Banks consider external conditions, such as economic conditions, the industry the debtor is in, and government policies, which may affect the potential debtor's ability to repay the loan. In addition, these conditions include interest rate factors and general economic stability.

c. Signing of Credit Agreement

If the prospective debtor meets the criteria of the 5C principle, then the next step is the provision of credit by the bank and the signing of the Credit Agreement between the Debtor and the Creditor. The agreement between the bank and the Debtor will create a debt-receivable relationship. Where the debtor has an obligation to pay off all debts that have been agreed upon by the creditor based on the terms and conditions agreed upon by both parties.

Based on the Mortgage Law, objects that can be burdened with Mortgage Rights are land rights and objects related to the land. Land rights that can be burdened with Mortgage Rights are: Ownership Rights, Cultivation Rights and Building Rights.

That the debtor has signed Credit Agreement Number 581/152/PK/BKK/BRT/VII/2020 dated July 10, 2020. The Credit Agreement regulates the amount of credit ceiling, credit term, principal and interest installment payments, and other matters stipulated in the credit agreement.

d. Credit Realization with Collateral Binding

That the debtor received the realization of credit from the creditor on July 10, 2020, according to the amount agreed in the agreement. After the funds are disbursed, the debtor has an obligation to pay the loan installments according to the schedule and nominal amount agreed in the credit agreement.⁸This

⁸Ni Nyoman Ayu Tirtawati, 2019. "The Influence of Credit Quality and Implementation of the 5 C Principles on Credit Realization Decisions at Village Credit Institutions (LPD) in Abiansema

installment payment includes the principal and interest according to the agreement stated in the credit agreement. The credit realization process is carried out in accordance with applicable procedures, including the fulfillment of all administrative requirements including the binding of collateral required by both parties.

Bonding collateral in the context of Mortgage Rights is a formal process in which land rights are used as collateral for the benefit of creditors, in order to protect their rights if the debtor does not fulfill payment obligations. The binding of Mortgage Rights is carried out through several stages regulated in the Mortgage Rights Law, with the aim of providing legal certainty for creditors. The following is an explanation regarding the binding of mortgage guarantees:⁹

- 1) Creation of SKMHT (Power of Attorney to Charge Mortgage Rights).
- 2) Preparation of Deed of Grant of Mortgage Rights (APHT).
- 3) Registration of Mortgage Rights at the Land Office.
- 4) Issuance of Mortgage Certificate.

e. Debtor commits default

The debtor has clearly committed a breach of contract in fulfilling its financial obligations under the credit agreement. This is evident from its actions which repeatedly failed to pay off the principal and interest installments of the credit according to the due date set out in the credit agreement.

Based on Article 1243 of the Civil Code, it regulates the reimbursement of costs, losses, and interest due to default. Default is when one party to the agreement does not fulfill, performs imperfectly, or is late in fulfilling the performance.

f. Creditor Non-Litigation Efforts

Dispute resolution outside the court (non-litigation) is an effort to bargain or negotiate to obtain a mutually beneficial solution. The presence of a neutral third party is not to decide the dispute but the parties themselves make the final decision. Dispute resolution outside the court (non-litigation) has been regulated in the Indonesian legal system in the Arbitration Law. Alternatives that can be

District, Badung Regency", Warmadewa Economic Development Journal, No. 02, Vol.02, url: <https://www.ejournal.warmadewa.ac.id/index.php/wedj/article/view/1358>

⁹Risma Wati Sitompul, 2022. "Legal Protection for Creditors in Credit Agreements with Collateral", Jurnal Rectum, No. 01, Vol. 04, p. 95, url: <https://ejurnal.darmaagung.ac.id/index.php/jurnalrectum/article/view/1445/1291>

done by the disputing parties include: consultation, negotiation and peace, mediation, conciliation and arbitration.¹⁰

g. Creditor Litigation Efforts

The dispute resolution process carried out through the courts or often referred to as "litigation", namely a dispute resolution carried out through a court proceeding where the authority to regulate and decide is carried out by the judge. This dispute resolution process results in all parties in dispute facing each other to defend their rights in court. The final result of a dispute resolution through litigation is a decision stating a win-lose solution.¹¹

Based on the results of the interview with Mr. Puguh Indro Paksiko, Legal Officer, various non-litigation efforts have been made by the Bank as a Creditor. As a follow-up, the creditor has made direct approaches. These efforts include providing a First Warning Letter (SP1) and a Second Warning Letter (SP2) to remind the debtor of his obligations. And mediation has been carried out through the Grobogan District Attorney's Office. However, all of these non-litigation efforts did not produce the expected resolution. However, the debtor did not show good faith in completing his obligations. Therefore, the creditor took legal steps by filing a simple lawsuit through the court. This simple lawsuit aims to obtain a final and binding legal decision regarding the debtor's default and to secure the creditor's rights to the collateral that has been given according to the agreement. The creditor filed a Simple Lawsuit against the Debtor with case number 28/Pdt.GS/2023/PN Pwd.¹²

h. Follow-up Lawsuit

The debtor was dissatisfied with the verdict of the simple lawsuit filed by the creditor. So he decided to continue the problem by filing a new lawsuit in court. This lawsuit was filed as a form of legal resistance to the decision of the simple lawsuit and aims to invalidate the legal arguments that are the basis for the creditor in executing the mortgage rights. The debtor filed a lawsuit against the Creditor with case number 41/Pdt.G/2023/PN Pwd through the Indonesian End Consumer Cross Foundation (YLKAI).

i. Appeal Efforts

The plaintiff filed an appeal as stated in the Electronic Appeal Application Deed Number 41/Pdt.G/2023/PN Pwd dated March 25, 2024 made by the Clerk of the

¹⁰Rahmat Rosyadi and Ngatino, 2002, *Arbitration in the Perspective of Islam and Positive Law*, Citra Aditya Bakti, Bandung, p. 124

¹¹Nurnaningsih Amriani, 2012, *Alternative Mediation for Civil Dispute Resolution in Court*, PT. Raja Grafindo Persada, Jakarta, p. 35

¹²Interview with Puguh Indro Paksiko, Legal Officer of PT BPR BKK Purwodadi (Perseroda), November 13, 2024.

Purwodadi District Court. The appeal application Number 205/PDT/2024/PT SMG was notified to the parties on March 27, 2024.

That the parties, both as the Appellant originally the Plaintiff, the Respondent originally the Defendant and Co-Appellant I originally Co-Defendant I, and Co-Appellant II originally Co-Defendant II through their Legal Counsel have been given the opportunity to examine the case files (inzage) by the Bailiff of the Semarang District Court electronically each on April 17, 2024. Thus, the results of the Appeal Court Decision Number 205/PDT/2024/PT SMG are as follows:

- a) Accepting the appeal request from the original Appellant, the Plaintiff;
- b) Confirming the decision of the Purwodadi District Court Number 41/Pdt.G/2023/PN Pwd, dated March 13, 2024, which was appealed;
- c) Ordering the Appellant, the Plaintiff, to pay court costs at both levels of court, which at the appeal level was set at IDR 150,000.00 (one hundred and fifty thousand rupiah);

2) Legal Protection for Creditors

Banking is a financial institution that plays an important role in supporting the economy, especially through the provision of credit facilities. In carrying out its functions, banking requires the availability of large amounts of funds, most of which are collected through credit schemes. To ensure credit security, clear regulations and adequate legal protection are needed, especially in anticipating the possibility of default by debtors.¹³

Legal protection for creditors is realized by ensuring that the credit granting process runs according to applicable provisions, including in terms of binding collateral and agreements between parties. One form of strong legal protection is through the creation of a credit agreement in the form of a notarial deed. A notarial deed provides legal certainty because it has binding legal force and protects the creditor's rights, both in the binding process and in resolving disputes if the debtor does not fulfill his obligations.

In addition, based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land and making the interests of debtors and creditors get legal protection from the government. The main purpose of the enactment of this Mortgage Law, in particular, is to provide legal protection for creditors if the debtor commits an unlawful act in the form of default.

3) Use of Legal System Theory

¹³Moh. Anwar, 2014, "Legal Protection for Creditors in Credit Agreements with Collateral in the Form of Mortgage According to Law No. 4 of 1996", *Jurnal Jendela Hukum*, Faculty of Law, Unija, Vol. 1, No. 1, p. 04.

Analysis of Legal Protection for Creditors Due to the Cancellation of the Deed of Granting Mortgage Rights (APHT) and the Power of Attorney to Charge Mortgage Rights (SKMHT) at PT BPR BKK Purwodadi (Perseroda) based on the Legal System Theory according to Lawrence Meir Friedman, a Professor in the field of law, an American history expert historian, and a productive writer. Who stated that the effectiveness and success of law enforcement is based on three components of the Legal System, namely the Legal Structure which concerns law enforcement officers, Legal Substance which includes legal instruments, and Legal Culture which is the living law adopted by a society.¹⁴

In this case, the Legal Culture is as follows:

1) Debtor's Attitude Towards Obligations

The debtor in this case shows a disobedient attitude towards the obligation to pay installments according to the schedule agreed in the credit agreement. The debtor's default illustrates the low awareness or compliance with legal obligations which have an impact on the emergence of disputes and longer legal processes.

2) Dispute Resolution by the Parties Involved

In practice, the legal culture in Indonesia sometimes does not pay serious attention to peaceful or non-litigation dispute resolution. This is reflected in mediation efforts that are often considered mere formalities and are not optimized as an effective means of conflict resolution. As a result, when this peaceful resolution fails, the aggrieved party, such as the creditor in this case, will choose to take the court route.

3.2. Judge's Considerations in the Decision on the Lawsuit for Cancellation of APHT and SKMHT at PT BPR BKK Purwodadi (Perseroda) with Case Number 41/Pdt.G/2023/PN Pwd.

PT BPR BKK Purwodadi (Perseroda), as the creditor, received a lawsuit from the debtor on October 23, 2023 with Case Number 41/Pdt.G/2023/PN Pwd. This lawsuit was filed because the debtor did not receive a decision in the simple lawsuit case previously filed by the creditor. In this case, PT BPR BKK Purwodadi (Perseroda) became the defendant, with the Indonesian End Consumer Cross Foundation (YLKAI) acting as the debtor's attorney on behalf of Shodikin, as the plaintiff.

1) The main issues contained in the plaintiff's lawsuit and the defendant's exception. The following is a conclusion of the main issues contained in the plaintiff's lawsuit and the defendant's exception:

¹⁴Lawrence M. Friedman, 1975, *The Legal System*, Russell Sage Foundation, p. 16.

a. Legal Relationship of the Plaintiffs

The relationship between the Plaintiff, namely the Indonesian End Consumer Foundation (YLKAI), acts as the debtor's attorney on behalf of Shodikin as follows:

- 1) The Plaintiff's lawsuit in the quo case, the Defendant argued in the Response that the Plaintiff did not have the capacity and legal standing to file a lawsuit in the quo case (*Persona Standi Non Judicio*).
- 2) That the Defendant's reason for arguing that the Plaintiff does not have the capacity and legal standing to file a lawsuit in the quo case (*Persona Standi Non Judicio*) is the legal relationship between the Defendant as Creditor with Mr. Shodiqin and Ms. Puji Lestari as Debtors is a debt relationship based on Credit Agreement No. 581/152/PK/BRT/VII/2020 dated July 10, 2020.
- 3) That in accordance with Credit Agreement No. 581/152/PK/BRT/VII/2020 dated July 10, 2020, to guarantee the credit taken by Mr. Shodiqin and Ms. Puji Lestari, the credit is guaranteed by a plot of land with ownership rights No. 214/Selojari with an area of 340 m² (three hundred and forty square meters) located in Central Java Province, Grobogan Regency, Klambu District, Selojari Village as described in the measurement letter No. 9717/1997 issued by the Grobogan Regency Land Office and registered in the name of Ngadimin along with everything that according to its nature and/or according to the provisions of the law is considered as permanent property.
- 4) That the Defendant's argument as referred to above, is based on Supreme Court Jurisprudence Number 824 K/Pdt.Sus/2010 dated February 1, 2011, which states that the legal relationship between creditors and debtors is a legal relationship of debt and not a consumer dispute as referred to in Law No. 18 8 of 1999 concerning Consumer Protection.
- 5) Supreme Court Jurisprudence Number 824 K/Pdt.Sus/2010 dated February 1, 2011 is a cassation decision against objections regarding the authority of BPSK (Consumer Dispute Resolution Agency) but between BPSK and the Community-based Consumer Protection Agency have the same legal umbrella, namely under the auspices of Law No. 8 of 1999 concerning Consumer Protection, thus the Community-based Consumer Protection Agency in this case YLKAI (Plaintiff) cannot represent the legal interests of the Debtor (Mr. Shodiqin and Ms. Puji Lestari).
- 6) That the Plaintiff, in this case the Consumer Protection Agency YLKAI, represents the legal interests of the Consumer, namely Mr. Shodiqin, who in

essence has the intention and purpose of requesting the Honorable Panel of Judges examining and trying the aquo case to decide:

- a. declare that the Power of Attorney to Encumber Mortgage Rights (SKMHT), Deed of Granting Mortgage Rights (APHT), and Certificate of Mortgage Rights (SHT) are null and void; And
- b. stating that the auction is prohibited from being carried out; the Plaintiff's intent and purpose is due to an act of violation of statutory regulations (quod non)

Defendant's Objection

- 1) That in the opportunity given in the trial of this case, namely in the reply and evidence, the Plaintiff did not submit a rebuttal or evidence to refute the Plaintiff's arguments in the Exception as explained above.
- 2) Even in the opportunity for proof given, the Plaintiff submitted written evidence in the form of a Letter Dated November 7, 2023, the main content of which is that Mr. Ngadimin through the Plaintiff submitted a restructuring application to the Defendant.
- 3) That with the evidence of the Letter of Request for Relief, it further confirms that the main issue in this case is the legal relationship of debt, not a consumer dispute as referred to in Law No. 8 of 1999 concerning Consumer Protection.
- 4) That with the above considerations, it is very reasonable to conclude that the Plaintiff does not have the Capacity and Legal Standing to file a lawsuit in the aquo case (Persona Standi Non Judicio).

- b. The creation of APHT with SKMHT is done in excess of the provisions

Plaintiff's Lawsuit

- 1) The creation of an APHT which begins with a SKMHT is made in excess of the provisions in Article 15 paragraph (3) of Law No. 4 of 1996, namely that a Power of Attorney to Encumber Mortgage Rights regarding registered land rights must be followed by the creation of a Deed of Grant of Mortgage Rights no later than 1 (one) month after it is granted;
- 2) Due to the Plaintiff's suspicions regarding the Defendant holding a copy of the Power of Attorney to Assign Mortgage Rights, please show or prove that the said SKMHT will be made by the CONSUMER and the Notary within a maximum period of 30 days (1 month) after being signed by the CONSUMER;
- 3) If the Defendant as the Holder and custodian of copies of the SKMHT and APHT and SHT cannot prove the existence of the SKMHT or it is proven that the time gap from signing the SKMHT to APHT was more than 30 days (1 month),

then in accordance with Article 15 paragraph (6), the Power of Attorney to Encumber Mortgage Rights which is not followed by the preparation of a Deed of Granting of Mortgage Rights as referred to in paragraph (3) or paragraph (4), or the time determined according to the provisions as referred to in paragraph (5) is void by law.

Defendant's Rebuttal

1) The Power of Attorney to Encumber Mortgage Rights related to this case was made before Notary Endang Sri Wukiryatun, SH No. 181 dated February 11, 2021 and the APHT related to this case was made by PPAT Endang Sri Wukiryatun, SH with No. 498/2021 dated March 1, 2021.

2) The SKMHT was signed on February 11, 2021 and the APHT was signed on March 1, 2021, so it can be concluded that the time gap between the SKMHT and APHT related to this case was less than 1 (one) month and this has fulfilled the provisions in Article 15 paragraph (3) of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land ("Law No. 4/1996"), and therefore the Plaintiff's suspicions were not proven.

3) That in fact it can be explained that the event of increasing SKMHT to APHT in the series of events of providing credit from the Defendant to Debtors Shodiqin and Puji Lestari, is not required to follow the provisions of a 1 (one) month time gap as referred to in Article 15 paragraph (3) of Law No. 4/1996, this is considering that the credit provided is micro credit and for productive loans with a ceiling of under IDR 200,000,000,- (two hundred million rupiah). This is based on Article 15 paragraph (5) of Law No. 4/1996 Jo. Article 2 letters a and c of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 concerning the Determination of the Time Limit for the Use of Power of Attorney to Charge Mortgage Rights to Guarantee the Repayment of Certain Credits ("Permen ATR/BPN No. 22/2017"), as follows:

Article 15 paragraph (5) of Law No. 4/1996

"The provisions referred to in paragraph (3) and paragraph (4) do not apply in the event that a Power of Attorney to Encumber Mortgage Rights is granted to guarantee certain credits as stipulated in the applicable laws and regulations."

Article 2 letters a and c of ATR/BPN Ministerial Regulation No. 22/2017

Power of Attorney to Encumber Mortgage Rights to guarantee the repayment of credit/financing/loans is valid until the principal agreement, namely as follows:

a) Credit/Financing/Loans provided to micro and small business customers, within the scope of the definition of productive businesses owned by individuals and/or individual business entities;

b)

c) "Other Productive Credit/Financing/Loans with a ceiling of up to IDR 200,000,000 (two hundred million rupiah)".

Based on the above matters, the arguments put forward by the Plaintiff in the Main Part of the Lawsuit are not based on actual legal facts and strong legal reasons and the time gap between the SKMHT and APHT is in accordance with the provisions of applicable laws and regulations.

c. The time gap between APHT and SHT submission does not comply with applicable provisions.

Plaintiff's Lawsuit

That the Plaintiff questions the time gap between the submission of APHT and SHT in accordance with Article 13 of Law No. 4/1996 as follows:

1) Article 2 No later than 7 (seven) working days after signing the Deed of Granting of Mortgage Rights as referred to in Article 10 paragraph (2), the PPAT is obliged to send the relevant Deed of Granting of Mortgage Rights and other required documents to the Land Office.

2) Article 4 The date of the mortgage land book as referred to in paragraph (3) is the seventh day after receipt of all the documents required for registration and if the seventh day falls on a holiday, the land book in question is dated the following working day.

3) Article 5 The Mortgage Right is born on the date of the Mortgage Right land book as referred to in paragraph (4).

Defendant's Objection

That the PPAT submitted the APHT and other documents on March 1, 2021, so it can be concluded that it does not violate the provisions of Article 13 paragraph (2) of Law No. 4/1996 (Note: The APHT was signed on March 1, 2021).

Based on the above matters, the arguments put forward by the Plaintiff in the Main Part of the Lawsuit are not based on actual legal facts and strong legal reasons and the time gap process between APHT and SHT is in accordance with the provisions of applicable laws and regulations.

d. The defendant committed an unlawful act

Plaintiff's Lawsuit

That in the Main Part of the Lawsuit, which in essence the Plaintiff alleges that Based on the Credit Settlement Summons made between the Defendant and the

Debtor at the Purwodadi Prosecutor's Office, there was a mediation between the Debtor and the Defendant. In the mediation, the Defendant put pressure on the Debtor to pay off all of his debts immediately without conditions amounting to IDR 143,126,000. The Defendant also threatened the Debtor to register the Credit Guarantee with Co-Defendant II to be auctioned.

Defendant's Objection

That the Defendant hereby declares that he rejects the Plaintiff's argument, on the grounds that it is not true that the Defendant made threats to the Debtor regarding the auction of collateral, what the Defendant did was provide an explanation that there are legal consequences, namely in the form of the sale of collateral through auction in the event that the Debtor defaults, and this is in accordance with the following provisions:

Article 6 of Law No. 4/1996

"If the debtor defaults, the first Mortgage Right holder has the right to sell the Mortgage Right object under his own authority through a public auction and to take payment of his receivables from the proceeds of the sale."

To confirm that the Defendant has never committed an Unlawful Act as alleged by the Plaintiff, please allow us to explain in detail the elements of an Unlawful Act by referring to Article 1365 of the Civil Code, as follows:

- 1) Elements of an Unlawful Act This element is not fulfilled, considering that the provision of credit from the Defendant to Debtors Shodiqin and Puji Lestari was in accordance with applicable provisions and the collateral binding process in the form of mortgage rights was in accordance with applicable provisions as described above.
- 2) Element of Fault from the Perpetrator This element is also not fulfilled, because the provision of credit from the Defendant to Debtors Shodiqin and Puji Lestari was in accordance with applicable provisions and the collateral binding process in the form of mortgage rights was in accordance with applicable provisions as described above.
- 3) Element of loss This element is not fulfilled, even the party who suffered the loss is the Defendant, this is due to the default committed by Debtors Shodiqin and Puji Lestari.
- 4) The element of a causal relationship between the act and the loss. This element is not fulfilled, because there is no proof of the element of the unlawful act that the Plaintiff accused the Defendant of and there was no loss suffered by the Plaintiff, so therefore this element is not fulfilled.

2) Judge's Considerations in the Decision on the Lawsuit for Cancellation of APHT and SKMHT at PT BPR BKK Purwodadi (Perseroda)

Based on the research, the following results were obtained, namely that the judge's considerations in Decision Number 41/Pdt.G/2023/PN Pwd were as follows:

IN EXCEPTION

The plaintiff does not have legal standing to file a quo lawsuit (*persona standi non judicio*).

- 1) The Panel of Judges is of the opinion that the legal relationship between Mr. Shodikin and Puji Lestari as Debtors with the Defendant, namely PT BPR BKK Purwodadi (Perseroda) at Jalan Siswamiharjo No. 40 Jetis Timur, Purwodadi, Grobogan, as a creditor is a debt relationship based on the Credit Agreement dated July 10, 2020 with a guarantee of 1 (one) Certificate of Ownership.
- 2) Considering, that furthermore the Panel of Judges is of the opinion that the dispute between Mr. Shodikin and Puji Lestari with the Defendant is not a consumer dispute as required by Law No. 8 of 1999. This is in accordance with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 824 K/Pdt.Sus/2010, dated February 1, 2011, which states that the legal relationship between creditors and debtors is a legal relationship of debt and not a consumer dispute as referred to in Law No. 8 of 1999 concerning Consumer Protection;
- 3) Considering, that the Supreme Court Jurisprudence Number 824K/Pdt.Sus/2010, dated February 1, 2011 is a cassation decision against objections in terms of the authority of BPSK (Consumer Dispute Resolution Agency) but between BPSK and the Community-based Consumer Protection Institution have the same legal umbrella, namely under the auspices of Law No. 8 of 1999 concerning Consumer Protection, thus the Community-based Consumer Protection Institution in this case YLKI (Plaintiff) cannot represent the legal interests of Debtors Mr. Shodikin and Puji Lestari;
- 4) Considering, that with these considerations, the Panel of Judges declares that the Plaintiff does not have the Capacity and Legal Standing to file a lawsuit (*Persona Standi Non Judicio*) and thus the Defendant's Exception can be granted;
- 5) Considering, that because the Defendant's Exception was granted, the Panel of Judges does not need to consider further Exceptions;

IN THE MAIN CASE

- 1) Considering, that the intent and purpose of this lawsuit is as stated above;

- 2) Considering, that as has been considered in the considerations regarding the Exception above, it appears that the Defendant's Exception argument is granted, then the Plaintiff's lawsuit must be declared inadmissible (Niet Ontvankelijk Verklaard);
- 3) Considering, that because the Plaintiff's lawsuit cannot be accepted, the Plaintiffs must be ordered to pay court costs;
- 4) Taking into account Law No. 8 of 1999 concerning Consumer Protection and other relevant regulations;

Based on the research, the following results were obtained, namely that the judge's considerations in Decision Number 41/Pdt.G/2023/PN Pwd were as follows:

IN EXCEPTION

- 1) Considering, that based on the above arguments, the Panel of Judges is of the opinion that the legal relationship between Mr. Shodikin and Puji Lestari as Debtors with the Defendant, namely PT. PPR BKK, Address Jl. Siswamiharja No. 40, East Jetis, Grobogan District, Grobogan Regency, Central Java Province as Creditor is a debt relationship based on the Credit Agreement dated July 10, 2020 with a guarantee of 1 (one) Certificate of Ownership;
- 2) The Panel of Judges is of the opinion that the dispute between Mr. Shodikin and Puji Lestari with the Defendant is not a consumer dispute as required by Law No. 8 of 1999. This is in accordance with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 824 K/Pdt.Sus/2010, dated February 1, 2011, which states that the legal relationship between creditors and debtors is a legal relationship of debt and not a consumer dispute as referred to in Law No. 8 of 1999 concerning Consumer Protection;
- 3) Considering, that the Supreme Court Jurisprudence Number 824 K/Pdt.Sus/2010, dated February 1, 2011 is a cassation decision against objections in terms of the authority of BPSK (Consumer Dispute Resolution Agency) but between BPSK and the Community-based Consumer Protection Institution have the same legal umbrella, namely under the auspices of Law No. 8 of 1999 concerning Consumer Protection, thus the Community-based Consumer Protection Institution in this case YLKI (Plaintiff) cannot represent the legal interests of Debtors Mr. Shodikin and Puji Lestari;
- 4) Considering, that with these considerations, the Panel of Judges declares that the Plaintiff does not have the Capacity and Legal Standing to file a lawsuit (Persona Standi Non Judicio) and thus the Defendant's Exception can be granted;

IN THE MAIN CASE

- 1) Considering, that the intent and purpose of this lawsuit is as stated above;
- 2) Considering, that as has been considered in the considerations regarding the Exception above, it appears that the Defendant's Exception argument is granted, then the Plaintiff's lawsuit must be declared inadmissible (Niet Ontvankelijk Verklaard);
- 3) Considering, that based on the considerations above, the decision of the Purwodadi District Court Number 41/Pdt.G/2023/PN Pwd, dated March 13, 2024 has legal grounds to be upheld;
- 4) Considering, that because the decision of the First Instance Court was upheld, the Appellant, originally the Plaintiff, must be ordered to pay court costs at both levels of the Court;
- 5) Taking into account Law Number 20 of 1947 concerning Repeat Trials in Java and Madura/R.Bg Stb Number 1947/227 in conjunction with Law Number 2 of 1986 concerning General Courts which has been amended several times and the latest amendment with Law Number 49 of 2009 and other relevant laws and regulations.

Based on the analysis of the decision of case Number 41/Pdt.G/2023/PN Pwd, it can be concluded that the panel of judges rejected the lawsuit for cancellation of APHT and SKMHT filed by the plaintiff. The main reason for this rejection lies in the defendant's exception stating that the plaintiff does not have legal standing to file a lawsuit. The panel of judges is of the opinion that the legal relationship between the debtor and creditor in this case is a pure civil relationship, namely a debt relationship.

So in this case the author is of the opinion that this decision is in accordance with existing provisions. The panel of judges has conducted a careful and precise legal analysis in this case. The decision to reject the lawsuit based on the defendant's exception is a logical step and in accordance with applicable legal principles for the following reasons:

- a. In this case, the panel of judges was correct in assessing that YLKI, as a consumer protection institution, does not have sufficient legal standing to represent the debtor's legal interests. This is because the legal relationship between the debtor and creditor in this case is a purely civil relationship, not a consumer relationship.
- b. Law Number 8 of 1999 concerning Consumer Protection does provide extensive protection for consumers. However, this protection has certain

limitations. Not all civil disputes can be categorized as consumer disputes. In this case, the panel of judges was right in distinguishing between consumer disputes and pure civil disputes.

3) Use of Legal Certainty Theory

The application of the Legal Certainty Theory in this case uses a clear legal basis, namely the Supreme Court jurisprudence (Number 824 K/Pdt.Sus/2010) as the legal basis indicating that this case refers to previous decisions. This is in line with the Legal Certainty Theory of Gustav Radbruch, which emphasizes the importance of written, clear, and consistent laws to provide guarantees of justice.

The Panel of Judges stated that the relationship between Mr. Shodikin and Puji Lestari with PT BPR BKK Purwodadi (Perseroda) was a debt-receivable relationship based on a credit agreement, not a consumer dispute. This decision strengthens that the law has been applied in accordance with the provisions contained in Law Number 8 of 1999 concerning Consumer Protection, and that the Non-Governmental Consumer Protection Institution (YLKI) does not have the legal standing to file a lawsuit in this case.

4. Conclusion

Legal protection for creditors is realized by ensuring that the credit granting process runs according to applicable provisions, including in terms of binding collateral and agreements between parties. One form of strong legal protection is through the creation of a credit agreement in the form of a notarial deed. A notarial deed provides legal certainty because it has binding legal force and protects the creditor's rights, both in the binding process and in resolving disputes if the debtor does not fulfill his obligations. In addition, based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land and makes the interests of debtors and creditors receive legal protection from the government. As an effort for legal protection, the author advises Bank PT BPR BKK Purwodadi (Perseroda) to draft a credit agreement with land collateral in the form of a notarial deed, because this step provides stronger legal certainty and facilitates the execution of collateral in the event of a default. The panel of judges in Decision Number 41/Pdt.G/2023/PN Pwd has made a fair and legal decision, while emphasizing the importance of compliance with laws and regulations in credit transactions, especially those relating to mortgage rights. In addition, this decision can be a learning material to improve understanding in similar cases so that lawsuits are filed appropriately.

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