

Legal Analysis of Legal Protection for Debtors Who Breach of a Credit Agreement with Guarantee of Mortgage Rights

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Abstract. *The purpose of this study is to examine and analyze legal protection for debtors who default on credit agreements with collateral. Credit is granted by banks to anyone who has the ability to repay with conditions through a debt agreement between the creditor and the debtor. The credit agreement made by the bank to the debtor is one of the most important aspects in providing credit. Every credit that has been approved and agreed upon between the creditor and the credit recipient must be stated in the form of a credit agreement. A credit agreement is a bond between the creditor and the debtor whose contents determine and regulate the rights and obligations of both parties in connection with the provision of credit. This study uses a normative legal approach method, with analytical descriptive research specifications. The data used in this study are secondary data obtained from library research, which are then analyzed qualitatively. Legal protection that can be done by debtors if they commit a default is that the debtor can file a lawsuit against the object of his mortgage rights in the implementation of the execution auction that will be carried out by the creditor against the collateral object. Obstacles and solutions for debtors, injustice in the implementation of the execution auction of the object of mortgage rights often occurs because creditors ignore the rights of the debtors as owners of the collateral objects, so in addition to the debtor being able to file a lawsuit, the Law must also be updated to better guarantee legal certainty for debtors who enter into credit agreements with collateral.*

Keywords: Agreement; Credit; Default; Mortgage; Rights.

1. Introduction

Economic development is part of national development, one of the efforts to realize a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, paragraph 2. In maintaining the continuity of this

development, the actors of which include both the government and the community as individuals and legal entities, very large funds are needed. One of the facilities that has a strategic role in procuring these funds is banking. A bank is a financial institution that is a place for individuals, private business entities, state-owned enterprises, and even government institutions to store their funds. Various financial institutions, especially conventional banks, have helped meet the need for funds for economic activities by providing loans, including in the form of bank credit. Bank credit is one of the conventional bank businesses that has been widely utilized by members of the community who need funds.

Nowadays, globalization is not a new thing for a country, especially Indonesia, society is faced with increasingly rapid world developments, increasingly sophisticated technology and has also changed many attitudes, behaviors, and thinking patterns of society. The impact of globalization on Indonesian society has both positive and negative impacts. One of the negative impacts of globalization is the pattern of consumerist behavior of society. Humans are often faced with problems to meet their needs and maintain their lives. Therefore, humans must fulfill their needs. So that many people do debt or credit to the bank.

Article 1 paragraph (11) of Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 states that credit is the provision of money or bills based on an agreement or loan agreement between a bank and another party that requires the borrower to pay off his debt after a certain period of time with the provision of interest. Credit is also one of the business activities for banks, related to the duties and functions of banks as intermediary institutions or institutions that function to collect and distribute funds to the community. Providing credit is the main function of banks.¹

Basically, credit is given by banks to anyone who has the ability to repay the loan on the condition that a debt agreement is made between the creditor and the debtor.²

Credit agreement made by the bank to the debtor is one of the most important aspects in providing credit. Every credit that has been approved and agreed upon between the creditor and the credit recipient must be stated in the form of a credit agreement. A credit agreement is a bond between the creditor and the debtor whose contents determine and regulate the rights and obligations of both parties in connection with the provision of credit.

In principle, the rights arising from a credit agreement are individual and relative, meaning that with the birth of the agreement made, in addition to himself as a

¹M. Bahsan, 2007, *Indonesian Banking Credit Guarantee and Collateral Law*, Raja Grafindo, Jakarta, p. 75.

²Gunawan Widjaja and Ahmad Yani, 2000, *Fiduciary Guarantee*, PT. Raja Grafindo Persada, Jakarta, p. 1.

legal subject being bound to the opposing party, his property is also bound. This can be seen in the provisions of Article 1131 of the Civil Code, that:

"All movable and immovable property belonging to the debtor, whether existing or future, shall serve as collateral for the debtor's individual obligations."

The guarantee provided in Article 1131 of the Civil Code is general in nature in the sense that the guarantee positions the debtor's assets and the guarantee is given to all those who have the position of creditor.³ However, in the credit agreement, the bank as the creditor requires the provision of collateral, for example, Mortgage Rights on Land because this collateral is considered the safest by the bank and has a high value or price and continues to increase, this is stated in Law No. 4 of 1996 concerning Mortgage Rights. The Mortgage Rights guarantee institution is used to bind the object of debt collateral in the form of land or objects related to the land in question. The Mortgage Rights Law stipulates that if the debtor defaults, the creditor must execute the Mortgage Rights.

Article 20 paragraph (1) and (2) of Law Number 4 of 1996 concerning Mortgage Rights provides an understanding that, if the debtor defaults, the Law on Mortgage Rights provides three alternatives for fulfilling the creditor's receivables, namely (i) using the right to sell under one's own authority through a public auction using the right to sell under one's own authority through a public auction granted by Article 6 of the Law on Mortgage Rights to the first Mortgage Rights holder, (ii) executing the sale contained in the Mortgage Rights Certificate granted by the power of Article 14 paragraph (2) of the Law on Mortgage Rights, (iii) by mutual agreement between the debtor and creditor through a private sale.⁴

The obligation if the debtor defaults so that the creditor can realize the promised performance himself at the debtor's expense based on the power granted by the Judge, if the debtor is reluctant to carry out the performance.⁵ As is known, to carry out the execution, one condition must be met, namely permission from the judge. This is, as a result of the application of a legal principle, namely that people are not allowed to be judges themselves. A creditor who wants the implementation of an agreement from a debtor who does not fulfill his obligations must ask for help from the court, but it often happens that the debtor himself has given his consent from the start that if he is negligent, the creditor has the right to carry out his own rights according to the agreement without having to ask for an intermediary judge.

³Trisadini Prasastinah Usanti and Leonora Bakarbesy, 2013, Guarantee Law, Banking Law Reference Book, Revka Petra Media, Surabaya, p. 6.

⁴Law Number 4 of 1996 concerning Mortgage Rights. Guarantee institutions.

⁵Sugiyono, Heru, 2017, Legal Protection for Third Parties as Collateral Owners When the Bank Does Not Implement the Principle of Prudence in Credit Agreements Using Collateral. Jurnal Juridical Vol. 4 No. 1. p. 98-109.

This study aims to examine and analyze legal protection for debtors who default on credit agreements with collateral and to examine and analyze the obstacles and solutions to legal protection for debtors who default on credit agreements with collateral.

2. Research Methods

This study uses a normative legal approach method, the research specifications used are analytical descriptive, the data collection method uses secondary data types, the data analysis method uses qualitative analysis.

3. Results and Discussion

3.1. Legal Analysis of Legal Protection for Debtors Who Default on Credit Agreements with Collateral in the Form of Mortgage Rights.

Based on Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the definition of Credit is explained: "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between a bank and another party that requires the borrower to repay his debt after a certain period of time with the provision of interest". In the provisions of the article, what is meant by an agreement or loan agreement is a form of credit agreement where the agreement must be made in writing.

The agreement in the Banking Credit Agreement must be made in written form. This provision is contained in the Explanation of Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which requires banks as credit providers to make written agreements. The requirement for banking agreements to be in written form has been stipulated in the main provisions of banking by Bank Indonesia as referred to in Article 8 paragraph (2) of the Banking Law.

According to Badriyah Harun, the main provisions stipulated by Bank Indonesia are:⁶

- 1) The provision of credit or financing based on sharia principles is made in the form of a written agreement;
- 2) Banks must have confidence in the debtor customer's ability and capability, which is obtained from, among other things, a careful assessment of the debtor customer's character, ability, capital, collateral and business prospects;

⁶Badriyah Harun, 2010, Settlement of Problematic Credit Disputes, Pustaka Yustisia, Yogyakarta, p. 23-24.

- 3) The bank's obligation to prepare and implement credit or financing procedures based on sharia principles;
- 4) The bank's obligation to provide clear information regarding credit or financing procedures and requirements based on sharia principles;
- 5) Prohibition of banks from providing credit or financing based on sharia principles with different requirements to debtor customers and/or affiliated parties;
- 6) Dispute resolution.

Based on the Explanation of Article 10 of Law Number 4 of 1996, it is explained that an agreement that creates a debt-receivable relationship that is guaranteed for repayment can be made in 2 (two) forms, namely either a private deed or an authentic deed, depending on the legal provisions governing the material of the agreement. The form of legal protection provided to the creditor according to the provisions of the Mortgage Law is in the form of the credit agreement itself. This credit agreement functions as evidence and provides limitations on the rights and obligations of each party.⁷In order for the credit agreement to guarantee the repayment of the creditor's debt, a guarantee binding process must be carried out with a granting clause.

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Credit agreements can guarantee the repayment of creditor debts, so a collateral binding process must be carried out with a clause granting Mortgage Rights if the collateral is a fixed object, namely land rights. Land rights are often used as collateral because they generally have a value or price that tends to increase every year.

The legal basis for default according to the Civil Code is regulated in Article 1338, the agreement made in accordance with the laws and regulations applicable to those who have made it, and according to Article 1238 of the Civil Code, the debtor's default is where the debtor's condition is declared negligent by a letter of instruction, or something similar, or based on the power of the obligation itself, namely if this obligation results in the debtor being deemed negligent by the

⁷HR Daeng Naja, 2005, Credit Law and Bank Guarantee, The Bankers HandBook, PT Citra Aditya Bakti, Bandung, p. 183.

passage of the specified time which has been agreed upon in the agreement between the debtor and creditor.

According to R. Subekti, default is if the debtor (debtor) does not do what he promised, then he is said to have committed a "default". This means that the debtor is negligent or negligent or breaks a promise or violates an agreement, if he does or does something he is not allowed to do.⁸

If the debtor does not carry out the achievements that are his obligations, then the agreement can be said to be defective or say bad performance. Default is a bad performance, namely the parties do not carry out their obligations according to the contents of the agreement. Default can occur either due to negligence or intent. Default committed by the Debtor's customer in the Civil case above is included in the category of default not carrying out as agreed.

Legal protection efforts that can be made by debtors if they are in default are that debtors can file a lawsuit against the object of their collateral in the implementation of the execution auction that will be carried out by the creditor against the collateral object, the debtor can submit and request to the Panel of Judges so that the implementation of the execution auction can be postponed, because the debtor feels disadvantaged because the object of the collateral that has been guaranteed/pledged to the creditor will be auctioned arbitrarily which will take or pay off the debtor's debt.

Protection for Debtors One of the objectives of the law is to achieve protection in implementing the objectives of legal protection is also carried out in implementing the objectives of the law there are only two or more people *ubi societas, ubi ius* (where there is society there is law).

Because the purpose of law is to achieve order and justice, the law must be made to be able to effectively regulate things that have not been regulated by really paying attention to the legal principles inherent in the draft regulation. Regarding the judge's decision in fulfilling protection for debtors, the element of protection for debtors is achieved because debtors must have a sense of responsibility as people who are in debt but the creditor does not fulfill the debtor's rights.

Legal protection for debtors is legal protection in the execution auction of mortgage rights. Creditors submit an auction application. The auction office must first notify the debtor of the creditor's auction application so that the debtor knows that the object of the mortgage right he owns has been registered at the auction office.

⁸R. Subekti, 1979, Law of Contracts, Intermasa, Jakarta, p. 45.

3.2. Obstacles and Solutions to Legal Protection for Debtors Who Default on Credit Agreements with Collateral in the Form of Mortgage Rights.

Economic development emphasizes the very important role of banks because banks are financial institutions with the main task of collecting funds from the community and channeling them back to the community, entrepreneurs to finance the real sector through the provision of credit.⁹

The bank's business activities include, among others, providing credit, investing in securities, foreign exchange activities, placing funds with other banks and capital participation carried out by other legal entities, all of which are not free from the risk of not returning some or even all of the funds distributed (bad credit).

Banks as distributors and providers of credit funds for the community do not always run smoothly, sometimes debtors do not fulfill their obligations according to the agreed time (default). Default is considered a failure to carry out an agreed promise because the debtor does not carry out his obligations without a reason that is acceptable by law. If a default occurs, the creditor can sue for damages and cancellation. The provisions on compensation that regulate obligations to provide something are stated in Article 1236 of the Civil Code which stipulates that the Debtor is obliged to compensate for costs, losses and interest to the creditor if he makes himself unable to hand over the goods or does not take care of them properly to save them. While in Article 1239 of the Civil Code regulates obligations where each obligation to do something, or not to do something, must be resolved by providing compensation for costs, losses and interest, if the debtor does not fulfill his obligations.¹⁰

In credit activities, several parties are involved, namely creditors, debtors and related parties, so in Law Number 4 of 1996 concerning Mortgage Rights (UUHT) the interests of these parties are considered and given balance in their protection and legal certainty. UUHT is intended to provide a foundation for a strong collateral rights institution and guarantee legal certainty for all interested parties in a balanced manner.

The provisions in Article 6 of the UUHT actually give the creditor the right to sell the object of the Mortgage Right under his own authority through a public auction and take the settlement of his receivables from the proceeds of the sale if the debtor defaults and gives a strong position to the holder of the Mortgage Right. If the debtor defaults, the holder of the mortgage right can sell the object of the mortgage right under his own authority through a public auction, cannot carry out the execution auction, thus the Object of the Mortgage Right is postponed in its implementation, with the existence of a debtor's lawsuit requesting a sense of

⁹M. Bahsan, 2003, Introduction to Indonesian Banking Credit Analysis, CV. Rejeki Agung, Jakarta, P. 1.

¹⁰Ibid. p. 2.

justice, injustice in the implementation of the execution auction of the object of the mortgage right often creditors ignore the rights of the debtor as the owner of the collateral object, so the debtor requests a postponement in the implementation of the auction, so that the debtor wants to really feel that he has not been harmed and has been guaranteed legal certainty over the object of his collateral rights.

UUHT also provides protection to debtors/mortgagors and third parties in this case as follows:

- 1) The possibility of committing a partial roya as regulated in Article 2 paragraph (2) as a deviation from the principle cannot be divided into Article 2 paragraph (1)
- 2) Fulfillment of the principles of specialization and publicity
- 3) Provisions regarding the contents of SKMHT and APHT
- 4) The right of the first mortgage holder to sell the mortgage object under his own authority can only be exercised if this is agreed upon (Article 6 in conjunction with Article 11 paragraph (2) letter e)
- 5) A promise that gives authority to the holder of the mortgage right to own the object of the mortgage right if the debtor defaults on the promise is void by law (Article 12)
- 6) Provisions regarding the deletion (roya) of mortgage rights that are already in good standing (Article 22) are made for the sake of interests of the debtor/mortgagee.
- 7) UUHT aims to provide a basis for the implementation of a strong mortgage institution, including by affirming or correcting inaccurate perceptions in the past. The affirmation/correction regarding several of these issues requires a change in the perception and attitude of all parties related to the implementation of this mortgage. An objective understanding of the principles of mortgage followed by compliance to implement UUHT consistently can more or less reduce the possibility of banking bad debts.¹¹

As an effort to provide legal protection for debtors, debtors can use 3P to overcome bad debts, namely 1. Scheduling, 2. Requirements, and 3. Restructuring.

1) Scheduling

In financial traffic in the banking sector, the term tenor is known. Tenor is the payment period of a loan or credit. This is intended for borrowers to pay off debts and interest. If they are hit by bad debt, the debtor can apply for a tenor

¹¹Law Number 4 of 1996 Concerning Mortgage Rights

rescheduling. This term is also known as rescheduling or credit restructuring. The bank will adjust the loan tenor so that the debtor can return to paying installments. The bank does this so that the installments or installments that must be paid are lighter. The tenor extension will be adjusted to the debtor's ability to pay.

Credit rescheduling is a change in the credit payment schedule or change in the credit term. Credit rescheduling is part of a bank facility called credit restructuring. Credit restructuring itself is an improvement effort made by the bank in credit activities for debtors who are having difficulty in carrying out their credit obligations. Credit restructuring can be done by means of credit rescheduling, credit restructuring (re-requirements) and credit reconditioning (re-arrangement).

In credit rescheduling, the bank will offer a rescheduling of the debtor's debt, where the credit tenor that the debtor has can be extended according to the bank's policy. By extending the credit tenor, the debtor's monthly credit installment obligations will be reduced. With this installment reduction, it is expected to help debtors who have financial difficulties in meeting their credit payment obligations. Not infrequently, banks will also reduce the amount of credit installments each month according to the debtor's financial ability when applying for credit rescheduling. For example, A takes an Unsecured Credit (KTA) at a bank of IDR 10,000,000 with a credit tenor of 6 years. However, in carrying out credit payment obligations, A experiences financial problems so that A cannot pay the minimum KTA installments each month that have been determined at the beginning. As a solution, A applies for a credit reschedule to the relevant bank to extend his credit tenor from 6 months to 1 year. With credit rescheduling, A has a longer time to pay off the KTA debt with smaller monthly installments.

The ways to deal with bad debts are as follows:

a) Cooperative in nature

A cooperative nature is absolutely necessary in submitting a credit restructuring. To submit a reschedule, the Debtor should go directly to the bank concerned to meet directly with KTA or Debt Collector section that handles bad credit at the bank. Furthermore, the Debtor must explain the reason why the Debtor intends to apply for this credit reschedule facility. Provide detailed and strong reasons so that the bank fully understands the financial difficulties that the Debtor is facing. Prepare all the required documents, according to the bank's request. Try to follow the bank's procedures and show cooperative attitude. There may be times when one of the employees or the bank directly rejects the Debtor's credit reschedule request. The Debtor must not be discouraged and immediately cancel the Debtor's intention. The method is, the Debtor can ask the bank employee concerned to be able to meet directly with his manager or the person concerned

in deciding the bad credit case. The important thing is that the Debtor must show a cooperative attitude.

b) Show Good Faith

The Debtor's credit reschedule application is approved. In providing an explanation of the financial difficulties faced by the Debtor, the Debtor must also be able to show good intentions to be able to pay off the Debtor's KTA debt. The bank will only accept credit restructuring applications for debtors who have good intentions and good prospects in paying off their debts. Try to explain how much the Debtor can pay off the Debtor's KTA debt per month, accompanied by logical reasons, so that the bank will see that the Debtor can pay the KTA installment obligations after the credit tenor is added.

If the Debtor is a businessman, try to convince the bank that the Debtor actually has quite good business prospects and is able to fulfill the Debtor's KTA credit obligations after the Debtor's credit is rescheduled.

c) Be Open

Being open to the bank is no less important in submitting a credit reschedule. The debtor must provide a complete and detailed explanation of the debtor's financial condition. The debtor must be able to provide appropriate and logical reasons why the debtor cannot fulfill the bank's credit obligations that the debtor has previously agreed to.

Try to provide all the data required by the bank so that the Debtor's credit reschedule request is accepted.¹²

2) Re-Requirements

When the debtor experiences difficulties in paying installments, there are conditions that can be changed by the bank to help the debtor. By simply confirming with the bank that the debtor is experiencing difficulties in paying. Changes to the conditions can include changes to the payment schedule, term, or other conditions. Re-requirements can be made if they do not change the maximum credit limit.

This re-requirement is certainly given by the bank to solve the problem of bad credit. With this program, it is expected to make borrowers at least pay off the principal loan.

3) Restructuring For Bad Credit

¹² <https://www.simulasikredit.com/tips-reschedule-kredit-traffic-jam-kta/> accessed on August 24, 2024, at 12.21 WIB.

In addition to the two things that can be done above, if a bad credit occurs, the bank can also change the credit conditions. This can be called restructuring. Credit conditions are changed to ease the responsibility of borrowers who are experiencing bad credit. This restructuring can be done by adding credit facilities, converting arrears into new credit principal, to scheduling, and re-requirements.

4. Conclusion

As an effort of legal protection for debtors who default on Credit Agreements with Mortgage Rights as collateral according to Article 1243 of the Civil Code states that Compensation for costs, losses, and interest due to failure to fulfill an obligation, is only required if the debtor is declared negligent in fulfilling his obligation. So if the debtor is still able to fulfill his obligation, the creditor cannot execute the Mortgage Rights arbitrarily. Likewise, as stated in Law Number 4 of 1996 concerning Mortgage Rights, which explains that agreements that give rise to debt-receivable relationships that are guaranteed for repayment are made in 2 (two) forms, namely in the form of private deeds or authentic deeds. The form of legal protection for debtors according to the provisions of the Mortgage Rights Law is contained in the credit agreement itself where the debtor can add or reduce the contents of the agreement submitted by the creditor before signing it so that when the debtor and creditor sign the credit agreement, both have truly reached an agreement without burdening either party. Or if the agreement has been frozen by the creditor, the debtor can re-examine the existing clauses so that if they do not agree, the debtor can withdraw by not continuing to make the credit agreement. In addition, legal protection efforts that can be taken by the debtor if they are in default are that the debtor can file a lawsuit against the object of his mortgage in the implementation of the execution auction that will be carried out by the creditor against the collateral object, the debtor can file and request the Panel of Judges so that the implementation of the execution auction can be postponed, because the debtor feels disadvantaged by the object of the mortgage that has been guaranteed/pledged to the creditor will be auctioned arbitrarily which will take or pay off the debtor's debt.

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