

Legal Analysis of Protection for Debtors in Credit Agreements with Credit Rights (Study of Kudus District Court Decision No. 18/Pdt.G/2023/Pn.Kds)

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Abstract. *This research method uses an approach methodempirical juridical, Specificationanalytical descriptive, sources and types of data, namely primary data and secondary data, data collection methods by conducting field studies and literature studies, data analysis methods by deductive means, namely from general to specific. The form of a standard bank credit agreement, the debtor only needs to sign, in the bank credit agreement the debtor is the party that is very disadvantaged. The debtor as the party that is disadvantaged in the bank credit agreement, then needs to get legal protection. Legal protection for debtors in credit agreements aims to protect bank customers from possible risks. This protection can be done through various efforts, such as the implementation of Article 18 number 1 letter a of Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK), Bank Indonesia policies, and rescheduling, reconditioning, restructuring. Considerations of the Panel of Judges in decision number 18/Pdt.G/2023/PN.Kds, because an agreement was reached in the implementation of mediation, the judge decided for the parties toPlaintiff and Defendant for comply with the agreed Peace Agreement. Once an agreement is reached between the parties, a peace deed is then made. The Peace Deed is made on the basis of a peace agreement between the disputing parties before the court and with the knowledge of the judge, has the same effect as the judge's decision.*

Keywords: Agreements; Credit; Debtors; Mortgage; Protection.

1. Introduction

Credit agreement is a means of the bank that contains risk, because the credit agreement is an intermediary in the relationship between parties who have excess funds with parties who lack funds and need funds. Banks as financial institutions

provide credit facilities to people who need funds, the loans/credits are stated in the credit agreement made by the bank in the form of a standard agreement. The credit agreement as stated in the standard form is not without risk. This is because the debtor only needs to sign and agree to the agreement, so that the debtor can be said to be a weak party in the banking credit agreement. The common risk in bank credit is bad debt or what is commonly called default. Therefore, the bank as a creditor in providing loans to debtors provides requirements, namely the existence of protection or protection in the form of collateral that must be provided by the debtor to guarantee the repayment of his debt for security and legal certainty, if default occurs. Common and usual goods used as collateral at the bank are immovable objects such as Certificates of Ownership (SHM) for land and buildings.

Another function of credit guarantee is as a form of seriousness of the debtor to fulfill and carry out his obligations as a debtor to pay off the credit that has been received as agreed in the credit agreement so that the debtor will use the funds that have been received from the creditor properly and carefully. Because, if there is a default, then the object of the credit guarantee that has been bound by the mortgage right by the creditor will be sold at auction to pay off the debt, the sale at auction at a price below the prevailing general price (below market price) so that the debtor can suffer losses. Article 1131 of the Civil Code states that "All objects of the debtor, both movable and immovable, both existing and new in the future, become collateral for all individual obligations", then Article 1132 of the Civil Code. The two articles as mentioned above are often included as one of the clauses in bank credit agreements.¹The most frequently used credit collateral is land ownership rights or Certificate of Ownership (SHM), business use rights, building use rights. or usage rights, because in general they have a high value or price and continue to increase, so that in this case it is appropriate if the debtor as the recipient of the credit and the creditor as the provider of the credit facility and other related parties receive protection through a strong guarantee rights institution that can provide legal certainty.²

This Mortgage Guarantee Institution has been recognized through Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land and makes the interests of debtors and creditors get legal protection from the government. The main purpose of the enactment of the Mortgage Law is to provide protection for creditors if the debtor commits an unlawful act in the form of default. The credit granting process, It often happens that the creditor is harmed when the debtor is in default, so that a legal regulation is needed in the implementation of the imposition of Mortgage Rights which is stated in a credit agreement, the aim is to provide legal certainty and protection for the parties,

¹H.Badriyah, 2010, Settlement of Problematic Credit Disputes, Pustaka Yustisia, Yogyakarta, p. 78.

²Y.Pandu, 2008, Collection of Legislation on Fiduciary Guarantees and Mortgage Rights, Indonesia Legal Center Publishing, Jakarta, p. 40.

both creditors and debtors, especially for creditors if the debtor defaults or does not fulfill his obligations.³

Based on the explanation of Article 10 of the Mortgage Rights Law, it is explained that an agreement that creates a guaranteed debt-receivable relationship. The payment can be made in 2 (two) forms, namely in the form of a deed below hand or authentic deed, depending on the legal provisions that govern the material of the agreement. The form of legal protection given to creditors. According to the provisions of the Mortgage Rights Law, it is contained in the form of the credit agreement itself. This credit agreement functions as evidence as well provide limitations regarding the rights and obligations of each party. So that credit agreement can guarantee the payment of creditor's debt, then it must the guarantee binding process is carried out with a clause granting mortgage rights if the object being guaranteed is a fixed object, namely land rights. Land is often used as collateral, because it generally has economic value and prices tend to increase every year.⁴

Banking credit problems as experienced by NA who has a loan/credit at PT Bank Negara Indonesia (Persero) Kudus Branch of IDR 200 million with a ceiling of 48 months or 4 (four) years. As collateral for credit, NA at PT Bank Negara Indonesia (Persero) Kudus Branch submitted a SHM located in Tanjungrejo Village, Jekulo District, Kudus Regency. However, over time the debtor's business declined, which had an impact on his obligations as a debtor. Because NA's business declined, NA's credit at PT Bank Negara Indonesia (Persero) Kudus Branch was in default (default). NA's SHM which was used as collateral for a loan at Bank Negara Indonesia (Persero) Kudus Branch was bound by a Mortgage Right as stated in the BNI Small Business Credit Agreement number 323/KDS/PK-KMK.KUR/2019 dated May 22, 2019.

2. Research Methods

2.1. Approach Method

This research uses an approach method empirical juridical, namely This research will include research on legal identification (unwritten law) and research on the effectiveness of the law.⁵

2.2. Research Specifications

³ Erya Sekar Langit, Erny Herlin Setyorini, Legal Protection for Debtors in Default in Home Credit Agreements with Collateral of Mortgage Rights, Indonesian Journal of Law and Social-Political Governance, Vol. 2, p. 778

⁴ Fitri Windradi, Hery Lilik Sudarmanto, Lindu Ardjayeng and Hery Sulisty, Legal Protection for Creditors Against Defaulting Debtors in Debt Recognition Credit Agreements, Journal of Legal Transparency, Faculty of Law, University of Kediri, 2024, pp. 86-87.

⁵ Dyah Ochtorina Susanti and A'an Efendi, 2014, Legal Research, Sinar Grafika, Jakarta, p. 18.

The specifications of this research use analytical descriptive, meaning that the results of this research will later be described in detail, systematically and comprehensively regarding everything, both legislation and legal theories related to the object of this research,⁶

2.3. Data Sources and Types

2.3.1. Primary Data

To obtain primary data, the author conducted a field study using interview techniques or methods.

2.3.2. Secondary Data

Secondary data is obtained by conducting a library research. To obtain secondary data, the author conducted a library research, namely by studying regulations, documents and books that are related to the problem being researched.

2.4. Method of collecting data

Data collection in this study was carried out by conducting field studies and literature studies. (liberal research). To obtain primary data, the author conducted a field study by conducting interviews with predetermined sample respondents.⁷

2.5. Data Analysis Methods

The analysis of this research data, namely by means of data and information that has been collected from the research results, both data obtained from interview activities with sample sources/respondents. can explain and interpret logically and systematically.

3. Results and Discussion

3.1. Legal Protection for Debtors in Credit Agreements with Mortgage Rights

Money lending activities or better known as the term Credit in everyday life is not something that is foreign again, even this credit term is not only known by the public urban areas, but also to rural communities. General credit serves to facilitate a business activities, and especially for economic activities in Indonesia plays a very important role in The position is good for business production and

⁶Beni Ahmad Saebani, 2018, "Legal Research Methods", Revised Edition, Pustaka Setia, Bandung, p. 97.

⁷H. Zainuddin Ali, 2010, Legal Research Methods, Sinar Grafika, Jakarta, p. 106.

private businesses developed independently because aimed at improving the standard of living socialize.⁸

According to CH Gatot Wardoyo, credit agreement has several functions, namely:⁹

1. Credit agreements have a function as the main agreement. It means, a credit agreement is a which determines whether it is cancelled or not cancellation of other agreements follow it. For example, an agreement bond of guarantee.
2. The credit agreement functions as evidence regarding the limits of rights and obligations between debtors and creditors.
3. The credit agreement functions as tools for monitoring credit.

Banking credit agreements generally use a standard contract form, in practice the form of the agreement has been provided by the bank as the creditor while the debtor studies and understands it well. Such an agreement is usually called a standard contract, where in the agreement the debtor is only in a position to accept or reject without any possibility of negotiating or bargaining which ultimately results in an agreement that is not very profitable for either party. Consumers of banking services are better known as customers.

The main problem is the legal protection of the debtor when the debtor defaults and what sanctions are given to the debtor when the debtor defaults, as it is known that the debtor's credit guarantee is attached with a Mortgage Right, if the debtor defaults, the debtor's credit guarantee will be sold at auction to pay off the remaining unpaid loan, as regulated in Law Number 4 of 1996 Concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as the Mortgage Law). Article 1 number 1 of the Mortgage Law states that:

"Mortgage rights over land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, with or without other objects that are an integral part of the land, for the settlement of certain debts, which give a priority position to certain creditors over other creditors."

Legal protection for debtors in credit agreements aims to protect bank customers from possible risks. This protection can be done through various efforts, such as the implementation of Article 18 number 1 letter a of Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK), Bank Indonesia policies, and rescheduling, reconditioning, restructuring. Article 18 of

⁸Moh. Anwar, 2014, *Legal Protection for Creditors in Credit Agreements with Mortgage Guarantees According to Law no. 4 of 1996*, Journal of Legal Window, Faculty of Law, Unija. Volume I Number 1, p. 2.

⁹CHGatot, Wardoyo, 2012, *About Bank Credit Agreement Clauses*. Journal of Management and Banking, Citra Aditya Bakti, Bandung, p. 43.

UUPK states that "*Business actors offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document and/or agreement if they state the transfer of responsibility of the business actor.*"

Legal protection for debtors through the Consumer Protection Act:

1. Protecting debtors in unsecured credit agreements;
2. Providing legal protection to debtors in credit agreements.

Legal protection for debtors through Bank Indonesia's policy of empowering customers, implementing customer complaint mechanisms, establishing independent mediation institutions, ensuring transparency of product information, providing... education to customers. Legal protection for debtors who experience credit default by holding discussions or reporting to the creditor with the aim of avoiding unilateral withdrawal or confiscation.

According to the theory of legal protection, in this case the debtor as the weak party in the banking credit agreement (legal subject) has the right to receive legal protection in the form of legal instruments, both preventive and repressive, both written and unwritten. In other words, legal protection as a depiction of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace.¹⁰

Banking credit agreements between debtors and creditors reviewed from the theory of justice can be associated with credit agreements in terms of the satisfaction of the parties involved, as well as in terms of good faith underlying the agreement. The theory of justice explains that:¹¹

1. The theory of justice explains that a person's satisfaction depends on whether the person as a legal subject feels fair or unfair in a situation.
2. Equity theory is a variation of social comparison.
3. Justice is a measure of the validity of a social, national and state order.
4. Justice is giving rights to those who deserve them.
5. Justice is achieved on the basis of law.

Fairness theory in credit agreements:¹²

¹⁰Ahmadi Miru and Sutarman Yodo, 2014, Consumer Protection Law, King. Grafindo Persada, Jakarta, p. 32.

¹¹Ibid, ,p. 46.

¹²Lukman Santoso AZ, 2019, Agreement Aspects (Comprehensive Study of Theory and Its Development), Media Pustaka, Yogyakarta, p. 24.

1. Credit agreements must be based on the good faith of the parties so that the agreement can be protected by law.

In general, credit agreements are standard agreements, in standard agreements the debtor does not have the right to bargain, because the agreement has been prepared by the creditor as the lender to the debtor. Therefore, the debtor in a credit agreement is a very weak party and is very disadvantaged.

2. In a bank credit agreement, the standard agreement only contains the minimum creditor obligations but contains the maximum debtor obligations.

3. Credit agreements are always followed by a guarantee agreement as protection for the bank that the debtor will carry out his/her obligations according to the agreement.

3.2. Legal Considerations from the Judge in Decision Number 18/Pdt.G/2023/PN.Kds

Before making a decision, the judge will consider the law and its reasons, this is as regulated in Article 50 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which states that "A court decision must not only contain the reasons and basis for the decision, but also contain certain articles of the regulations." relevant legislation or unwritten legal sources that are used as the basis for judging". Article 50 paragraph (1) explicitly explains that the reasons as the basis for the decision and the relevant articles of legislation or unwritten legal sources that are used as the basis for judging must be included in a court decision. The position of a person.¹³

At the first hearing, the parties were present, therefore the agenda was the implementation of mediation, during the mediation an agreement was reached between the plaintiff and the defendant, so that the agreement was stated in the deed of van dading. Article 17 number 1 of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court (hereinafter referred to as Perma Number 1 of 2016), which states that ""On the day of the hearing that has been determined and attended by the Parties, the Case Examining Judge requires the Parties to undertake Mediation."

If the judge examining the case does not order the parties to mediate, this violates the provisions of the laws and regulations, as regulated in Article 3 number 3 of Perma Number 1 of 2016), which states that "The examining judge who does not order the parties to undergo mediation so that the parties do not undergo mediation has violated the provisions of the laws and regulations governing mediation in court". The implementation of this mediation is also used as a

¹³ Laura Rizky Ananta, 2021, Analysis of the Peace Deed in the Decision of the Padang District Court Number 14/Pdt.GS/2020/PN.Pdg, Kertha Semaya Journal, Vol. 9 No. 11, p. 22.

consideration by the judge in the decision, as regulated in Article 3 number 2 of Perma Number 1 of 2016, which states that "The examining judge in the decision consideration must state that the case has been attempted to be reconciled through mediation by stating the name of the mediator".

The peace agreement between the parties in case number 18/Pdt.G/2023/PN.Kds states that they are willing to end the the dispute between them as stated in the lawsuit said, by way of peace through mediation with a Mediator Judge of Kudus District Court, and for that reason has enter into an agreement based on a written Peace Agreement dated May 30, 2023. Because an agreement has been reached, the judge decided as follows:

1. Punish both the Plaintiff and Defendant for comply with the Peace Agreement that has been agreed upon;
2. Ordering the Plaintiff to pay court costs in the amount of Rp.1,547,000.00 (one million five hundred and forty seven thousand rupiah).

The peace decision in civil case number 18/Pdt.G/2023/PN.Kds as mentioned above, is a decision stating that both parties have reached a peace agreement. This decision is stated in a peace deed. The power of the peace deedThe peace deed has the same force as a judge's decision which has permanent legal force.The peace deed cannot be appealed or cassated.Peace deed number18/Pdt.G/2023/PN.Kdshas executive power, and if it is not implemented, execution can be requested from the Head of the Kudus District Court.

The parties hereby promise and bind themselves not to take any legal action against each other. Because of civil case number18/Pdt.G/2023/PN.Kdshas been completed peacefully, then the parties declare that everything concerning all problems between the parties has been resolved without any exceptions and declares the Peace Agreement (Dading) as mentioned above is the same as the last legal effort so that there will be no other legal efforts. Peace agreement for civil case number18/Pdt.G/2023/PN.Kds binding the Collateral Object which is the collateral in the credit agreement between the First Party and the Second Party.¹⁴

The Peace Deed in the decision of the Kudus District Court Number 18/Pdt.G/2023/PN.Kds, in essence, the parties in this case stated their willingness to end the dispute peacefully, for this matter, careful peace negotiations have been held until finally a peace agreement was produced as mentioned above. BasicallyThe judge's considerations in issuing a civil decision are based on facts, law, and the principles of justice, legal certainty, and benefit.

Judge's decision number 18/Pdt.G/2023/PN.Kds in its considerations reflects justice, as is known, it is not easy to find a benchmark for justice for the disputing parties, because what is fair for one party is not necessarily fair for the other party.

¹⁴Interview with Sumarna, Mediator Judge of Kudus District Court, February 19, 2025.

The judge's duty to uphold justice in accordance with the principles made in the head of the decision, namely "For Justice Based on the Almighty God". The justice referred to in the judge's decision is one that does not favor one party to the case, recognizing the equality of rights and obligations of both parties. In making a decision, the judge must comply with existing regulations so that the decision can be in accordance with the justice desired by the community. The winning party can demand or obtain what is their right and the losing party must fulfill their obligations. In order to uphold justice, the judge's decision in court must be in accordance with its true purpose, namely to provide equal opportunities for the parties to the case in court. The value of justice can also be obtained when the case resolution process is carried out quickly, simply, and at low cost because delaying the resolution of the case is also a form of injustice.¹⁵

The judge's considerations in the decision of case number 18/Pdt.G/2023/PN.Kds which ended in peace when linked to the theory of legal certainty are very...reflecting legal certainty. the process of resolving cases in court has a role in finding the right law. Judges in making decisions do not only refer to the law, because it is possible that the law does not regulate clearly, so that judges are required to be able to explore legal values such as customary law and unwritten law that live in society.¹⁶In this case, the judge is obliged to explore and formulate it in a decision, where the judge's decision is part of the law enforcement process which has one of the goals, namely legal truth or the realization of legal certainty. The legal certainty stated in the judge's decision is a product of law enforcement based on legally relevant trial facts from the results of the case resolution process in the trial.¹⁷

4. Conclusion

Legal protection for debtors in credit agreements aims to protect bank customers from possible risks. This protection can be done through various efforts, such as the implementation of Article 18 number 1 letter a of Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK), Bank Indonesia policies, and rescheduling, reconditioning, restructuring. Article 18 of UUPK states that "*Business actors offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document and/or agreement if they state the transfer of responsibility of the business actor.*" Legal protection for debtors through Bank Indonesia's policy of empowering customers, implementing customer complaint mechanisms, establishing independent mediation institutions, ensuring transparency of product information, providing... education to customers. Legal protection for debtors who experience credit default by holding discussions or reporting to the

¹⁵Interview with Sumarna, Mediator Judge of Kudus District Court, February 19, 2025.

¹⁶Busyro Muqaddas, 2002, "Criticizing the Principles of Civil Procedure Law", *Ius Quia Iustum Law Journal*, Yogyakarta, p. 21.

¹⁷Interview with Sumarna, Mediator Judge of Kudus District Court, February 19, 2025.

creditor with the aim of avoiding unilateral withdrawal or confiscation. The parties in the mediation agreed to make peace, so the panel of judges considered that the parties were willing to end the matter.

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