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Legal Analysis of Legal Protection for Parties and Third Parties in Credit Agreements with Guarantee of Mortgage Rights

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Abstract. *This study aims to analyze and determine the form of legal protection for creditors, debtors, and third parties in credit agreements with Mortgage Rights as collateral; analyze the obstacles that arise in the implementation and execution of Mortgage Rights if the debtor is in default and efforts to resolve them; and create an example of a Mortgage Rights Deed that reflects the form of legal certainty and protection for the parties. This research method uses a normative juridical research method with a statutory approach and a conceptual approach. The sources of legal materials consist of primary legal materials in the form of laws and regulations, specifically Law Number 4 of 1996 concerning Mortgage Rights, the Civil Code, and laws and regulations related to credit and banking agreements; secondary legal materials in the form of books, scientific journals, research results, and opinions of legal experts. Based on the research, it is concluded that legal protection in credit agreements with Mortgage Right guarantees is provided preventively and repressively. Protection for creditors is realized through the encumbrance and registration of Mortgage Right which provides a position as a preferred creditor, the nature of droit de suite, and ease in carrying out execution if the debtor is in default. Protection for debtors is realized through clarity of rights and obligations in the credit agreement, certainty regarding the object and value of the collateral, and the creditor's obligation to carry out execution in accordance with applicable legal provisions. Meanwhile, third parties obtain legal protection based on their status and legal interests in the object of Mortgage Right, especially through the principle of publicity in the registration of Mortgage Right so that third parties can be aware of the existence of a Mortgage Right encumbrance on an object. Obstacles in the implementation of execution include objections from debtors or third parties, issues of control over the collateral object, administrative and land issues, and the execution process that requires time. Resolving obstacles is done through restructuring efforts or settlement through deliberation, fulfillment of administrative requirements, and implementation of execution through mechanisms in accordance with the provisions of laws and regulations.*

Keywords: *Agreement; Creditors; Debtors; Legal; Protection.*

1. Introduction

Agreements are an important instrument in the legal and economic life of society because through agreements the parties can regulate their respective legal relationships, rights, and obligations. One form of material security most widely used in financing activities is the Mortgage Right. Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land provides special regulations regarding Mortgage Rights as a security right over land rights used to guarantee the repayment of certain debts and provide a priority position to certain creditors over other creditors. With the Mortgage Right, creditors obtain material security that provides certainty in obtaining repayment if the debtor does not fulfill its obligations.[1]

In practice, legal relationships arising from agreements secured by a Mortgage Right can give rise to various legal issues. These issues can arise from the initial stages of the agreement, the assignment of the Mortgage Right, the registration of the Mortgage Right, and even the execution stage if the debtor defaults. Problems can also arise if the object of the Mortgage Right is found to have a legal relationship with a third party, or if a third party controls, owns, or claims rights to the object encumbered by the Mortgage Right.[2] This issue demonstrates that legal protection in agreements secured by mortgage rights cannot be viewed solely from the perspective of creditor protection. Debtor protection is also crucial to ensure that the creditor's exercise of the right of execution is not arbitrary and remains within the law. Similarly, third parties need legal protection if their interests in the mortgaged object are affected by the legal relationship between the creditor and debtor.[3] Thus, there is a legal issue that needs to be studied more deeply, namely how the law provides balanced protection to creditors, debtors, and third parties in legal relationships arising from agreements with Mortgage Rights as collateral. This study aims to determine, review and analyze the legal protection for the parties and third parties in credit agreements with Mortgage Rights as collateral. Based on the background above, the researcher is interested in discussing a study entitled Legal Analysis of Legal Protection for Parties and Third Parties in Credit Agreements with Mortgage Rights as Collateral.

2. Research Methods

This research is a normative legal or juridical-normative study, examining the legal

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[1]Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Article 1 number 1 and Article 6.

[2]Mei Ayu Kurniasari, Legal Protection for Third Parties in Credit Agreements with Mortgage Guarantee in Semarang Regency, Thesis, Master of Notary Program, Faculty of Law, Sultan Agung Islamic University, Semarang, 2021.

[3]Ana Fitra Rozmi, Legal Analysis of Legal Protection for Debtors Who Default on Credit Agreements with Mortgage Guarantee, Thesis, Master of Law Program, Sultan Agung Islamic University Semarang, 2024.

norms governing the legal protection of parties and third parties in agreements with collateral. The approach used in this research is a statute approach. Furthermore, the author also uses a conceptual approach by examining the theory of legal certainty and legal protection. This research uses secondary data, obtained indirectly through intermediaries or other parties.[4]The secondary data used include literature books, journal articles, research reports, theses, laws and regulations, archives, and documents, both printed and online, relevant to the research material. The secondary data collection method used in this study was document study and library research. The analysis used is prescriptive.

3. Results and Discussion

3.1. Analysis of Legal Protection for Creditors in Credit Agreements with Mortgage Guarantee

a. Preventive Legal Protection for Creditors

Legal protection for creditors can be provided even before a default occurs. This protection is preventative in nature, aimed at preventing future losses or legal issues. In a mortgage-backed loan agreement, preventative protection can be provided through a thorough examination of the debtor's identity, the legal status of the collateral, land ownership, and the debtor's ability to fulfill its obligations. The creditor must also ensure that the collateralized object is capable of being encumbered with the mortgage and is not currently in dispute or encumbered by other rights that could prejudice the creditor's interests.

Preventive protection is strengthened through the preparation of a Power of Attorney to Encumber Mortgage Rights (SKMHT) if necessary and the subsequent encumbrance of the Mortgage Rights through a Deed of Granting Mortgage Rights (APHT) drawn up by a Land Deed Official (PPAT). The Mortgage Rights must then be registered with the Land Office to provide certainty regarding the existence and legal status of the collateral rights. This registration is crucial because the Mortgage Right is born on the date it is recorded in the Mortgage Right land register. Therefore, creditors need not only have a credit agreement, but also ensure that the collateral has been legally encumbered and registered.

b. Creditor's Position as Preferred Creditor

One of the most important forms of legal protection for creditors is the existence of a preferred position. This position distinguishes creditors holding Mortgage Rights from concurrent creditors. If the debtor defaults, the creditor holding Mortgage Rights has the right to obtain payment of its receivables from the proceeds of the sale of the Mortgage Right object, prioritizing other creditors in

[4]Soerjono Soekanto and Sri Mamudji, Normative Legal Research: A Brief Review, Jakarta: Rajawali Pers, 2015, pp. 12–13.

accordance with its legal position.[5]This preferential position provides creditors with assurance that the collateral object is not merely part of the debtor's assets, open to all creditors. The mortgage right is attached to the collateral object and provides a stronger legal position to its holder. From a legal protection theory perspective, this preferential position represents a form of legal protection for the creditor's interests because the law provides instruments that can be used to defend and realize the creditor's rights if the debtor fails to fulfill its obligations.

c. Droit de Suite Principle as Protection for Creditors

Legal protection for creditors is also reflected in the droit de suite, or right to follow the collateral object regardless of who it is held by. This means that the mortgage remains burdensome on the collateral object even if the object is subsequently transferred to another party, as long as the transfer does not extinguish the mortgage right. Therefore, a change in ownership or control over the land does not automatically extinguish the creditor's rights as the mortgage holder.[6]This principle provides legal certainty to creditors because their guarantee rights do not solely depend on personal relationships with the debtor, but are attached to the object of the guarantee.

d. Legal Protection through Mortgage Certificates

Mortgage Certificates play a crucial role in providing protection to creditors. Mortgage Certificates contain the following clauses: "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD," which have executive power. This executive power provides the creditor with the authority to execute the debtor's obligations if they default, while adhering to applicable legal procedures and provisions. Therefore, creditors do not always have to file a civil lawsuit to obtain repayment of their debts. Mortgage Law provides an execution mechanism that creditors can use based on the executive nature of the Mortgage Certificate.

e. Protection through Execution Rights if the Debtor Defaults

If the debtor fails to fulfill their obligations under the credit agreement, the creditor may take legal action against the mortgaged property. Under the Mortgage Law, the first mortgagee has the right to sell the mortgaged property through a public auction and collect receivables from the proceeds. This mechanism constitutes a form of repressive legal protection, namely protection provided after a violation or default occurs.[7]With the right of execution, creditors have a legal instrument to address the risk of bad debt. Proceeds from the sale of

[5]Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.
[6]Adrian Sutedi, Mortgage Law, Jakarta: Sinar Grafika, 2010, pp. 98–99
[7]Philipus M. Hadjon, Legal Protection for the Indonesian People, Surabaya: Bina Ilmu, 1987, pp. 2–5

the collateral are used to satisfy the debtor's obligations to the creditor, based on the amount of the receivable and the creditor's legal status.

f. Protection against the Risk of Transfer of Collateral Objects

In practice, one of the risks that can be detrimental to creditors is the debtor's actions to transfer or carry out legal actions against the collateral object without considering the interests of the Mortgage Right holder. Therefore, the existence of a Mortgage Right provides protection because the collateral right remains attached to the land object. In addition, the recording and registration of Mortgage Rights at the Land Office provides information regarding the status of the land object so that third parties can know that the object is being burdened with a Mortgage Right. This also demonstrates the importance of the principle of publicity in Mortgage Rights. By registering the Mortgage Right, the existence of the collateral right is known to the public and provides certainty regarding the legal status of the collateral object.

g. Creditor Protection through Credit Agreements

Legal protection for creditors stems not only from the Mortgage Law, but also from credit agreements made between creditors and debtors. Credit agreements essentially form the basis of a contractual relationship, governing the amount of credit, term, interest rate, payment obligations, default, and legal consequences if the debtor fails to fulfill their obligations. Based on the principle of pacta sunt servanda, a legally executed agreement is enforceable as law for the parties who make it.[8] Therefore, clauses regarding mortgage guarantees must be clearly formulated and not contradict statutory provisions. In this context, optimal legal protection for creditors must maintain a balance of interests between creditors and debtors. Creditors cannot arbitrarily use agreement clauses to gain disproportionate benefits.

h. Analysis Based on Legal Protection Theory

When analyzed using legal protection theory, creditor protection can be divided into two forms. First, preventive legal protection, which is protection provided before a default occurs through the creation of a credit agreement, inspection of the collateral object, the imposition of a Mortgage Right, the creation of an APHT, and registration of the Mortgage Right. Second, repressive legal protection, which is protection provided when the debtor has committed a default. This form of protection takes the form of the creditor's right to execute the Mortgage Right object and obtain repayment of receivables from the proceeds of the sale of the collateral object. Thus, the existence of Mortgage Rights provides a relatively comprehensive legal protection system for creditors, from the stage of establishing a credit relationship to the settlement stage in the event of a default.

[8]Civil Code, Article 1338 paragraph (1)

i. Analysis Based on the Theory of Legal Certainty

From a legal certainty perspective, legal protection for creditors through Mortgage Rights is reflected in clear, firm, and measurable regulations regarding the rights, obligations, and mechanisms for enforcing the guarantee. Legal certainty is necessary so that creditors can be assured that their rights as Mortgage holders can be exercised and maintained if the debtor fails to fulfill their obligations. In this context, Law Number 4 of 1996 concerning Mortgage Rights provides a legal framework that regulates the process from the imposition of the guarantee to the execution of the guarantee.

First, certainty regarding the object that can be encumbered with a Mortgage Right provides protection to creditors because not every object can be used as a Mortgage Right. In principle, a Mortgage Right object is a right to a specific piece of land that meets the requirements as stipulated in laws and regulations. Clarity regarding the collateral object provides creditors with certainty regarding the objects that can legally be used as collateral for debt repayment.

Second, certainty regarding the procedure for granting a mortgage guarantees that the creditor's rights to the collateral are obtained through valid legal procedures. The granting of a mortgage is carried out through stages determined by law, including the preparation of a Deed of Grant of Mortgage Rights (APHT) by a Land Deed Official (PPAT) and the fulfillment of registration requirements. With these procedures, the creditor's position as the holder of the mortgage has a clear and demonstrable legal basis.

Third, registration of a mortgage is a crucial element in creating legal certainty. Registration provides publicity to the existence of the mortgage, thereby ensuring the status of the collateral is known to interested parties. For creditors, registration provides certainty regarding the existence of their mortgage rights and their legal standing regarding the collateral. Fourth, the position of the mortgage holder provides certainty regarding who is entitled to receive payment from the collateral. This is important if the debtor has more than one creditor. The mortgage holder has a legal priority position according to the provisions regarding mortgages, thereby reducing uncertainty regarding the priority of receivables repayment. Fifth, creditor preference rights are a concrete form of legal protection afforded by mortgage rights. Creditors holding mortgage rights have a priority position in obtaining repayment of their receivables from the proceeds of the sale of the mortgaged object. With these preference rights, the creditor's risk of not receiving repayment due to competition with other creditors can be minimized.

Sixth, the executorial power of the Mortgage Certificate provides certainty regarding the legal action the creditor can take in the event of a default by the debtor. The Mortgage Certificate has the same executorial power as a court decision that has obtained permanent legal force. This provision provides the legal basis for the creditor to execute the collateral object in accordance with the mechanisms stipulated by statutory regulations.

Seventh, an execution mechanism in the event of a debtor's default provides certainty regarding how the creditor will exercise their rights. With a legally established execution mechanism, creditors are not left in a state of uncertainty when the debtor fails to fulfill their obligations. Creditors can use the Mortgage Execution mechanism in accordance with applicable legal provisions to obtain repayment of their receivables. Thus, when linked to Gustav Radbruch's theory of legal certainty, the existence of mortgage regulations provides certainty regarding the legal status of the collateral, the creditor's position, preferential rights, and settlement mechanisms in the event of default. This certainty is a crucial element in creating a healthy credit relationship because the creditor can clearly anticipate the legal consequences of the debtor's actions and the legal remedies available to obtain repayment. However, legal certainty cannot be interpreted solely as favoring creditors. The implementation of mortgage rights must still adhere to the principles of justice, balance, good faith, and protection for debtors and third parties. Therefore, ideal legal protection is one that provides certainty to creditors in obtaining repayment, while simultaneously ensuring that the exercise of these rights is carried out according to valid and proportionate legal procedures.

Thus, it can be concluded that Mortgage Rights provide strong legal protection to creditors because the law has clearly defined the collateral object, the encumbrance and registration procedures, the creditor's position and preferential rights, the certificate's executorial powers, and the execution mechanism in the event of default. This shows that Mortgage Rights are a material security instrument that provides legal certainty while strengthening the creditor's position in guaranteeing the repayment of their receivables.

3.2. Analysis of Legal Protection for Debtors in Credit Agreements with Mortgage Guarantee

In a credit agreement secured by a mortgage, legal protection is not only intended for the creditor as the party providing the financing, but also for the debtor as the party receiving the credit facility. The debtor's position needs to be protected because in practice, credit agreements can create an imbalance in the bargaining position between the creditor and the debtor, particularly when the credit agreement is drawn up in a standard form. Therefore, legal protection for debtors is necessary to ensure legal certainty, fairness, balance, and the implementation of the agreement in good faith.

a. Debtor Protection through Certainty of Rights and Obligations in Credit Agreements

Legal protection for debtors is primarily achieved through clarity regarding the rights and obligations of the parties to the credit agreement. The credit agreement must clearly state the amount of the loan, the term, the interest rate, the method of repayment, the debtor's obligations, the creditor's rights, conditions that could constitute default, and the legal consequences of any breach of the agreement. This clarity is crucial for debtors to understand the exact obligations they must fulfill. Conversely, creditors cannot unilaterally determine that a debtor has committed a default without relying on the agreed terms and legally justifiable circumstances. From the perspective of legal certainty theory, clarity in the agreement provides protection for debtors by preventing uncertainty regarding the obligations they must fulfill. Debtors can understand the limits of their obligations and can defend their rights if the creditor takes actions inconsistent with the agreement.

b. Protection through the Principles of Freedom of Contract and Good Faith

Credit agreements are fundamentally subject to the principle of freedom of contract, as reflected in the provisions of contract law. However, this freedom is not absolute. The parties' freedom to enter into agreements remains limited by law, morality, public order, propriety, and the principle of good faith. In credit relations, the principle of good faith must be applied by both creditors and debtors. Creditors are required to provide accurate and transparent information regarding credit facilities, including the amount of payment obligations, interest, fees, terms, and consequences of late payments. Meanwhile, debtors are required to fulfill their obligations in accordance with the agreement. Therefore, legal protection for debtors does not mean absolving them of their obligations, but rather ensuring that these obligations are carried out in a fair and proportional legal relationship.

c. Protection of Debtors in the Imposition of Mortgage Rights

A mortgage is a material guarantee that provides a strong position for the creditor. However, the encumbrance of a mortgage on a debtor's land must be carried out based on valid legal procedures. The debtor must obtain information and understand that the land they own is being used as collateral for a specific debt. This encumbrance is carried out through the stages of preparing a Deed of Granting of Mortgage Rights (APHT) and registering the Mortgage Right at the Land Office. From a debtor protection perspective, this procedure is important because it provides certainty regarding the secured debt, the land object used as collateral, and the creditor's position as the holder of the Mortgage Right. With this certainty, the debtor can clearly understand the object of their assets that is encumbered by the collateral and the legal consequences that may arise if the credit obligation is not met.

d. Protection of Debtor's Ownership Rights

Although the debtor's land is encumbered with a mortgage, ownership of the land essentially remains with the debtor until a transfer of rights occurs through a legal mechanism. A mortgage grants a security interest to the creditor, not automatically transferring ownership of the land to the creditor. This serves as a form of protection for the debtor, preventing the creditor from unilaterally controlling or possessing the collateral simply because the debtor has a credit obligation. Therefore, the existence of a mortgage must be understood as a guarantee for debt repayment, not as a means to transfer ownership of the collateral to the creditor.

e. Debtor Protection in the Event of Default

A debtor's default is one of the conditions that can cause a creditor to take action against the object of the Mortgage Right. However, the existence of a default does not mean that the creditor can act arbitrarily. The exercise of the creditor's rights must still be carried out in accordance with laws and regulations and the Mortgage Right enforcement mechanism. The debtor still has the right to know about any unfulfilled obligations and the legal consequences that will arise. If the debtor still has the ability to fulfill their obligations, settlement through deliberation or credit restructuring can be a form of protection that provides the debtor with the opportunity to improve their financial situation before executing the collateral object.

f. Protection through Credit Restructuring

Credit restructuring can be a form of protection for debtors experiencing difficulty meeting their obligations, as long as they meet the applicable requirements agreed upon by the parties. Restructuring can be implemented through changes to credit terms, including those related to the term, installment amount, or other payment provisions. The goal is to provide debtors with the opportunity to fulfill their obligations while simultaneously providing creditors with the opportunity to recover their receivables. From a legal protection theory perspective, this mechanism is a form of preventive protection and proportional settlement, as it provides debtors with the opportunity to improve their situation before reaching the stage of executing the mortgage object.

g. Protection of Debtors against Execution of Mortgage Rights

Execution of a Mortgage Right is a legal consequence that can occur if the debtor defaults. However, the execution must be carried out in accordance with applicable legal procedures. Protection for debtors at this stage can be seen in the provisions governing the execution mechanism, so that creditors cannot sell or transfer the Mortgage Right object unilaterally outside the mechanisms permitted by law. Furthermore, if there is an allegation that the execution was carried out illegally or violated the debtor's rights, the debtor in principle has the opportunity to use available legal remedies in accordance with applicable legal provisions. Thus, the executorial power of the Mortgage Right should not be understood as the creditor's absolute authority, but as an authority whose implementation remains limited by law.[9]

h. Protection of Debtors against Detrimental Agreement Clauses

In credit practice, agreements are often made in the form of standard agreements with clauses drafted in advance by the creditor. This situation can weaken the debtor's bargaining position. Therefore, legal protection is necessary to prevent clauses that disproportionately burden the debtor or grant excessive authority to the creditor. Clauses in credit agreements must adhere to statutory provisions as well as the principles of fairness and balance. If a clause conflicts with legal provisions, it cannot be used as a basis to justify creditor actions that are detrimental to the debtor.

i. Analysis Based on Legal Protection Theory

When analyzed based on legal protection theory, debtor protection can be divided into two forms. First, preventative legal protection, which is protection provided before a dispute or default occurs. This includes clarity of the credit agreement, transparency of credit information, the imposition of mortgage rights according to procedures, registration of mortgage rights, and the application of the principle of good faith. Second, repressive legal protection, which is protection provided after a default or dispute occurs. This includes the opportunity to resolve the matter through deliberation, credit restructuring, dispute resolution through agreed mechanisms, and the use of legal remedies in the event of creditor actions that violate the law. This concept demonstrates that legal protection for debtors is not intended to eliminate creditor rights, but to ensure that the exercise of creditor rights remains lawful, proportional, and does not unfairly harm the debtor.

j. Analysis Based on the Theory of Legal Certainty

Viewed from the theory of legal certainty, protection for debtors is realized through the existence of clear regulations regarding:

From a legal certainty perspective, legal protection for debtors in mortgage-backed credit agreements is essentially achieved through clear, consistent, and predictable legal provisions. Legal certainty provides debtors with assurance that their legal relationship with creditors is not arbitrary, but rather based on statutory regulations and the agreements agreed upon by the parties.

First, regarding the debtor's rights and obligations under the credit agreement. The credit agreement must provide clarity regarding the loan amount, term, interest rate, repayment method, the rights and obligations of the parties, and the legal consequences in the event of a breach of the agreement. This clarity provides the debtor with certainty regarding the performance requirements and also limits

[9]Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Article 14 paragraphs 2–3 and Article 20 paragraphs 1–5.

the creditor's actions. This ensures the debtor knows with certainty the legal consequences of any actions taken.

Second, regarding objects that can be used as collateral. Legal certainty is achieved through regulations regarding land rights that can be encumbered with mortgages, as stipulated in Law Number 4 of 1996 concerning Mortgage Rights. This regulation is crucial to prevent ambiguity regarding the status and legality of collateral. Debtors are protected because their property can only be used as collateral if it meets specified legal requirements.

Third, regarding the procedures for encumbrance and registration of mortgage rights. Encumbrance of mortgage rights is carried out through predetermined legal steps, including the preparation of a Deed of Grant of Mortgage Rights (APHT) and its registration at the Land Office. This procedure provides certainty regarding the creation of the mortgage right, the status of the parties, and the status of the object used as collateral. For debtors, transparent procedures guarantee that the encumbrance of their land is carried out legally and cannot be done unilaterally outside of legal mechanisms.

Fourth, regarding the debtor's position as the owner of the collateral. Granting a mortgage does not result in the transfer of ownership of the land to the creditor. The debtor remains the land rights holder as long as no enforcement action is taken based on legal provisions. This is an important form of protection for the debtor, as the creditor essentially only obtains collateral rights to guarantee debt repayment, not ownership rights to the collateral.

Fifth, regarding conditions that can be categorized as default. Legal certainty requires clarity regarding the circumstances that cause a debtor to be deemed in default. Default should not be determined unilaterally by the creditor without reference to the contents of the agreement and applicable legal provisions. Clarity regarding the form of default, such as failure to pay installments on time, allows the debtor to understand when they are considered to have committed a violation and the potential legal consequences.

Sixth, regarding the procedures for executing Mortgage Rights. Protection for debtors is also reflected in the existence of execution procedures that must be carried out in accordance with legal provisions. Although Mortgage Rights provide a strong position for creditors, execution must still comply with the requirements and procedures stipulated by laws and regulations. This ensures that debtors do not arbitrarily lose their collateral. Execution must be based on the existence of a debt that has matured and is not being paid and must be carried out through a legitimate execution mechanism.

Seventh, regarding dispute resolution mechanisms. Legal certainty also provides protection through the availability of dispute resolution mechanisms in the event of a dispute between debtors and creditors. Settlement can be achieved through deliberation, an agreed-upon dispute resolution mechanism, or through the courts if an agreement cannot be reached. The existence of these mechanisms ensures that debtors have legal means to defend their rights and interests in the event of creditor actions deemed detrimental.

Thus, the theory of legal certainty demonstrates that protection for debtors lies not only in the right to obtain credit, but also in clarity regarding all stages of the legal relationship, from the formation of the credit agreement, the provision of collateral, the imposition and registration of the Mortgage, the determination of default, to the implementation of execution and dispute resolution. Certainty regarding these stages creates a balance between the interests of creditors to obtain repayment of their receivables and the interests of debtors to obtain protection for their rights and the object of collateral.

In the context of thesis research, it can be emphasized that legal protection for debtors through Mortgage Rights is both preventive and repressive. Preventive protection is evident in the existence of rules and procedures that must be fulfilled before and during the imposition of Mortgage Rights, while repressive protection is evident in the availability of objection mechanisms, dispute resolution, and legal remedies in the event of a violation of the debtor's rights. This is in line with the principle of legal certainty that every legal action must have a clear and accountable basis, procedure, and legal consequences. The existence of these rules provides certainty to debtors regarding the limits of their obligations and provides protection against creditor actions that have the potential to exceed their rights.

3.3. Analysis of Legal Protection for Third Parties in Credit Agreements with Mortgage Guarantee

a. Legal Protection for Third Parties in Credit Agreements with Mortgage Guarantee

A credit agreement is essentially a legal relationship between a creditor and a debtor that gives rise to rights and obligations for each party. In practice, to provide certainty and protection to creditors if the debtor fails to fulfill its obligations, collateral in the form of a Mortgage Right on land is often used. The Mortgage Right provides a preferred position to certain creditors over other creditors, as long as the Mortgage Right has been charged and registered in accordance with statutory provisions. However, the legal relationship in a credit agreement with Mortgage Right collateral does not always involve only the creditor and debtor. In certain circumstances, there are third parties who have a legal interest in the collateral object. These third parties can be the owner of the collateral object who is not the debtor, the party who obtains rights to the collateral object, the heirs, the buyer of the collateral object, or other parties who legally have a relationship or interest in the land burdened with the Mortgage Right. Legal protection for third parties is important because the imposition of a

Mortgage Right on a land object can have legal consequences that are felt not only by the creditor and debtor, but also by other parties who have a legal relationship with the object. Therefore, the application of the principles of legal certainty, transparency, prudence, and protection of third party rights must be an integral part of the implementation of credit agreements with Mortgage Rights as collateral. Based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Mortgage Rights are security rights imposed on land rights to guarantee the repayment of certain debts. With the existence of Mortgage Rights, creditors gain a strong position in the event of a debtor's default. However, the strength of the creditor's position does not mean that the rights of third parties can be ignored. Legal protection for third parties can be analyzed in two forms, namely preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent violations of third party rights, while repressive legal protection is provided after a dispute or violation of rights has occurred.

b. Preventive Legal Protection for Third Parties

Preventive legal protection for third parties is realized through various legal mechanisms before and during the imposition of a Mortgage Right. One of the most important forms of protection is clarity regarding the status and ownership of the object to be used as collateral. In the practice of imposing a Mortgage Right, the collateral object must have a clear and legally provable legal basis. The party providing the guarantee must also have the authority to carry out legal actions against the object. Thus, if the collateral object belongs to a third party, the third party must provide consent and legally bind themselves to the Mortgage Right imposition process. This condition provides protection to third parties because the imposition of collateral cannot be carried out arbitrarily on land that does not belong to the debtor. The consent of the owner of the collateral object is an important part of ensuring that legal actions taken against the object have a valid basis of authority. Preventive protection can also be seen in the obligation to register the Mortgage Right. Registration provides certainty regarding the existence of the Mortgage Right, the object being encumbered, the Mortgage Right holder, and the legal status of the collateral. Through registration, interested parties can determine the legal status of a land object. The principle of publicity through registration is crucial for third-party protection. Third parties who wish to transact with land encumbered with a Mortgage Right may first examine the status of the land. This way, third parties can be aware of the Mortgage Right and consider the legal consequences before taking legal action against the land object. Furthermore, preventive protection also relates to the role of Land Deed Officials (PPAT) and Notaries in ensuring that the documents and identities of the parties meet legal requirements. Examination of the certificate, the identity of the rights holder, the authority to act, and supporting documents are part of the principle of prudence in deed preparation. In this context, protection for third parties is not only the responsibility of creditors and debtors, but also relates to the professionalism of PPATs, Notaries, and land agencies. Any legal action related to Mortgage Right objects must be carried out based on accurate legal and physical data to avoid causing harm to other parties.

c. Legal Protection for Third Parties as Guarantee Providers

One type of third party that frequently appears in credit agreements is a third party who provides their land as collateral for the debtor's debt. In such circumstances, the third party is not the recipient of the credit facility, but rather the property they own is used to guarantee the debtor's obligations. This third party's position must be protected by law because the risks they bear are directly related to the property they own. If the debtor defaults, the land owned by the third party can become the object of execution in accordance with the provisions of the Mortgage Right. Therefore, the third party as the guarantor must obtain adequate information regarding the credit agreement, the amount of debt secured, the credit term, the circumstances that could cause the debtor to be declared in default, and the legal consequences if the debt is not repaid. This protection is a form of implementing the principle of balance in contractual relationships. The third party should not only be burdened with the risk of losing the collateral object, but must also be certain about the limits of their liability. In principle, the third party's liability as the guarantor relates to the collateral object and does not automatically make them the party obligated to repay the debtor's debt using all of their assets. Thus, it is necessary to clearly distinguish between the debtor's position as the party obligated to repay the debt and the third party as the owner of the object providing collateral. This distinction is crucial to prevent the third party's liability from being expanded beyond the agreement or applicable legal provisions.

d. Legal Protection for Third Parties in the Event of Default

Debtor default is one of the circumstances that can cause a creditor to exercise its rights over the object of the Mortgage Right. When the debtor fails to fulfill its credit payment obligations according to the agreement, the creditor can take legal action in accordance with applicable provisions, including executing the object of the Mortgage Right. In such circumstances, the interests of third parties must still be considered. If the collateral object belongs to a third party, then the execution of the object has direct consequences for its ownership rights. Protection for third parties at this stage can be realized through certainty regarding the basis for execution, clarity regarding the amount of debt, the existence of the debtor's default, and the implementation of execution procedures in accordance with legal provisions. Creditors cannot exercise their rights arbitrarily by ignoring legal procedures. Mortgage Rights provide convenience for creditors in obtaining receivables repayment through the execution of the collateral object. However, this convenience must be implemented based on the principles of legality and legal certainty. Thus, the creditor's right to obtain repayment must be balanced with protection for the owner of the collateral object and other third parties who have rights to the object. If a third party feels aggrieved by a creditor's actions or an unlawful execution process, the third party can, in principle, use available legal mechanisms to defend their rights. This repressive protection can be achieved through dispute resolution in accordance with the authority of the competent institution.[10]

e. Protection for Third Parties Buying Mortgage Objects

Another problem arises when a land object encumbered with a Mortgage Right is transferred to a third party. In such circumstances, the buyer must pay attention to the legal status of the land object before entering into a transaction. The principle of publicity in Mortgage Rights plays a crucial role in providing information to prospective buyers. Examining the land certificate and status is necessary to determine whether the land is encumbered with a Mortgage Right or whether there are other legal issues. A third party who acquires land with knowledge of the Mortgage Right must essentially take into account the existence of this encumbrance. Conversely, if a legal act results in a third party acquiring the land object without knowledge or proper information regarding the Mortgage Right, then issues may arise regarding the protection of that third party. Therefore, checking the land status before the transaction is an important part of efforts to provide legal protection to third parties. In land practice, checking certificates and land data is an important instrument to prevent future disputes.

f. Repressive Legal Protection for Third Parties

Repressive legal protection is necessary when a violation or dispute regarding the object of the Mortgage Right occurs. Third parties who feel their rights have been violated can pursue legal action based on their legal standing and interests. Dispute resolution can be achieved through non-litigation or litigation mechanisms. Non-litigation resolution can be achieved through deliberation or mediation between the interested parties. If an agreement cannot be reached, the aggrieved party can pursue legal action through the competent judicial institution. This repressive protection demonstrates that the power of the Mortgage Right does not constitute unlimited authority for the creditor. The exercise of the creditor's rights remains within the legal framework and must consider the rights of other parties. Therefore, if a violation of the rights of a third party occurs, a legal mechanism is available to test and resolve the action deemed detrimental.

g. Analysis Based on the Theory of Legal Certainty

From the perspective of legal certainty theory, protection for third parties in credit agreements secured by Mortgage Rights is reflected in the existence of clear regulations regarding the object of the Mortgage Right, the party authorized to

[10]Philipus M. Hadjon, Legal Protection for the Indonesian People: A Study of Its Principles, Its Handling by the Courts in the General Court Environment and the Formation of State Administrative Courts, Surabaya: Bina Ilmu, 1987, pp. 2–5.

provide the guarantee, the procedure for encumbrance, registration, the position of the Mortgage Right holder, and the execution mechanism. Legal certainty is necessary so that third parties can understand the legal status and consequences of a land object that has been encumbered with a Mortgage Right. Mortgage Right Registration provides legal information regarding the status of the collateral object so that third parties can act more carefully. In Gustav Radbruch's perspective, legal certainty is one of the objectives of law that must be realized through clear regulations and can provide guidance for the community. In the context of Mortgage Rights, legal certainty is not only necessary for creditors to guarantee the repayment of their receivables, but also for third parties to understand the limits of their rights and obligations related to the collateral object. Thus, legal protection for third parties can be said to have a sufficient normative basis, but its effectiveness is highly dependent on the implementation of the principle of prudence, information transparency, the accuracy of land data, and the parties' compliance with the procedures for encumbrance and execution of Mortgage Rights.

h. Analysis Based on Legal Protection Theory

Based on Philipus M. Hadjon's legal protection theory, legal protection can be divided into preventive and repressive protection. Both forms of protection can be applied in legal relationships involving third parties in credit agreements with Mortgage Rights as collateral. Preventive protection is carried out before a dispute occurs, including through land status inspections, approval from the owner of the collateral object, preparation of a Deed of Grant of Mortgage Rights, registration of the Mortgage Rights, and provision of adequate information to interested parties. Meanwhile, repressive protection is provided when a dispute has occurred, for example if a third party feels disadvantaged due to the imposition of Mortgage Rights, transfer of collateral objects, or implementation of execution that is deemed not in accordance with legal provisions. From this perspective, it can be seen that legal protection for third parties is not only normative, but must also be realized in practice. The law must provide an opportunity for third parties to know, defend, and fight for their rights if a violation occurs.

4. Conclusion

Overall, it can be concluded that a mortgage is a legal instrument of collateral that provides relatively strong certainty and protection to creditors while also imposing legal limitations and procedures that must be followed in the exercise of said rights. Legal protection for debtors and third parties remains necessary to prevent abuse of rights and ensure that execution is carried out legally, transparently, and in accordance with statutory provisions. Problems that arise in practice are generally not solely caused by weaknesses in legal norms, but can also occur due to inaccuracy in examining collateral objects, incomplete documents, administrative disorder, lack of understanding of the parties regarding the contents of the agreement, debtor default, and the existence of third party interests in the collateral object. Therefore, the application of the principles of prudence, legal certainty, transparency, balance and good faith from the stage of making a credit agreement to the execution stage is an important factor in providing optimal legal protection for creditors, debtors and third parties.

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