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Internal Debt Recognition Position Credit Agreement and Deed of Granting Mortgage Rights by Land Deed Official (PPAT)

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Abstract. *This study aims to analyze the position of the debt acknowledgement deed in the legal relationship between the credit agreement and the deed of granting the Mortgage Rights made by the Land Deed Making Official (PPAT). The research uses a juridical-normative approach with an analysis of statutory documents, civil and agrarian law doctrine, as well as a study of court decisions and related notarial literature. The results of the study show that practice of making credit deeds, debt acknowledgement deeds, and APHT is strengthened through compliance with the formal provisions of UUHT and the provisions of HIR/RBg regarding grosse akta; PPAT and notaries must ensure the conformity of the contents of the deed with the main agreement and the completeness of the mandatory elements to reduce the potential for disputes and ensure legal certainty of mortgage rights. This research is expected to contribute to the study of agrarian law and the practice of financing problematic credit in Indonesia.*

Keywords: *Acknowledgement; Agreements; Credit; Legal; Mortgage.*

1. Introduction

Debt acknowledgment in the form of a grosse akta holds a strategic position in credit agreements and mortgage deed (APHT) by PPAT, as it serves as authentic evidence and the basis for executing collateral if the debtor defaults. In banking practice, a grosse akta is often used as an additional instrument to strengthen the creditor's position, considering that this deed has the same executorial power as a court decision that has permanent legal force.

However, in practice, there is a gap between legal provisions and reality. Although the grosse akta normatively grants creditors the privilege of executing debt without going through the usual lawsuit process, judicial institutions often limit this executive power to the fixed amount of debt. This creates legal uncertainty and hinders the efficient resolution of credit disputes.

In addition, the execution process based on a grosse akta often ignores the legal protection aspect for the debtor and third parties. The findings show that the execution is sometimes carried out without proper notification, and the value of the seized collateral often far exceeds the actual amount of the debt. This condition raises questions about the balance between legal certainty, legal protection, and justice in the practice of collateral execution. Previous research by Kansil (1989) and Harahap (2000) confirmed that a grosse akta is the only authentic deed other than a court decision that has an executorial title. However, further research is needed to analyze the role and implementation of a grosse akta in the context of executing debtor's collateral, especially when linked to APHT by PPAT.

Based on the above description, identifying the problem is crucial to understanding the legal status of the gross deed of debt acknowledgement and how it is implemented in the practice of executing collateral. Without clear identification, the potential for conflict of interest between creditors, debtors, and third parties will persist, hindering the creation of legal certainty and justice.

This study aims to determine and analyze the role of the grosse deed of debt recognition in the execution of the debtor's asset guarantee.

2. Research Methods

This research uses a normative juridical approach with a focus on the role and implementation of grosse deed of debt recognition in the execution of debtor's asset guarantee. Statute Approach: Using legislation and regulations in the form of the Civil Code, Law No. 30 of 2004 concerning the Position of Notary, HIR/RBg, PERMA No. 1 of 2008, and PERMA No. 4 of 2019. Conceptual Approach: Examining views, doctrines, concepts and legal principles that are relevant when legal rules do not exist or do not exist for the problem at hand. Types of research: Normative juridical which is based on primary legal materials (statutory regulations) and examines theoretical aspects such as principles, doctrines, norms and legal rules. Scope: Limiting the discussion to the role and implementation of the grosse deed of debt recognition in the execution of the debtor's asset guarantee so that the research is focused and does not float. Sources of Legal Materials: Primary: Civil Code, Law No. 30 of 2004, HIR/RBg, PERMA No. 1 of 2008, PERMA No. 4 of 2019. Secondary: Law books, theses, dissertations, law journals, and court decision commentaries. Tertiary: Legal dictionaries, encyclopedias, and materials from the internet that explain primary and secondary materials. Collection Techniques: Library research method through reading literature, documents, laws and regulations, journal articles, mass media, and other relevant sources. Data Analysis Method Types of Analysis: Qualitative based on statutory regulations. Analysis Process: Describe and formulate the research material against applicable legislation, then match and analyze the truth to provide answers to research problems.

3. Results and Discussion

3.1. What is the role of Grosse's debt acknowledgment deed in executing collateral for the debtor's assets

The dualism between the use of credit agreements and notarial debt acknowledgement deeds in banking practice is based on the need for legal certainty and efficiency of execution. Credit agreements, whether private or notarial, serve as the principal agreement, setting out the terms, rights, and obligations of the parties. However, these documents serve only as ordinary evidence and have no enforceable power. If the debtor defaults, the creditor cannot immediately seize the collateral but must file a civil lawsuit with the District Court, which can take up to five years due to appeals and cassation.[1].

As a way out of the complexities of civil lawsuits, creditors utilize notarial debt acknowledgement deeds based on the provisions of Article 224 HIR / 258 RBg. A debt acknowledgement deed is a unilateral obligation from the debtor that stipulates the obligation to pay a certain amount of money. By including the irah-irah "For the Sake of Justice Based on the One Almighty God" in the grosse aktat, this document is equated with a court decision that has obtained permanent legal force, thus granting droit de suite and direct execution rights to the creditor.[2].

Despite containing executorial powers, the validity of the grosse deed of debt recognition has encountered technical obstacles following the issuance of Supreme Court Letter and Decision Number 213/229/86/UM-TU-/PDT. The Supreme Court stipulated strict requirements that the secured debt must be certain and pure. This condition complicates the common banking practice of granting credit based on a maximum binding facility (ceiling). The difference between the ceiling and the actual withdrawals by the debtor is often exploited by the debtor to file a rebuttal (verzet), thus further hampering the execution of the guarantee.[3].

To maintain the validity of a debt acknowledgement deed within these legal constraints, the notarial deed must meet standard normative criteria. These requirements include a clear unilateral acknowledgement from the debtor, the inclusion of a definite debt figure based on actual principal obligations (not a maximum ceiling), separation from the reciprocal obligation clause (event of default), and proof that the debt originates from a pure money lending transaction.

In addition to fulfilling the debt acknowledgment deed, banks implement risk mitigation strategies through the binding of material and immaterial collateral.

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[1]Indonesia, Supreme Court, Letter and Decision of the Supreme Court Number 213/229/86/U<-TU-PDT concerning the Conditions for Executing a Deed of Acknowledgment of Debt.
[2]Indonesia, Supreme Court, Letter and Decision of the Supreme Court Number 213/229/86/U<-TU-PDT concerning the Conditions for Executing a Deed of Acknowledgment of Debt.
[3]Indonesia, Law concerning Mortgage Rights over Land and Objects Related to Land, Law no. 4 of 1996, LN No. 42 of 1996, TLN No. 3632, Ps. 1 paragraph (1)

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Movable and immovable assets are secured using specific collateral institutions in accordance with agrarian regulations and property law. One of the primary collateral institutions for land rights is the Mortgage Right, as stipulated in Law Number 4 of 1996, which grants a preferred position to creditors holding land rights.[4].

The procedure for assigning a mortgage is carried out through three imperative stages. The assignment begins with the inclusion of a promise to provide collateral in the principal credit agreement, followed by the preparation of a Deed of Assignment of Mortgage Rights (APHT) by a Land Deed Official (PPAT)—or through a Power of Attorney to Assign Mortgage Rights (SKMHT) if attendance is an issue—and ends with the registration of the APHT at the local Land Office. This registration results in a Mortgage Rights Certificate containing the executorial instructions.[5].

Execution of a Mortgage Certificate can be carried out directly through parate executie based on Article 6 of the UUHT or through the assistance of an auction office without the need to file a civil lawsuit. In addition to a public auction, Article 20 of the UUHT provides an alternative private execution based on a mutual agreement between the creditor and debtor, as long as it is announced in writing and does not encounter obstacles or objections from third parties within one month.[6].

For collateral objects in the form of movable objects (tangible or intangible) and buildings that cannot be encumbered with a Mortgage Right, binding is carried out through a Fiduciary Guarantee institution. Based on Law Number 42 of 1999, Fiduciary Guarantee transfers ownership rights are carried out on the basis of trust, while physical control remains with the debtor to support operational activities. The formation of this guarantee begins with the principal credit agreement which is then set out in a Notarial Fiduciary Guarantee Deed and registered with the Fiduciary Registration Office.[7].

3.2. How is the execution of the Grosse deed of debt recognition carried out in the execution of the debtor's asset guarantee?

Economic development as part of national development aims to realize the welfare of the people based on Pancasila and the 1945 Constitution. Development financing is obtained from various sources, one of which is through the distribution of credit by banking financial institutions, both government banks and private

[4]Indonesia, Law concerning Mortgage Rights over Land and Objects Related to Land, Law no. 4 of 1996, LN No. 42 of 1996, TLN No. 3632, Ps. 4

[5]Mariam Darus Badrulzaman, Guarantee Law in Indonesia, (Bandung: Citra Aditya Bakti), pp. 85-90; Indonesia, Law No. 4 of 1996, Articles 10-13

[6]Indonesia, Fiduciary Guarantee Law, Law No. 42 of 1999, LN No. 168 of 1999, TLN No. 3889, Articles 1-3; Supreme Court of the Republic of Indonesia, Decision No. 372K/SIP/1970 dated September 1, 1971.

[7]Indonesia, Law No. 42 of 1999, Articles 5-13

banks. According to Article 1 paragraph (2) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, a bank is defined as a business entity that collects funds from the public in the form of savings and redistributes them in the form of credit or other forms to improve the standard of living of the community.[8].

The main function of banks is oriented towards distributing funds to the public through credit facilities based on the principle of trust.[9]In a civil context, a credit agreement is identified with a loan agreement as regulated in Articles 1754–1769 of the Civil Code. A credit agreement serves as a consensual preliminary agreement (*voorovereenkomst*) before the actual transfer of money.[10]. To ensure legal certainty for the bank as creditor, the provision of credit is outlined in a written agreement which is then followed by the creation of a debt acknowledgement deed.

A debt acknowledgment deed is a unilateral statement from the debtor which aims to strengthen legal protection for creditors. If the deed is made notarially before a Notary[11]Based on Article 1 paragraph (1) UUJN, creditors can obtain the first copy called the grosse aktakan acknowledgment of debt. Based on Article 55 paragraph (2) UUJN, this grosse akta has executorial power which contains the irah-irah "For the Sake of Justice Based on the One Almighty God", thus providing the basis for the bank's right of direct execution to collect receivables without having to go through the court process.[12].

Although the grosse akta acknowledgment of debt is designed as a practical means of execution, its practice is often hampered by differences in interpretation of Article 224 HIR / Article 258 Rbg. To meet the requirements of the execution law (unified legal framework), the grosse akta must meet formal requirements in the form of a notarial deed containing an executorial title, as well as material requirements in the form of a unilateral debt acknowledgment with a definite amount (fixed load).[13]. In addition, the principle of specialization also applies, which requires confirmation of certain collateral items, so that the right of direct execution is limited to these collateral items.[14].

[8]Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.
[9]R. Subekti, Guarantees for the Granting of Credit According to Indonesian Law, Bandung: Alumni, 1978, p. 11.
[10]Mariam Darus Badrulzaman, Bank Credit Agreement, Bandung: Citra Aditya Bakti, 1991, p. 26.
[11]Republic of Indonesia Law Number 30 of 2004 concerning the Position of Notary, Article 1 paragraph (1).
[12]Ibid., Article 55 paragraph (2). See also Article 1891 of the Civil Code regarding the criteria for the basis of original rights.
[13]M. Yahya Harahap, Resistance to the Execution of Grossen Deeds and Court and Arbitration Decisions and Execution Legal Standards, Bandung: Citra Adtya Bakti, 1993, pp. 305-309.
[14]Ibid., pp. 310-311.

Based on Article 1888 of the Civil Code, the evidentiary force of a document lies in the minutes of the original deed, which are kept in the notary's protocol. A gross copy of the deed issued by an authorized notary.[15]has perfect evidentiary power (volledig bewijs) for the parties and their heirs in accordance with the provisions of Article 1870 of the Civil Code and Article 165 of the HIR. This evidentiary power covers external, formal, and material aspects as long as the contents contain a definite debt figure and are directly related to the subject matter of the deed.

The application of grosse execution of a debt acknowledgement deed under Article 224 HIR is an exception to the general principle of execution, which typically requires a legally binding court decision. Under civil law, the provisions of an agreement in the form of a grosse deed are given equal legal force and effect with a judge's decision. Therefore, when a debtor defaults, the creditor can immediately request an execution order (fiat execution) from the Chief Justice of the District Court to forcibly seize and auction the collateral.

In banking practice, requests for execution of grosse aktat are often rejected by the court due to technical problems and debtor objections, such as the impurity of the debt acknowledgement deed, mixing of agreement clauses, or uncertainty about the amount of debt due to the presence of interest and fine components.[16]. The unequal perception between law enforcement officers and Notaries regarding the criteria of Article 224 HIR and Supreme Court Fatwa Number 213/229/85/II/Um-Tu/Pdt dated April 16, 1985 often triggers time and material losses for banking institutions.[17].

The debtor's failure to fulfill the agreement's obligations is categorized as default, which can be in the form of not paying, paying partially, or paying installments late.[18]. Handling of problematic credit can be achieved through non-litigation efforts such as credit restructuring negotiations (rescheduling, reconditioning, restructuring), mediation, or arbitration.[19]If the peace efforts fail and the execution of the deed is rejected, the bank is forced to file a regular civil lawsuit

[15]Republic of Indonesia Law Number 30 of 2004 concerning the Position of Notary, Article 57.

[16]HP Panggabean, Collection of Decisions of the Supreme Court of the Republic of Indonesia Concerning Banking Credit Agreements Volume 1, Bandung: Citra Aditya Bakti, 1992, p. 167 (Referring to Decision of the Supreme Court of the Republic of Indonesia Number 3971 K/Pdt/1986).

[17]Victor M. Situmorang & Cormentyna Sitanggang, Grosse Akta Dalam Pembuktian dan Esekusi, Jakarta: Rineka Cipta, 1992, p. 143. See also Soetarno Soedja, Grosse Akta Pengakuan Debt, National Seminar Paper, Surabaya, 1988, p. 5.

[18]H. Riduan Syahrani, Basic Material of Civil Law, Bandung: Ciitra Aditya Bakti, 2000, p. 218. Compare with Gatot Suparmono, Banking and Credit Problems, Jakarta: Djambatan, 1995, pp. 131-132.

[19]Salim HS, Contract Law, Theory & Techniques of Contract Drafting, Jakarta: Sinar Grafika, 2008, p. 27. See also M. Yahya Harahap, Civil Procedure Law, Jakarta: Sinar Grafika, 2007, p. 244.

with the District Court.[20], although this procedure takes a relatively long time and costs a lot of money due to further legal efforts by the debtor.

4. Conclusion

The gross deed of debt acknowledgement has the same evidentiary power as the original deed, despite the difference in wording (the phrase "For the Sake of Justice Based on Belief in the One and Only God"). Based on Article 224 HIR, this gross deed also has the same executory power as a court decision with permanent legal force, so that execution (auction) can be carried out directly without going through a court process in order to provide certainty and legal protection for creditors. The following is a summary of the suggested procedures for settling debts: Main Obstacles: Settlement through ordinary civil lawsuits in the District Court takes a long time because debtors often put up resistance (verzet, appeal, cassation, and judicial review). Solution/Suggestion: Creditors are advised to ask a notary to issue a Grosse Deed of Acknowledgment of Debt which has executory power, so that credit settlement due to defaulting debtors can be carried out more easily. Crucial Steps: Clarity of conditions, implementation and potential problems must be included in the deed so that the grosse deed is not rejected. There needs to be a common interpretation of Article 224 HIR so that the process of executing the grosse akta runs smoothly according to the rules.

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