

## Settlement of Loans in Arrears by Using Parate Execution of Collateral Bearing Mortgage Rights

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### Abstract

Various fields related to business always require banking services. Then the government created Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Lending by a bank as a creditor to a customer as a debtor must be carried out with an agreement in a compact form. The important thing in a credit agreement is collateral or guarantee. Collateral in banking practice can be bound by Law Number 4 of 1996 concerning Mortgage Rights for objects related to land. The Bank believes that material collateral in the form of land will provide a greater sense of security and legal certainty execution if the debtor fails to fulfil his promises to his obligations. Different implementations can execute objects that are the object of Guarantee Rights. The main problem is implementing bad debts by para the execution of collateral things saddled with mortgages. How is the implementation of legal protection for creditors if there is resistance from the debtor due to the execution part's performance? This research uses a descriptive qualitative approach. The main sources in qualitative research are primary data and secondary data. Researchers collect data through observation and documentation. Data analysis was performed using qualitative juridical analysis methods. The conclusion obtained is that the implementation of the settlement of lousy credit through separate execution of the collateral object that is burdened with mortgage rights is to sell the bank guarantee object as a creditor in the event of bad credit. This is done to cover the debtor's obligations, Then the implementation of legal protection for creditors if there is resistance from the debtor due to the execution of the execution Parate is to apply the provisions in Article 6 of the Mortgage Rights Law.

**Keywords:** *Bad Credit, Parate Execution, Mortgage Rights.*

### A. INTRODUCTION

Banking institutions have a crucial role in supporting the economic development of a country. Various fields related to business certainly require banking services (Tjiptoherijanto, 1997). Therefore, the government then enacted Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Article 1, number 1 of Law Number 10 of 1998 on Amendments to Law Number 7 of 1992 concerning Banking, states that: Banking is everything concerning a bank, including

institutions, business activities, as well as methods and processes for carrying out its business activities (Erningtyas & Renata, 2007).

As stated in Article 4 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the objectives of banking concerning Banking is to support the implementation of national development in the context of increasing equity, economic growth, and national stability towards improving the welfare of the people at large (Hermansyah, 2005). The definition of Bank is further stated in Article 1 number 2, namely: Bank is a business entity that collects funds from the public in the form of savings and distributes it to the people in the form of credit or other structures to improve the standard of living of the people at large (Hariyani, 2010).

Business activities that can be carried out by banks as regulated in Article 6 number 1 and 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking are collecting funds from the public in the form of deposits in the form of demand deposits, time deposits, certificates (Tje'Aman, 1989). Deposits, savings, and or other equivalent forms and providing credit. In connection with banks' role in channelling funds to the public, banks must implement the precautionary principle. Implementing the precautionary principle is significant to create a sound, solid, and robust banking system (Subekti, 2021). If credit provision is not carried out by implementing banking principles, it will lead to problem loans, which will affect the Bank's health (Usman, 2001).

The contract has a narrower definition than the sense of an agreement or agreement because the warranty refers to a deal made in writing. In contrast, a deal made in writing or verbally cannot be said as a contract (Poesoko & Soerodjo, 2007). One of the critical things in a credit agreement is collateral or guarantee (Hasan, 1996). Rachmadi Usman explained the definition of guarantee as a means of protecting creditor security, namely the certainty of the repayment of debtor's debt on the implementation of achievement by the debtor or by the debtor guarantor (Soekanto, 2006).

Guarantee, according to the type, can be divided into individual guarantees and material guarantees. Borgtoch/personal guarantee is a guarantee in the form of a statement of commitment given by a third party (Moeloeng & Surjaman, 1991).

In everyday banking practice, can tie collateral with a Pawn guarantee institution based on the Civil Code and a Fiduciary Guarantee Agency based on Law Number 42 of 1999 concerning Fiduciary If the collateral is in the form of land or buildings, the collateral is bound by Law Number 4 of 1996 concerning Mortgage Rights for Objects related to land (starting now referred to as the Mortgage Rights Law) (Munir, 2005). Banks prefer guarantee institutions in Mortgage Rights institutions because the collateral value in land or buildings has relatively stable collateral coverage than other guarantee institutions (Cranston, 1991). Collateral value in the

state of land or facilities will usually increase selling value from year to year, especially in big cities (Steyn, 2017).

The problem raised by researchers in this study is implementing lousy credit settlement through parate execution of collateral objects that are burdened with mortgage rights and how to implement legal protections for creditors if there is resistance from debtors to the implementation of the execution parate.

## **B. METHOD**

This study uses a qualitative descriptive approach, which is a procedure to solve problems investigated by describing a subject or object at present based on specific facts. The main source in qualitative research is data, both primary and secondary data. Researchers used several methods in collecting data, namely: interviews, observations or observations, and documentation. Data analysis was carried out using qualitative juridical analysis methods, namely research methods that start from existing norms, principles, and legislation as positive legal norms, which are then analyzed qualitatively.

## **C. RESULT AND DISCUSSION**

### **1. Implementation of Bad Credit Settlement through Parate Execution of Collateral Objects Burdened with Mortgage Rights**

Lending to debtors provided by banks as creditors always requires guarantees from the debtors in question. Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, states that: Credit is the provision of money or an equivalent claim, based on a loan agreement or agreement between the Bank and another party which requires the borrower to pay off the debt after a particular time with interest (Wanki & Hansungule, 2020).

Banks in providing credit require a guarantee from the debtor. The Civil Code and other statutory regulations that are the Guarantee Law source do not provide a formula regarding the meaning of guarantee. The guarantee comes from the word guarantee, which means responsibility so that the guarantee can be interpreted as a liability. Dependent referred to here is the responsibility for all one's engagements. This is based on the provisions in Article 1131 and Article 1132 of the Civil Code. Article 1131 of the Civil Code states that: All objects of the debtor, both movable and immovable, both existing and future ones, are borne by a person's all ties. Then in Article 1132, the Civil Code states that: This material becomes a joint guarantee for all those who account for it, the income from the sale of these objects is divided according to the balance, namely according to the size of the respective receivables, except if there are valid reasons to prioritize the debts (Fallaw & Nugent, 2020).

Based on the provisions of the two articles above, we can conclude that all the assets of the debtor, both existing and future, all become collateral for all debts so that if the debtor does not fulfil his obligations or breaks his promise, all the debtor's assets can be confiscated and auctioned, the proceeds are divided according to the balance of the creditors' receivables. Collateral is critical because the Bank will need the guarantee as a creditor if the debtor turns out to be in default or default later. The Bank will generally sell goods that are the object of collateral as a creditor in the event of bad credit. This is done to cover the debtor's liabilities. The legal basis for the guarantee in providing credit is Article 8 paragraph 1 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which states that: In providing credit or financing based on Sharia Principles, Commercial Banks are required to have confidence based on in-depth analysis of the debtor customer's intention and ability and ability to pay off their debts and return the said financing as agreed.

According to the provisions in Article 8 of the Banking Act, credit guarantees constitute confidence in a debtor customer's ability and coverage to pay off his / her obligations as agreed. Banks, before extending credit, must make a careful assessment of the character, ability, capital, collateral, and business prospects of the debtor customer. Objects that are generally used as objects of collateral in credit agreements are land or buildings. Land or buildings can be categorized as relatively safe collateral because they are not easily lost and damaged. Land prices generally continue to increase, especially if the land used as a collateral object is a strategic area. The Mortgage Rights Institution is a land rights guarantee institution that is one of the types of individual rights to land in the National Land Law. The Mortgage is always agreed upon and follows the main agreement, namely the loan agreement, therefore without a credit agreement. There will be no mortgage.

Mortgage security is a security right to land to repay certain debts, which gives priority to certain creditors over other creditors. The Mortgage is a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, along with other objects which are an integral part of the land, for the settlement of certain debts that provide positions that give priority to certain creditors over other creditors. Law Number 5 of 1960 concerning Basic Agrarian Regulations has stipulated guarantees for land rights. Article 51 of Law Number 5, the Year 1960 concerning Basic Regulations on Agrarian Principles states that: Law regulates mortgage rights that can be imposed on Property Rights, Business Use Rights and Building Use Rights in Articles 25, 33 39.

The Mortgage Rights Law provides convenience to both debtors and creditors. This is based on the characteristics inherent in Mortgage Rights. One of a robust mortgage is easy and sure to execute if the debtor fails to promise. Although the provisions regarding execution have been regulated in the applicable Civil Procedure Law, requirements regarding the implementation of Mortgage Rights are

deemed necessary to handle this Insurance Rights Law, namely by holding the execution parate institution.

Parate execution is to carry out alone or to take what is their right, without the intermediary of a judge who addresses collateral and then sells the item himself. Parate execution can be an execution carried out by the holder of the guarantee right without the District Court's assistance, only with the aid of the Office of the State Property and Auction Service (Absolvitor, 1866). Parate execution is carried out if the debtor defaults or breaches his/her promise so that the creditor, in this case, a bank, has the right to sell objects that are the object of collateral for the Mortgage on his power through a public auction based on the method stipulated in the laws and regulations (Harington, 1866).

Can see the legal basis for parate arrangements for the execution of the Mortgage in Article 20 of the Mortgage Rights Law, which states that:

- a. If the debtor is in default, then based on:
- b. Upon the agreement of the giver and the holder of the Mortgage, the sale of the object of the Mortgage can be carried out under the hand if in this way the highest assets that benefit all parties can be obtained;
- c. The sale as referred to in paragraph 2 can only be carried out after one month has passed since being notified in writing by the giver or insurance rights holder to interested parties and announced at least in 2 newspapers circulating in the regions concerned or the local mass media, and neither party has expressed an objection (Demurrable, 1920).
- d. Any promise to carry out the execution of Mortgage Rights in a manner contrary to the provisions of paragraph 1, paragraph 2, and paragraph 3 shall be null and void.
- e. Until the announcement for the auction is issued, it can avoid the sale as referred to in paragraph 1 by paying off the debt guaranteed by the Insurance Right, and the execution costs incurred.

The three types of mortgage execution have different implementation procedures. Concerning the execution parate, based on the provisions in Article 6 of the Mortgage Rights Law, the holder of the first Mortgage has the right to sell the object of the Mortgage on his power through a public auction and to take repayment of his receivables from the proceeds of the sale, but the right must first be agreed (Blacktone, 1864). By the parties in the Deed of Granting Mortgage Rights (APHT) as referred to in Article 11 paragraph 2 letter e of the Mortgage Rights Law, which before enacting the Mortgage Rights Law, this matter is regulated in Article 1178 of the Civil Code.

Concerning the right or authority of creditors to sell on their power as stated in Article 6 of the Law and Liability Rights and their explanations, several things must be considered by creditors, namely:

- a. The Clause Must Be Firmly Promised and Registered
- b. The debtor must perform Default or Default
- c. Is the right of the First Mortgage Holder
- d. The implementation of the sale of the object of Mortgage on its power must be through a public auction
- e. Receivables Repayment Taken from Auction Sales Proceeds

## **2. Implementation of Legal Protection for Creditors If There is Resistance from Debtors as a Result of Execution Parate**

Legal certainty for the execution of mortgage rights obtained by the existence of the executorial title in the mortgage certificate turns out that can cancel the auction implementation due to the provisions in Article 27 letter c of the Regulation of the Minister of Finance of the Republic of Indonesia Number 93 / PMK.06 / 2010 concerning Guidelines for Auction Implementation which essentially states. In contrast, the plan to conduct an auction can be cancelled if there is a lawsuit from a third party regarding the execution auction procedure.

PT Bank Sumatra Utara experienced this as a creditor who sued for committing illegal acts by Ismaili (the debtor) because PT Bank Sumatra Utara was considered arbitrarily to conduct a joint auction with the State Property Services Office and Medan City Auction for collateral objects that belong debtor without a prior court decision stating that Isnaini (the debtor) has been negligent in fulfilling his obligations. The Auction Officer later cancelled the auction plan at the Medan City State Wealth and Auction Service Office because of a lawsuit from a third party, namely Isnaini's mother, who stated that she was the owner of the collateral object.

In the Medan District Court Decision Number 167 / Pdt.G / 2013 / PN.Mdn on March 18, 2014, the Medan District Court in the main matter of the case stated that the Plaintiff's claim was unacceptable because the basis for the Plaintiff's claim was the implementation of the auction on March 28, 2013, in which the stipulated auction implementation plan has been cancelled. Thus, Plaintiff's claim is groundless or has no legal interest.

The decision of the Medan District Court Number 167/Pdt.G/2013/PN, which is being appealed, is confirmed by the Decision of the Medan High Court Number 270/PDT/2014/PT-MDN. The judge's consideration in deciding the case in this decision is correct. The Mortgage Law provides parate rights for execution to the creditor who holds the first Mortgage to get full repayment of the debtor defaults or is in default.

PT Bank Sumatra Utara's action cannot be categorized as an illegal act because the auction official has cancelled PT Bank Sumatra Utara's request to conduct an execution auction submitted through the State Property and Auction Service Office



in Medan. Based on the provisions in Article 1365 of the Civil Code, an act against the law must contain the following elements:

- a. There is an act;
- b. The action is against the law;
- c. There was an error on the part of the perpetrator;
- d. There is a loss for the victim;
- e. There is a causal relationship between actions and failures.

The causal relationship between the actions committed and the losses incurred is a condition of an act against the law. These elements are cumulative, meaning that if one aspect is not fulfilled, the action cannot be said to be an act against the law. If it is reviewed, PT Bank Sumatra Utara's actions do not fulfil these elements, so that cannot say that PT Bank Sumatra Utara has committed an illegal act .

The auction planned to be carried out has also been cancelled due to a lawsuit from a third party, namely the debtor's biological mother, stating that the lawsuit's object is hers. The cancellation of the auction by the Auction Official at the Office of the State Wealth and Auction Service in Medan City is under the provisions in Article 27 point C of the Regulation of the Minister of Finance of the Republic of Indonesia Number 93/PMK.06/2010 concerning Guidelines for Auction Implementation which states that auction cancellation before the auction is conducted by the auction official if there is a lawsuit regarding the plan to carry out the execution auction based on Article 6 of the Mortgage Law from a party other than the debtor/husband or wife of the debtor or is executed.

Apart from the judge's consideration regarding the cancellation of the said action plan, if seen from the normative provisions in Article 6 of the Mortgage Law, the conditions in the article provide legal certainty for the creditors holding the first security right to get their receivables paid by selling the auction of the collateral object in the event debtor in default.

#### **D. CONCLUSION**

Lending to debtors provided by banks as creditors always require guarantees from the debtors in question. Collateral is critical because the Bank will need the proof as a creditor if the debtor turns out to be in default or default at a later date. The Bank will generally sell goods that are the object of collateral as a creditor in the event of bad credit. This is done to cover the debtor's liabilities.

Mortgage security is a security right to land to repay certain debts, which gives priority to certain creditors over other creditors. One of the characteristics of a robust mortgage is easy and sure to execute if the debtor fails to promise. Can see the legal basis for parate arrangements for the Mortgage's execution in Article 20 of the Mortgage Rights Law.

Based on the provisions in Article 6 of the Mortgage Rights Law, if the debtor is in default, the holder of the first security right has the right to sell the collateral object on his power through a public auction and collect the debt from the sale proceeds. The article's provisions are the legal basis for the right mortgage holder to carry out the execution *parate*.

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