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Legal Protection for Creditors Due to Problem Credit with Collateral Rights Guarantee: Case Study Decision Number 211/PDT.G/2020/PN.Bpp

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Abstract

Legal consequences of the implementation of the Power of Attorney to Charge Mortgage Rights in the implementation of the Sale and Purchase Agreement by a Notary based on the main agreement, namely the Credit Agreement in Banking which is not followed by the making of a Deed of Granting Mortgage Rights and analyzing legal protection for creditors in credit agreements with the execution of mortgage guarantees if the debtor is in default for settlement due to problematic credit. Based on Article 8 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking in providing credit, banks apply the principle of "5C" which is mainly to see the customer's ability to accept the credit applied for. If the debtor defaults so that problematic credit occurs, then they can file for the execution of the Mortgage Guarantee if the collateral is in the form of land or buildings for the implementation of the SKMHT along with the APHT by a Notary. The purpose of this study was to determine the regulations for debtors who are in default in credit agreements with the imposition of Mortgage Rights and legal protection for creditors in the event that the debtor is in default. By using normative-empirical research methods, data collection techniques in the form of primary data by interviewing informants as informants and secondary data in the form of documents related to the problems studied to obtain conclusions if the debtor defaults in a credit agreement with the imposition of Mortgage Rights, based on the regulations of Law No. 4 of 1996 concerning Mortgage Rights, it states that the imposition is carried out by making a credit agreement first, then the imposition of mortgage rights and registration of the Deed of Granting Mortgage Rights with a predetermined time limit. So that there is legal protection for creditors so that the debtor's debt repayment can be carried out in accordance with the provisions of the Mortgage Law concerning the creditor's right to sell the object of the mortgage right, and is carried out according to the procedure for completing the execution of collateral which can be carried out by selling underhand or auctioning through the court.

Keywords: *Legal Protection, Mortgage Rights, Default, Guarantee.*

I. INTRODUCTION

Economic development as part of the form of national development is an effort that is planned to be able to realize a just and prosperous life for the people. However, in order to realize this, large amounts of funds are needed, both for the government and ordinary people as individuals. The development that needs to be carried out results in an increasing need for the availability of funds, one of which can be obtained through credit.

The large number of transactions that occur between people, one of which is the sale and purchase of land, requires an authentic deed as a means of proving that a civil relationship has been created between the parties so that legal order can be realized in society.[1]A state-appointed public official is required to make the authentic deed, as implied in the provisions of Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) which states that "An authentic deed is a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed is made."[2]What is meant by a public employee or public official here is: "A public official is a state organ, which is equipped with general powers, authorized to exercise part of the state's powers to create written and authentic evidence in the field of civil law."

The public official who is authorized to make an authentic deed is a Notary, so in other words a Notary is a public official. As explained in Law Number 2 of 2014 which explains the Position of Notary, namely as a public official who has the authority to make an authentic deed and other authorities as stated in the law on the position of notary or other

[1]Jesseline Tiopan, et al. "Legal Implications of Notary Fraud in Making a Deed of Sale and Purchase Agreement as a Substitute for a Deed of Borrowing and Lending with Collateral." Jurnal Notary Indonesia Volume I No. 002. 2019.

[2]Indonesia. Civil Code (Burgerlijk Weboek). Translated by R. Subekti and R. Tjitrosudibio, 8th ed., (Jakarta: Pradnya Paramita, 1976), Article 1868.

laws.[3]Based on the explanation, a Notary is a person who is given the authority to make authentic deeds by the State. Where a Notary in his profession is an agency or public official who makes authentic deeds that can produce written and legal evidence. The importance of this profession means that a Notary has the authority to create absolute evidence that has a definition that what is stated in the authentic deed is true and the party stating the untruth of the deed must prove it.[4]

In addition to Notaries, other public officials who also have the authority to make authentic deeds are Land Deed Making Officials (PPAT) or more precisely, officials who make deeds related to land. PPAT is defined as a public official who is authorized to make authentic deeds regarding certain legal acts regarding Land Rights or Ownership Rights of Apartment Units.[5]The provisions regarding PPAT as a public official are regulated in Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials, which were then amended by Government Regulation Number 24 of 2016 which discusses Amendments to Government Regulation Number 37 of 1998 concerning the Regulations on Land Deed Making Officials.[6]

The existence of Notaries/PPAT is very much needed in the midst of society. Considering the very important role of Notaries/PPAT, namely providing legal certainty to the community regarding the making of authentic deeds needed in community activities both in terms of economy, social or politics, especially in this case land sale and purchase transactions, only Notaries/PPAT can provide services to make authentic deeds, so that the authentic deeds can be accepted by all parties concerned and can have legal certainty.[7]

The community is already familiar with buying and selling, because from time to time buying and selling is a common activity in community life. Buying and selling is usually done with an agreement or known as a sale and purchase agreement. In practice, there are 2 (two) characteristics of buying and selling, namely cash and clear. Cash is the price of land paid, either in whole or in part. The remaining payment that will be paid later becomes the buyer's debt to the seller. Buying and selling cannot be canceled if the buyer later does not pay the remaining payment that is his obligation. The settlement of the remaining payment related to the sale and purchase is carried out based on the provisions regarding debts, while "clear" means that the sale and purchase is carried out openly which is fulfilled when the sale and purchase is carried out before the PPAT as regulated in Government Regulation Number 24 of 1997 Concerning Land Registration.

In a sale and purchase agreement, there are 2 (two) elements, namely objects related to the delivery (levering) and the price related to the payment. Both elements complement each other between rights and obligations so that no party feels disadvantaged. Therefore, it can be said that the transfer of rights only occurs when the delivery (levering) is carried out.[8]Although the status of the Sale and Purchase Agreement (PPJB) is only an agreement and there has been no legal transfer of land and/or building ownership, however, in the Circular Letter of the Supreme Court Number 4 of 2016 Concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court, it is stated that, "The transfer of land rights based on the Sale and Purchase Agreement legally occurs if the buyer has paid the full price of the land and has taken control of the object of the sale and purchase and is carried out in good faith."[9]

Therefore, although in principle the Sale and Purchase Agreement or PPJB does not result in the transfer of ownership rights, it can be said that the PPJB is evidence of the transfer of land rights by law which is deemed to have occurred if the buyer has paid the price of the land, has taken control of the object being sold and purchased, and this is done in good faith.[10]However, Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, explains that the transfer of land rights, in this case a sale and purchase, can only be registered if proven by a deed made by an authorized PPAT in accordance with the provisions of applicable laws. In making an agreement regarding a sale and purchase made with a PPJB, both Notaries and PPATs are expected to be more careful and thorough. Notaries are required to pay attention to the conditions that form the basis for the transfer of rights in the name of the buyer when making a Deed of Sale and Purchase before the PPAT. Meanwhile, the PPAT must not be deceived regarding the land that is the object of the sale and purchase.

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[3]Indonesia, Law of the Republic of Indonesia concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Law No. 2 LN of 2014 No. 3, TLN No. 5491. Article 1.

[4]R. Soegondo Notodisoerjo. Notary Law in Indonesia: An Explanation. Jakarta: Rajawali Press. 1982. pp. 7-9.

[5]Urip Santoso. Land Deed Making Official (Regulation Perspective, Authority and Nature of the Deed). Jakarta: Prenadamedia Group. 2016. p.61.

[6]Husni Thamrin. Making of Land Deeds by Notary. Yogyakarta: LaksBang PressIndo. 2011. p. 46.

[7]Lidya Christina Wardhani. Notary/PPAT's Responsibility for Deeds Canceled by the Court. Yogyakarta: Thesis of the Islamic University of Indonesia. 2017. p. 3.

[8]Mariam Darus Badrulzaman. Compilation of Contract Law. Bandung: PT Citra Aditya Bakti. 2001. P. 90.

[9]Circular Letter of the Supreme Court Number 4 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016. Number: 04/Bua.6/Hs/SP/XII/2019.

[10]Noviana Eka Maharani, et. al., "Legal Analysis of Legal Consequences for Purchasers of Apartment Units if the Developer is Declared Bankrupt," (paper presented at the National Seminar & Call for Papers for Master of Law UNS 2022 on the Challenges of Developing Sustainable Health Policies to Support Post-Covid Economic Recovery Through Strengthening Legal Instruments. Surakarta. June 6, 2022). p. 192.

It is said so because PPJB only has a role in the initial agreement before the written sale and purchase agreement of the parties, this is because there are several things that make the sale and purchase agreement unable to be implemented, for example because the payment of the price has not been paid in full, the land building is still under bank guarantee, the certificate has not been transferred to another name or because of the division process at the National Land Agency (BPN), taxes that have not been paid, or other reasons as regulated in Article 2 paragraph (1) and (2) of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 which discusses the Regulations on the Position of Land Deed Makers and Sale and Purchase.

In general, PPJB is made authentically or made before a Notary as a public official, on the other hand there are also PPJBs made underhand. Both PPJBs made authentically in the form of deeds and those made underhand, usually include witnesses who also sign the PPJB. In banking practice, credit agreements are made using private deeds and this Notarial deed is more due to the demands of efficiency and costs in service, especially in banking credit agreements. Buyers who want to buy and sell land and/or buildings but have limited funds can make a credit agreement with a particular bank to fulfill their wishes, then it will be followed up by making a PPJB, as one of the reasons for making a PPJB is that the payment as a consequence of the sale and purchase cannot be paid in full.

Banking also plays an important role in business traffic, almost for every business actor or activity. Banks are one of several sources of funding providers, including in the form of credit for the community or individuals and business entities to meet consumption needs or to increase production.[11]To meet the diverse needs of society according to its dignity always increasing, while the ability to achieve something that is desired is limited. This causes the community to need help to increase their business, of course, they need capital with the help of banks for additional capital, namely in the form of credit. Automatically, a legal relationship will be realized in the form of a credit agreement where the bank is in the position of creditor while its customers are in the position of debtors.[12]

The position of the bank is as a mediator for parties who have excess funds with parties who need funds. Banks can also be said to be bodies that have a primary function in addition to collecting money from the community, namely as intermediaries to channel credit offers and requests.[13]The position of this bank is in accordance with the provisions of Article 1 number 2 of Law Number 10 of 1998 which states that a Bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of the people.

Banking activities are also determined in several matters, which are stated in Article 8 of Law Number 10 of 1998, namely: (1) To provide credit or financing that is run on Sharia principles, banks are required to have confidence based on in-depth analysis or good faith and the ability of the borrowing customer to truly be able to repay their debts as agreed; (2) The borrower returns their debt or repays it according to what was agreed; (3) General banks need to have and implement credit and financing guidelines based on Sharia principles as stipulated by Bank Indonesia. Then, the Decree of the BI Board of Directors No. 27/126/KTP/DIR which explains the Procedures and Methods for Granting Credit to banks is required to have a written credit policy. Some of the points written are regarding the principle of prudence, credit organization and management, loan approval policies, documentation and administration, and other matters regarding credit supervision. The existence of these guidelines is expected to be a tool to assist banks in carrying out credit activities, and if any risks arise, they can be detected and controlled as well and as early as possible.[14]

Based on these provisions, credit distributed by banks to credit recipients (borrowers) made in the form of an agreement, creates rights and obligations for each party, the bank as the credit provider or distributor is obliged to provide money, and the borrower is also obliged to return the credit according to the agreed time period. In order to reduce the potential for failure in credit distribution, banks are required to apply the principle of prudence, including by distributing and diversifying the portfolio of funds, especially through restrictions on the provision of funds, both to related parties and to non-related parties, by a certain percentage of the bank's capital or what is known as the Maximum Credit Limit (BMPK).[15]

However, even though banks have tried to reduce credit risk and tried to apply credit principles and mechanisms, problematic loans or non-performing loans still arise so that banking institutions are always faced with problematic loans. This condition occurs because borrowers who receive credit experience financial difficulties and negative cash flow, making it difficult to fulfill their obligations to the bank. The inability of borrowers to fulfill their obligations, makes the quality of bank credit worse and reduces bank interest income. The increase in non-performing loans affects the smoothness of bank operations because it will disrupt the bank's operational income so that efforts are needed to overcome non-performing loans.

In such conditions, banks are certainly faced with 2 (two) choices between immediately taking urgent action or efforts and anticipation such as credit rescue actions or settlement efforts. Rescue efforts can be made by saving credit from borrowers who are having difficulty in returning their credit. In addition, the bank can also make efforts by making

[11]Sutarno. Credit Aspects in Banks. Bandung: Cv. Alfabeta. 2003. p. 1.

[12]Setiawan. Various Legal Problems and Civil Procedure Law. Bandung: Alumni. 1992. p. 222.

[13]Thomas Syatno. Bank Institutions. Jakarta: Gramedia Pustaka Umum. 1994. p. 23.

[14]Wahyudi Santoso. Credit Restructuring, As an Integral Part of Banking Restructuring. Banking and Central Banking Law Bulletin. Volume 6. Number 14 1 April 2008. p. 18.

[15]Bank Indonesia Regulation Number: 7/3/PBI/2005 Concerning the Maximum Credit Limit for Commercial Banks.

a settlement, namely by terminating the credit agreement through the sale of collateral from borrowers to pay off their credit.

We need to know and remember that in terms of providing credit by the Bank to customers, it is very strict and always pays attention to what is known as the 5C, namely Character, Capacity, Capital, Collateral, and Condition of economy. Therefore, the Bank in providing loans or credit to customers will not just give it, but will also ask for collateral because it is not uncommon in providing credit to certain customers there are bad debts, or situations when customers do not pay their installments to the Bank, to solve this problem there are many ways that can be taken by the bank, such as selling collateral that has been submitted to the Bank, or selling receivables owned by the Bank.

In Article 1131 of the Civil Code, there are provisions regarding guarantees which are general in nature, meaning they apply to every debtor and creditor and are valid by law without having to be agreed upon beforehand, which states that: "All of the debtor's property, both movable and immovable, both existing and future, become collateral for all of his individual obligations."[16]Furthermore, Article 1132 of the Civil Code states:

"The difference becomes a joint guarantee for all those who have credit with him, the income from the sale of the goods is divided according to balance, namely according to the size of each creditor's debt, unless there are valid reasons for priority among the creditors."[17]

Before the enactment of the Basic Agrarian Law, namely Law Number 5 of 1960 on September 24, 1960, hereinafter referred to as UUPA, originally the land guarantee institution was a mortgage and a credit guarantee. The mortgage is regulated in Book II of the BW Burgelijke Wetboek (hereinafter referred to as BW), or the same as the Civil Code as in Articles 1162-1232 of the BW, while the credit guarantee is regulated in Staatsblaad Number 542 of 1908 which was later amended to Stb. 1937-190. Since the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations, Law Number 4 of 1996 was born which regulates Mortgage Rights on Land and Objects related to Land, hereinafter this regulation is referred to as the Mortgage Law.

Mortgage rights are basically understood as security rights imposed on land rights, this is similar to that referred to in Law Number 5 of 1960 which discusses the Basic Agrarian Principles.[18]An agreement on collateral that eventually gives birth to a Mortgage Right is made to complement the main agreement related to debt or credit. Through this understanding, it can be understood that in making an agreement there is a legal role that connects the two parties in the agreement and there are also two types of agreements, namely a collateral agreement as an additional guarantee (accessoir) and the main agreement itself.[19]

In several cases, one of which is in banking practice, there is a problem regarding the increase in building use rights to ownership rights that are still bound by mortgage rights where the debtor is not cooperative in signing the Power of Attorney to Charge Mortgage Rights (SKMHT) or the Deed of Granting Mortgage Rights (APHT) which causes the requirements as a mortgage to not be met. There are obstacles in making the Power of Attorney to Charge Mortgage Rights (SKMHT) or the Deed of Granting Mortgage Rights (APHT), because the debtor does not carry out his/her obligations to pay off all installment/credit payments of ownership to the Bank for the object of the Building Use Rights certificate. This causes the creditor to feel disadvantaged when the debtor defaults, which makes it necessary to have legal regulations in the imposition of Mortgage Rights in a credit agreement, this regulation will guarantee legal protection and certainty for each party entering into an agreement, especially if there is a default by the debtor. Thus, it will create legal uncertainty for the mortgage institution, because the land that is pledged can change its status at any time and thus eliminate its mortgage rights.

Mortgage Rights are also explained in Law Number 4 of 1996 which explains that Mortgage Rights are rights granted or imposed on a land, for the settlement of certain debts to a creditor. Mortgage Rights must be registered with the Land Office, this is none other than to establish legal protection for each party and to provide certainty for an agreement entered into by each party. This is also to fulfill the element of publicity, and to facilitate control by third parties if there is a transfer of collateral.

Through the exposure of the issue, the researcher is motivated to conduct research on the provisions of Law Number 4 of 1996 which discusses Mortgage Rights on Land and Objects Related to Land. Therefore, the researcher is interested in discussing the default in the credit agreement in the form of a thesis research entitled LEGAL PROTECTION AGAINST CREDITORS DUE TO DEFAULTY LOANS BY DEBTORS WITH COLLATERAL COLLATERAL RIGHTS ON OBJECTS AGREED IN THE CREDIT AGREEMENT (Case Study of Decision Number: 211/PDT.G/2020/PN.Bpp).

Based on the background description above, in this research the author raises several problems.What are the consequences of the implementation of the Power of Attorney to Charge Mortgage Rights (SKMHT) in a banking credit agreement based on the Sale and Purchase Agreement (PPJB)? What is the legal protection for creditors holding Mortgage Rights whose object is Building Use Rights, if the debtor defaults due to problematic credit?

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[16] Indonesia. Civil Code (Burgerlijk Weboek). Translated by R. Subekti and R. Tjitrosudibio, 8th ed., (Jakarta: Pradnya Paramita, 1976), Article 1131.

[17]Ibid..., Article 1132.

[18]Kansil. Principles of Mortgage Rights on Land. Jakarta: Pustaka Sinar Harapan. 2009. pp. 19-20.

[19]M. Isnaeni. The Confusion of Mortgage Rights in Relation to Security for Bank Credit Distribution. Journal of Mortgage Law. Vol. I. Jakarta. 1999. p. 80.

Literature Review Previous Research Review

Literature study is related to theoretical studies and other references related to values, culture, and norms that develop in the social situation being studied. There are three criteria for the theory used as a basis for research, namely relevance, recency and authenticity. To support the research conducted, a literature review is needed. Literature review includes reading, observing, recognizing, and explaining reading materials (libraries). The purpose of literature study is an effort to observe, recognize, and discuss research plans theoretically, conceptually and find various research variables with their relationships and previous research results.[20]

As far as the research that has been done, the author found a writing that discusses the problem of legal protection for creditors due to bad credit on objects agreed upon through a deed of sale and purchase agreement (PPJB) underhand. However, there are several studies related to the regulation of legal protection efforts for holders of sale and purchase agreements against banks and aspects related to them, the author found in the following works which the author arranged based on the time sequence (year) including:

First, the thesis research entitled "Legal Protection for Creditors Regarding the Implementation of Fiduciary Guarantee Execution (Analysis of Constitutional Court Decision Number: 18/PUU-XVII/2019)" written by Fikrotul Jadidah, a Master of Law student at the Postgraduate Program, Faculty of Law, University of Indonesia in 2021. The research in this thesis is based on the fact that the issuance of the Constitutional Court decision Number: 18/PUU-XVII/2019 is based on a request for a material review of Article 15 Paragraph (2) and Paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees which provides new legal changes regarding the regulation and implementation of procedures for the execution of fiduciary guarantee objects before and after the Constitutional Court decision Number: 18/PUU-XVII/2019 and the form of legal protection for creditors if the debtor commits a breach of promise (default).

From the research results obtained, it turns out that there are regulations on the execution of fiduciary guarantee objects previously regulated in Articles 29-34 of Law Number 42 of 1999 concerning Fiduciary Guarantees, but after a judicial review of the law, the regulations and implementation are in accordance with the Constitutional Court Decision Number: 18/PUU-XVII/2019 and Regulation of the Indonesian National Police Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees. As well as the form of legal protection for creditors if the debtor defaults, namely submitting an application for the lifting of a suspension of his execution rights in accordance with the applicable mechanism in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

Second, the Journal research entitled "Legal Protection for Holders of Land Purchase Agreements Where the Land Certificate is Under the Control of the Bank (Study of Decision Number: 751 PK/Pdt/2019)" written by Ahmad Raihan Imani Setiawan and Abdul Salam, students of the Faculty of Law, University of Indonesia in 2023. This journal discusses the dynamics of legal problems that continue to develop and also give rise to the complexity of problems in society that require legal certainty, especially in terms of legal protection for holders of underhand Sales Purchase Agreements (PPJB).

The results of this study indicate that the legal position of the buyer against the land and/or building objects that are guaranteed by the seller to the bank is valid and binding if it has met the valid requirements of the agreement as stipulated in Article 1320 of the Civil Code and with permission from the bank. So that with the consideration of the judge, it is appropriate to provide legal protection to the buyer on the basis of PPJB (Sales and Purchase Binding Agreement) based on Decision Number: 751 PK/Pdt/2019 which is in line with the Circular of the Supreme Court Number 4 of 2016 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016.

This is what makes the researcher interested in comparing and studying more deeply related to the idea of legal protection efforts for creditors if the debtor defaults due to bad credit so that the implementation of the making of the Deed of Sale and Purchase of the Credit Agreement by the Bank between the Plaintiff and the Defendant is hampered. The research conducted by the author is different from several previous studies above and makes this research have an element of Novelty, because the written work above is solely more focused on the theory and concept of aspects and substance of the study that are far different from the author's research.

Here the author focuses more on explaining about the debtor's default due to bad credit on the sale and purchase agreement according to the review of the Legislation on Legal Protection available to creditors in the event of a debtor's default, as well as the possible punitive actions taken by the creditor in response to the default of the credit agreement as regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. As well as the provisions of Article 59 Paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which states that creditors holding rights (pledges, fiduciary guarantees, mortgages, collateral rights, or other rights) can take action as if bankruptcy had not occurred. In this case, it shows that the creditor, namely the Bank, can still exercise its rights in carrying out the act of making a Deed of Granting Mortgage Rights (APHT) in the terms and conditions regarding the granting of Mortgage Rights from the debtor to the creditor in connection with the debt secured by the Mortgage Rights.

[20]Sugiyono, Understanding Qualitative Research, Bandung: Alfabeta. 2005. p. 144.

Theoretical Review of Contract Law

The theoretical framework is something that is very much needed in research, it provides a theoretical basis for the author to answer the problems in the research being conducted. The word theory etymologically comes from the Greek, namely theorea which means to see, theoros which means observation. Kerlinger stated that theory is a collection of interrelated variables, definitions, propositions that provide a systematic view of phenomena by specifying the relationships that exist between various variables, with the aim of explaining existing phenomena.[21]

Theory according to Sugiyono is a logical flow or reasoning, which is a set of concepts, definitions, and propositions that are arranged systematically. In general, theory has three functions, namely to explain, predict, and control a symptom (explanation).[22]The theoretical framework aims to outline the limitations of the theory and use it as a basis for research. So the theories used in this thesis can be described as follows:

Legal Protection Theory

The theory of legal protection is one of the most important theories used in a contractual relationship, in order to protect the parties who are weak in a contract. According to Fitzgerald, quoted by Satjipto Raharjo, the emergence of this theory of legal protection began with the theory of natural law or the school of natural law. This school was first put forward by Plato, Aristotle (Plato's student) and Zeno (founder of the Stoic school).[23]Fitzgerald explains this theory with the understanding of law as an instrument to integrate and coordinate various interests needed by society, the protection of these interests can only be achieved if there are restrictions on the interests of other parties. Legal interests are useful in order to protect human rights, therefore the law has the highest power and needs to be protected and supervised.

The theory of legal protection is a theory that studies and analyzes the form and shape of the objectives of protection, the legal subjects who are protected and the objects of protection provided by law to its subjects.[24]From the explanation regarding the theory of legal protection for creditors if the debtor defaults on bad credit for the object agreed upon through the PPJB, this will hamper the implementation stage of making the AJB by the parties.

Theory of Legal Certainty

Gustaf Radbruch, in the concept of "Standard Priority Teachings" explains three basic ideas or objectives of law, namely justice, certainty, and utility. Justice has the meaning as the main thing of the three bases. Law that is able to synergize the three basic elements can only be said to be good law, because in that way the law can build prosperity and welfare of its people. Then utility has the meaning of finality that describes the contents of the law, the contents of the law must be in accordance with what is its purpose. While certainty means the condition of the law is able to function as a rule and should be obeyed.[25]

The theory of legal certainty is used to study the form of contract law which can be interpreted as a legal provision that regulates the legal relationship between one person and another as part of the community. Thus, the main nature of contract law is the law that regulates the legal relationship between people, in Article 1313 of the Civil Code states that a contract is an act of one or more parties that binds itself to one or more people.[26]So it is clear that in the implementation of the Law of Agreement based on Article 1320 of the Civil Code, there are conditions for the validity of an agreement, namely the existence of an agreement between them in binding themselves, the ability to make an agreement, the existence of a certain thing, and the existence of a lawful cause. If the first 2 (two) conditions are not met, then the agreement can be canceled (subjective conditions), and if the last two conditions are not met, then the agreement is null and void (objective conditions).

A void agreement is an agreement that is void from the start and does not have any legal consequences for either party. An agreement that is contrary to law, morality, and public order is void. What is meant by an agreement that can be canceled is that one party has the right to cancel the agreement.[27]

[21]Eza AA Wattimena. Philosophy and Science: An Introduction. Jakarta: PT. Grasindo. 2008. p. 25.

[22]Sugiyono. Quantitative Research Methods and R&D. 3rd ed. Bandung: Alfabeta. 2007. pp. 52-54.

[23]Satjipto Raharjo. Legal Science. Bandung: PT. 2000. p. 53.

[24]Salim HS and Erlies Septiana Nurbani. Application of Legal Theory in Thesis and Dissertation Research. Jakarta: PT. Rajagrafindo Persada. 2013. p. 263.

[25]R. Tony Prayogo. Implementation of the Principle of Legal Certainty in Supreme Court Regulation Number 1 of 2011 Concerning the Right to Material Review and in Constitutional Court Regulation Number 06/PMK/2005 Concerning Guidelines for Proceedings in Reviewing Laws. Volume 13. No: 02. 2016.

[26]Supriyadi. Basics of Civil Law in Indonesia. Kudus: CV. Kiara Scince. 2015. p. 131.

[27]PNH, Simanjuntak. Indonesian Civil Law. Jakarta: Prenadamedia Group. 2015. pp. 288-289.

Overview of the Agreement

An agreement is a very important thing because it concerns the interests of the parties who make it. Therefore, every agreement should be made in writing in order to obtain legal force, so that the goal of legal certainty can be realized. In relation to the agreement, Article 1313 of the Civil Code provides the following definition: "An agreement is an act by which one or more people bind themselves to one or more other people."[28]R. Setiawan explains that an agreement is an act in which one or more people bind themselves to another person, which is considered a legal act. Then R. Subekti explains that an agreement is an event when someone and another person bind or promise each other to do something.[29]

Agreements or overeenkomst have a coercive nature or afduringbaarheid. In an agreement, there are rights owned by a creditor, namely in the form of performance of what is promised. This right is protected by law in the form of sanctions. This means that creditors are given the ability by law to force debtors to complete the implementation of their obligations/performance that they have promised. If the debtor is reluctant to fulfill his obligations, the creditor is able to submit a request to the court to carry out the sanctions that are adjusted to the law, either in the form of compensation, execution, or other things with procedures that have been determined by civil procedure law. In a sale and purchase agreement, both parties are equally burdened (schuld), namely the obligation to fulfill the fulfillment of performance and at the same time each is also burdened (hafting), namely the legal responsibility to fulfill the implementation of performance to each party at the same time.

Agreement Gives Birth to Engagement

According to BOOK III of the Civil Code, in Article 1233 of the Civil Code, it is stated that every obligation is born either because of an agreement, or because of a law. The obligation is regulated in Article 1235 of the Civil Code which states "In every obligation to give something, it includes the obligation of the debtor to hand over the relevant object and to care for it as a good housewife, until the handover. Based on this Article, it can be concluded that the debtor has certain obligations before the handover occurs". This means that the obligation to give something is an obligation to hand over (leveren) and care for the object (prestasi) until the handover is made. Thus, the debtor has an obligation to hand over something which is a principal obligation and to care for something until the handover occurs.

The sources of obligations are divided into 2 (two), namely obligations originating from agreements and obligations originating from laws, as follows:[30]

1. Engagements Originating from Agreements

   Obligations originating from agreements are emphasized in Article 1233 of the Civil Code, that every obligation is born either because of an agreement (contract) or because of a law. Agreements are the most important source of obligations;
2. Engagements originating from law

   Law as a source of obligation is divided into two, namely law alone and law in relation to a person's actions. An obligation that is manifested from law alone is an obligation whose obligations are directly ordered by law. An obligation that arises from law due to a person's actions is an obligation that arises because of an action carried out by a person and then the law determines the existence of rights and obligations for the action. The action is divided into two types, namely actions according to law (rechtmatige daad), and actions against the law (onrechtmatige daad).
3. Elements of an Agreement

   The elements of an agreement can be seen from the validity of the agreement itself, this is divided into three parts, namely:

   a. Essential Elements

      This element is a part that must be present in a contract, without the essential elements in an agreement, then there can be no contract. For example, in a sale and purchase contract that requires an agreement on the price and type of goods, without such an agreement, the sale and purchase contract can be canceled because there is no promised goods.[31]

   b. Natural Elements

[28]Indonesia. Op. Cit., Translated by R. Subekti and R. Tjitrosudibio, 8th ed., (Jakarta: Pradnya Paramita, 1976), Article 1313.

[29]R. Setiawan. Principles of Engagement Law. Bandung: Bina Cipta. 1994. p. 49.

[30]Wawan Muhwan Hariri. Contract Law. Bandung: CV Pustaka Setia. 2011. p. 97.

[31]Ahmadi Miru. Contract Law and Contract Drafting. Jakarta: Raja Grafindo Persada. 2014. p. 30.

This element has been regulated in law so that if it is not regulated by the party making the agreement, then this is already in the law that regulates it.[32]This element is also said to be an inherent characteristic in an agreement which indirectly and consciously guarantees and is inherent.

c. Accidental Elements

The accidental element is the part that will bind the related parties who make the agreement.[33]

Conditions for the Validity of the Agreement

In order for the agreement to be valid and have legal force, it must first fulfill the requirements for a valid agreement, namely an agreement determined by law. The parties who make the promise must fulfill 4 (four) requirements for a valid agreement as stated in Article 1320 of the Civil Code, namely including agreement, capacity, a certain thing, and a lawful cause.[34]

1. Agreeing of the parties who bind themselves

   The word "agreement" cannot be made because of an error in the goods or an agreement made by the other party, such as coercion when carrying out the act (Article 1324 BW); or because of fraud or lies or trickery (Article 1328 BW). Agreements that occur or are made based on reasons such as those above can be filed for cancellation.

2. Reliable in Making Agreements

   The parties are capable of making an agreement. The word capable in this case means that the parties are adults, are not under supervision due to unstable behavior and are not people who are prohibited by law from making an agreement. Article 1330 BW states several things that are considered incompetent parties to the agreement, namely:

   a. A person who is not an adult;
   b. People under pardon:
   c. Women as well as any person who is generally prohibited by law from entering into certain agreements.

   However, women in this case have been said to no longer be classified as people who do not have reliability or skills, this is explained in the Supreme Court Fatwa through circular letter Number 3/1963 of 1963. Women have the right to be authorized to carry out acts according to the law without permission from their husbands. So this provision is canceled by law (Article 1446 BW).

3. Certain Things

   The agreement must be made with the type of object that is agreed upon. If there is no object, the agreement can be canceled. Only goods that may be traded can be objects (Article 1332 BW), then goods that can later become objects are goods that are not expressly prohibited by law (Article 1334 BW).

4. Halal Reason

   The validity of a clause in an agreement is determined when the agreement is made, without the existence of such a lawful clause the agreement made can be canceled, except as determined by law. The first and second conditions concern the subject, while the third and fourth conditions concern the object. If there is a defect in will (mistake, coercion, fraud) in making a binding agreement concerning the subject, the agreement is void. If the third and fourth conditions concerning the object are not met, then the agreement is void by law.

Conceptual Overview of Credit Agreements

In Article 1 number 11 of Law Number 10 of 1998 which is an amendment to Law Number 7 of 1992, credit is defined as follows: "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between a bank and another party which requires the borrower to repay the debt after a certain period of time with the provision of interest."

According to HMA Savelberg in Mariam Darus Badrulzaman, credit has the following meaning:[35]as the basis of every obligation and someone has the right to demand something from another person, and as a guarantee and someone gives something to another person with the aim of getting back what was given. Drs. OR Simorangkir in Hasanuddin

[32]Ahmadi Miru. Op. Cit,... p. 31.
[33]Ahmadi Miru. Op. Cit,... p. 32.
[34]Op. Cit.., Civil Code. Article 1320.
[35]Mariam Darus Badrulzaman. Bank Credit Agreement. Bandung: Alumni. 1989. p. 21.

Rahman's book has another opinion stating that, Credit is the provision of performance (eg money, goods) with a return performance (counter performance) that will occur in the future.

Nowadays, modern economic life is the achievement of money, so credit transactions concerning money as a means of credit are discussed. Credit functions cooperatively between the creditor and the credit recipient or between creditors and debtors. They gain profits and bear risks together. In short, credit in a broad sense is based on the components of trust, risk and economic exchange in the future.[36]

Some understanding of the agreement above can be understood that a credit agreement can occur if the parties agree to bind themselves to a debt agreement, where the party receiving as a debtor while the creditor as the money provider and will receive a return with an amount equal to the interest and at the time promised in the credit agreement. The debtor is given credit by the creditor based on the trust that the debtor will pay off his debt on time.

Elements of Credit

In Article 1 Number 11 of Law Number 10 of 1998 which contains changes to the Banking Law, it states that the provision of credit is based on a debt agreement with other parties. The important thing to underline to understand the elements of credit is that credit is a loan agreement. Another opinion according to Sentosa Sembiring, the elements of a loan are an agreement between the borrower and the lender, the existence of a certain amount of goods used up due to giving a loan, then the party receiving the loan will replace the same goods, and the Borrower is obliged to pay interest if agreed.[37]

So it can be concluded that the elements contained in credit are as follows:

a. The existence of an agreement between two or more parties, one of which acts as a debtor and the other party as a creditor;
b. There is an agreement on a certain amount which is the object of the loan, this amount can be in the form of goods or a direct amount in the form of money;
c. There is an agreement on the loan repayment period and the amount of interest for the loan service as well as sanctions for late payment of the loan.

Credit was initially more of a form of loan agreement that was limited to a certain amount of money, but in its development, credit also began to include payment of a certain amount of money for the use or purchase of an item, for the word use of an item oriented towards the form of financing credit for production purposes such as in credits practiced at leasing financing institutions, while credit for the purchase of an item is oriented towards the form of credit for the purchase of goods of a consumptive nature such as that practiced at consumer financing institutions.

II. METHOD

Types of research

Sutrisno Hadi explains research as an effort to discover, develop, and test the truth of knowledge using scientific methods.[38]It can be understood that research is basically conducted to obtain data that has been tested for its truth. So this type of research is normative-empirical or can also be called field research (applied law research), which is a research that uses normative-empirical legal case studies in the form of legal behavioral products, for example studying the implementation of credit agreements. The main point of the study is the implementation or implementation of positive legal provisions and contracts factually in every particular legal event that occurs in society, especially banking, in order to achieve predetermined goals.[39]

This research is descriptive-qualitative with the type of research is normative-empirical, namely explaining natural phenomena or man-made phenomena regarding activities, relationships, changes, characteristics and others. There is a difference between the law that should be (das sollen) and the applicable law (das sein), namely if in das sollen the settlement of the lawsuit case is carried out quickly and is carried out in accordance with the results of the court decision with a predetermined time. The implementation of the law (execution) of cases decided by the District Court in the first instance is carried out on the orders and under the leadership of the Chief Justice of the District Court. Thus it can be interpreted that the parties in the case must carry out the contents of the judge's decision, as mandated by Law Number 48 of 2009 concerning Judicial Power, stated in Article 54 paragraph 2 which states that, The implementation of court decisions in civil cases is carried out by paintera and bailiffs chaired by the chief justice. However, in das sein the implementation of the law decided by the first instance district court did not run as it should, it can even be said that there is no certainty when the implementation will be, so that this description must be presented.

[36]Rahman. Hasanuddin. Legal Aspects of Bank Credit Provision in Indonesia. Bandung: Citra Aditya Bakti. 1998. p. 95.

[37]Sentosa Sembiring. Banking Law. Bandung: Mandar Maju. 2002. p. 67.

[38]Soerjono Soekanto. Introduction to Legal Research. Jakarta: UI Press. 1986. p. 6.

[39]Abdulkadir Muhammad. Law and Research. 1st edition. Bandung: PT Citra Aditya Bakti. 2004. p. 52.

Problem Approach

The approach method used in compiling this thesis is normative-empirical research (normative-empirical legal research method), which includes:

a. Statute approach;

This approach means conducting a review and analysis of all laws and regulations related to the issue being studied, namely the legal consequences of the problem and legal protection for creditors who are subject to default by their debtors.

b. Conceptual approach;

This approach is by understanding the concepts related to the legal issues being studied. This approach starts from the views and doctrines that develop in a legal science. This approach is important because by understanding the views and doctrines that already exist in legal science, this becomes a foothold for building legal arguments on the issues being faced or being studied.[40]Views or doctrines will clarify ideas by providing legal definitions, legal concepts, and legal principles that are relevant to the problem being studied, namely the application of the legal consequences of the implementation of SKMHT in banking credit agreements and the application of the law on the protection of creditors who hold Mortgage Rights in the form of HGB if the debtor defaults due to bad credit, so that it is hoped that the approach and application in these legal regulations will no longer be ambiguous.

Data collection technique

Data is the plural form of datum (Latin), in this case, when viewed from where it is obtained, data can be divided into two types, namely:[41]

a. Primary Data, namely data obtained through field research;

Primary data used by researchers, namely conducting empirical research, is by using observation and/or interviews as data collection tools. The intended observation is to capture the symptoms of the observed object carefully which is studied comprehensively. While interviews as a data collection tool to obtain information with questions about what things are known in connection with the problems in this study to the resource persons are the parties involved in the case study, namely the Consumer Legal Bank Group Division of PT. Bank CIMB Niaga, Tbk., as Creditors, through interviews as interested parties or respondents who can provide the information needed related to the problems to be studied.

b. Secondary data, namely data obtained and based on literature studies;

Secondary data collection that has been obtained by researchers, studied, checked or read and collected data related to the research object being conducted. This secondary data is grouped into 3 types of legal materials, namely:

Data Analysis Techniques

From the data collection used, it is then arranged to obtain findings based on the focus or problem that needs to be discussed and answered, as follows:

a. Condensation

Data Condensation is a process that refers to the stages of selection, focusing, simplifying, abstracting and making data into notes obtained in writing or orally in the field or Q&A notes, documentation and other empirical information. By summarizing data from interviews, observations and documentation, researchers relate one to another so that they strengthen each data obtained and can make researchers understand better when conducting data analysis.[42]

[40]Johnny Ibrahim. Normative Legal Research Theory and Methodology. Surabaya: Bayumedia Publishing. 3rd printing. 2007. p. 391.

[41]Sri Mamudji. 2005. Research Methods and Legal Writing. Depok: Publishing Body, Faculty of Law, University of Indonesia. Cet. I. 2005. p. 8.

[42]Miles, Matthew B and A. Michael Huberman. Qualitative Data Analysis A Sourcebook About New Methods. Jakarta: Universitas Indonesia Publisher. 2014. p. 20.

b. Draw a conclusion

Drawing conclusions is a complete activity that is useful for obtaining short, concise and clear data so that it can be immediately understood by the reader. Drawing conclusions will not appear until the final data is collected which is then arranged and formulated in descriptive sentences and depends on how much data is sought and found in the field and the research process.

III. RESULTS AND DISCUSSION

Legal Consequences of the Implementation of SKMHT in Bank Credit Agreements Based on Sales and Purchase Agreements (PPJB)

SKMHT is generally used as a credit agreement. The use of SKMHT is the same as an agreement that creates debts and SKMHT is used as a guarantee of repayment. Munir Fuady explained that the agreement of will in legal regulations anywhere is one of the valid requirements for making a contract, in Indonesia this is stipulated in Article 1320 of the Civil Code.[43]Mariam Darus Badrulzaman stated that the existence of the Principle of Consensualism explained in the article means the will, the parties mutually achieve or have the will to bind themselves to an agreement. This Will raises trust in the fulfillment of the promises made.[44]

The application of the principle of consensualism has a close relationship with the principle of freedom of contract and binding power, this is explained in Article 1338 paragraph 1 of the Civil Code, which explains that every agreement made legally applies as a law for the people who make it. Furthermore, Mariam Darus explains that the principle of freedom has the meaning of a contract to establish a relationship with the content that determines "what" and with "whom" an agreement is made.[45]

When related to standard agreements, in credit agreements there is no principle of freedom of contract, because the conditions specified in the agreement are not based on both parties, but are based on the wishes of the creditor alone. Marian Darus explains several characteristics of standard agreements, namely as follows:[46]

1. The contents of the agreement are generally determined unilaterally by the creditor, so their position is relatively stronger than the debtor;
2. The debtor has no participation in determining the contents of the agreement;
3. The debtor is driven by a need that forces him to accept the agreement;
4. The agreement is made in writing;
5. Prepared in advance both in bulk and individually.

These things can be understood that the agreement is contrary to the legal principles of agreements and morality where in practice this agreement grows due to the will and must be accepted. Creditors providing loans must adhere to the principles explained in Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, namely that they must have confidence based on in-depth analysis or the good faith and ability and capability of the debtor customer to pay off their debts or return the financing in question in accordance with what was agreed in accordance with the character, capital, collateral, ability, and other healthy credit principles.

Before the enactment of the regulations in UUHT, the making of SKMHT can only be held in special circumstances, namely if the grantor of Mortgage Rights is unable to be present before the PPAT in person when making APHT, so that the grantor of rights delegates his/her authority to the power of attorney with SKMHT. This SKMHT is in the form of an authentic deed made by a notary. The provisions of the contents of a SKMHT are limited to only containing the law on imposing mortgage rights.

The reason for using SKMHT is because the land object that is guaranteed for credit has not been registered and the land is located outside the creditor's work area. Generally, creditors in distributing their funds do not accept land objects that have not been registered, unless it has been stated by a Notary or PPAT as the land that is guaranteed can be upgraded to a certificate with a special note or "covernote", the note must contain that the land is currently being processed at the National Land Agency.

UUHT basically requires that the land that is the object of the guarantee is a land right that has a certificate or has been registered, this is the same as that stipulated in the Banking Law. However, considering that there are still many lands that have not been registered in Indonesia, UUHT allows holders of rights to land that have not been certified to apply for bank credit, this is explained in Article 10 of UUHT. This is proof of ownership of a land that according to the system and customary law allows it to be used as collateral.

When associated with the case study of the civil case at the Balikpapan District Court above, where the use of SKMHT which was born from a credit agreement occurred because the creditor was sure that his loan would be safe because the collateral given by the debtor was in the form of land rights on which the SKMHT was installed and the creditor was sure of the debtor's ability to repay the credit according to the agreement. The credit is guaranteed because the rights and powers are given to the Bank, namely PT Bank CIMB Niaga, Tbk., to obtain repayment from the credit agreement if the debtor commits a breach of contract, namely to repay his debt at the time specified in the agreement, and there is legal certainty to the bank that his credit will still be returned by executing his bank credit guarantee. So it is clear that it can be concluded that there is an application of the Legal Certainty Theory, especially in achieving his rights for

[43]Munir Fuady. 2001. Contract Law (From a Business Law Perspective). Bandung: Citra Aditya Bakti. p. 2.

[44]Mariam Darus Badrulzaman. Compilation of Contract Law. Bandung: Citra Aditya Bakti. 2001. p. 20.

[45]Mariam Darus Badrulzaman. Op.Cit., Compilation of Contract Law. p. 25.

[46]Mariam Darus Badrulzaman. Some Legal Problems of Bank Credit Agreements with Hypotheek Collateral and Their Obstacles in Medan. Bandung: Citra Aditya Bakti. 1991.

creditors in the implementation of the SKMHT to obtain repayment for the debtor's injury and to pay the debt that has been set in the Agreement which must be obeyed by the parties.

So by making the SKMHT, the creditor can increase it to APHT without the presence of the debtor based on the SKMHT that has been signed by the debtor and registered in the land book of mortgage rights, so that the position of the first creditor will be prioritized over other creditors in terms of debt repayment from the debtor. Regarding the form of an agreement, the principle applies that an agreement does not have to be made in a certain form, which means that an agreement can be made in written form and can also be in unwritten form, but there are several types of agreements that are required by law to be made in written form.

The making of a credit agreement deed that imposes SKMHT can be made with an authentic deed by a Notary/PPAT. This is done after an agreement based on trust from the parties regarding the loan agreement and the SKMHT object that will be used as collateral. Therefore, based on the mutual agreement, the parties also make deeds related to the SKMHT which is used as collateral in the credit agreement. According to Munir Fuady, a contract is made in writing with the following intentions:[47]

1. The written contract may be made for evidentiary purposes;
2. Written contracts can also be used for legal certainty purposes;
3. Written contracts are created for sophisticated contracts, so it is considered inappropriate if they are only done verbally.

UUHT further regulates the form of credit agreements that contain provisions for the existence of SKMHT in them. Regarding this, the credit agreement as the main agreement must be made in writing. Article 10 paragraph (1) of UUHT expressly states that the granting of mortgage rights is preceded by a promise to provide mortgage rights as collateral for the payment of certain debts, which is stated therein and is an inseparable part of the relevant debt agreement or other agreements that give rise to the debt. Further explanation regarding Article 10 paragraph (2) of UUHT is that, after the main agreement is made, the granting of Mortgage Rights is carried out by making a Deed of Granting of Mortgage Rights (APHT) made by the PPAT in accordance with applicable laws and regulations.

The absence of the mortgagee before the PPAT at the time of making the APHT is a reason that allows the mortgagee to make or use the SKMHT, therefore Article 15 paragraph (1) of the UUHT emphasizes that the power of attorney in question must be special and authentic and must be made before a Notary or PPAT. Thus, the SKMHT installation stage is carried out before a Notary or PPAT and is carried out after there is a credit agreement as the main agreement containing the agreements of the parties regarding borrowing money by installing a mortgage.

Based on the description, the encumbrance of one or more land rights in one SKMHT can be carried out by a Notary or PPAT by considering the ownership of the land rights and based on the provisions that regulate it. Regarding the ownership of land rights to which the SKMHT will be attached, the Notary/PPAT must first pay attention to the land rights to which the SKMHT will be attached who are truly the owners of the rights. If one or more land rights are owned by one person, then the identity of the owners of the land rights is included in the SKMHT comparison as the grantor of power of attorney. However, if the owners of the land rights are different, then the identities of the owners of the land rights must be included in the SKMHT comparison as the grantor of power of attorney.

The authenticity of a notarial deed itself can be based on the provisions of Article 1868 of the Civil Code in conjunction with Article 1 number (1) in conjunction with Article 1 (7) in conjunction with Article 38 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. According to these provisions, a notary is a public official who has the authority to make authentic deeds, where the form and procedure of the notarial deed must be in accordance with those regulated in the UUJN. Therefore, a notary in carrying out his/her position cannot be separated from all provisions regulated in the UUJN, as well as regarding the form and procedure for making each deed must be in accordance with the provisions stipulated by the UUJN, even though in this case the Notary fills in a SKMHT form that has been issued by the National Land Agency of the Republic of Indonesia. Notaries must be careful and meticulous so that each deed is made in accordance with applicable provisions, so that each deed made by the Notary is an authentic deed that is good and correct, a deed that is of good quality and has a positive impact, and maintains its authenticity or validity of something made by the Notary/PPAT so that the parties in the deed can be protected for their interests. However, in practice, there are still many obstacles in making SKMHT legally, especially at the Notary/PPAT.

The above is due to the existence of regulations regarding SKMHT which have been clearly regulated in UUHT, however several obstacles related to administration have been found, including:

1. Obstacles to upgrading SKMHT to APHT due to costs. This is not due to the cost of upgrading SKMHT to APHT by PPAT, but because the next process, namely making a certificate for an unregistered SKMHT object, requires quite expensive costs. Meanwhile, for other SKMHTs that do not experience these obstacles, Article 15 paragraph (5) of the UUHT applies, this is seen based on the amount of each credit, which does not need to comply with the validity period of the power of attorney, in terms of guaranteeing certain credits applied in laws and regulations, such as small credits, home ownership credits, and others, namely until the end of the validity period of the relevant principal agreement as stated in the Regulation of the Minister of State for

[47]Munir Fuady. Theory of Evidence Law (Criminal and Civil). Bandung: PT Citra Aditya Bakti. 2006. p. 10.

Agrarian Affairs/Decree of the National Land Agency Number 4 of 1996 concerning Explanation of the Time Limit for Using SKMHT to Guarantee Settlement of Certain Credits.

2. For land that has not been registered/has a certificate, after the SKMHT is signed, the next step is making a certificate, this is the process that often experiences obstacles. This is due to the large costs involved in processing certification. In Article 15 of the UUHT, the SKMHT period is regulated in several matters, namely: If the creditor receives a binding of rights to land that has been registered, then it is necessary to make an APHT no later than one month after it is given. Then if the creditor receives a binding of rights to land that has not been registered, it must be followed by making an APHT no later than three months after it is given.

The provisions regarding the short validity period of the SKMHT, while the long credit agreement period of the provisions, then this will make the creditor feel disadvantaged. Credit congestion occurs not because of errors or poor creditor analysis in assessing business feasibility, but due to economic changes or changes in regulations. In such conditions, the debtor will not provide the SKMHT, except when the validity period expires, because of bad faith, this is used as an opportunity for the debtor to avoid his responsibilities. In this condition, the debtor will try to prevent the bank from burdening the mortgage rights on his land that has been pledged.

Legal Protection for Creditors Holding Mortgage Objects If the Debtor Commits Default Due to Problematic Credit

The form of legal protection given to creditors, when creditors are faced with a problem of default by the debtor in a credit agreement with a mortgage guarantee, is initiated by the process of binding the credit agreement with a mortgage guarantee, namely by making a credit agreement using a mortgage grant clause where the mortgage guarantee binding agreement is an accessory agreement that follows the main agreement. Article 10 paragraph (1) of the UUHT states that in granting mortgage rights, it is preceded by a promise to provide mortgage rights as a guarantee for certain payments which are stated in and are an inseparable part of the relevant debt agreement or other agreements that give rise to the debt. Then making APHT by PPAT where this is stated in Article 10 paragraph (2) of the UUHT states that in granting mortgage rights, it is done by making a Deed of Granting Mortgage Rights by the Land Deed Making Officer in accordance with applicable laws and regulations.

In the APHT, it is mandatory to include promises to protect creditors as stated in Article 11 paragraph (2) UUHT as a mandatory nature of the validity of the APHT to fulfill the principle of special mortgage rights, but if it is not stated in full, it can be void by law. After the guarantee binding process, the mortgage right burden process is carried out through 2 (two) stages, namely the first stage with the registration of mortgage rights as stated in Article 13 UUHT explaining that the granting of mortgage rights must be registered at the Land Office then the PPAT no later than 7 (seven) working days after signing the APHT must send the relevant APHT and other documents to the Land Office after which the Land Office makes mortgage books and records them in the land book of land rights that are the object of mortgage rights and copies the notes on the relevant land certificate of rights. Registration of this mortgage right is a manifestation of the principle of publicity and an absolute requirement for the birth of mortgage rights where the mortgage right is born on the date of the mortgage land book which falls on the seventh day after receipt of complete files.

Then the second stage with the issuance of mortgage rights is contained in Article 14 UUHT 7 explaining that the Land Office is required to issue a Mortgage Certificate (hereinafter referred to as SHT) by having the irah_irah "FOR JUSTICE BASED ON GOD ALMIGHTY" as evidence of mortgage rights and as the basis for executorial power. Basically, the granting of Mortgage Rights must be carried out by the owner himself, but if a legal action cannot be carried out by the interested party himself in a situation, then he can authorize his actions to someone he appoints, the granting of power can be done specifically, namely regarding only one particular interest.[48]

Legal Status of Credit Agreements on Mortgage Objects in the Status of Sale and Purchase Agreements at PT Bank CIMB Niaga, Tbk.

One of the easiest alternatives to get a decent and desired home is through bank credit. Based on Article 4 of Law Number 10 of 1998 concerning Banking, the purpose of banking is to support the implementation of national development in order to increase equality, economic growth and national stability towards increasing the welfare of the people.

The existence of payments through installments or installments to the bank means that people no longer need to buy a house by paying the full price of the house, which is currently an obstacle for some people. To be able to buy a house with a cash price, of course, requires a lot of money, because the needs of the community are increasing. Where the KPR application process is carried out by making an agreement between the bank and the customer. The first step in providing KPR is done by making a house sale and purchase agreement between the consumer and the developer. This process is then continued by making a credit agreement between the home buyer and the bank as the party financing the purchase of the house by encumbering the house to the mortgage institution.

When the credit agreement is made and the customer has agreed to the bank's provisions or what is known as standard provisions related to the house price, down payment, installment amount and house specifications. The customer then fills out the form provided by the bank. The debtor's obligation is to fulfill the obligation for payment in accordance

[48]R. Subekti. 1995. Various Agreements. Tenth Printing. Bandung: PT. Citra Aditya Bakti. p.143.

with the terms and procedures for payment that have been determined in the PPJB in a timely manner. The consequences of late payment of obligations are the imposition of fines and warnings, even if within a certain period of time the obligation is not fulfilled, then the sale and purchase agreement can be canceled and the money that has been paid will be returned after deducting compensation costs for the developer and the bank. In addition, consumers are also required to fulfill obligations in terms of charging costs that will arise later in the sale and purchase agreement that is implemented.

When a credit agreement is made, all parties must be present and participate in the credit agreement process that is made. This means that "agreement" occurs when the deed of agreement is made and signed between the customer and the bank. After the credit agreement deed is signed, a debt repayment agreement is made which contains the customer's obligation to repay and pay off his debt to the bank within a specified period. After the deed of debt recognition is made by a notary, a deed of sale and purchase is made where between the developer and the customer there is an agreement for the transfer of rights, namely the transfer of rights to land and buildings that were previously in the name of the PT that oversees the developer to become the property of the customer, while between the bank and the customer there is an agreement for the transfer of debt where all of these things are stated in the financing agreement. The handover of the certificate for the house is carried out before the credit agreement is made and signed by the parties. In addition, in the debt recognition agreement to guarantee the repayment of the customer's debt by pledging the deed of ownership of the land and buildings in accordance with the regulations and agreements between the customer and the bank.[49]

Credit Agreement is included in the sale and purchase agreement, because as long as the house has not been paid off and is still being paid in installments, the customer is the tenant, but when everything has been paid in full, it becomes the property of the customer as a consumer, which then results in a transfer of ownership, then the house and the certificate of ownership are handed over by the bank to the customer and become the property of the customer. This means that as long as the customer has not paid off his debt in installments, he can automatically be said to be a tenant, but after paying off his debt, the customer can be said to be the buyer of the house he is paying in installments.[50]

If examined, the agreement between consumers and developers in the credit purchase process in home ownership, then if the consumer has agreed to the home ownership credit agreement, an agreement is made where the consumer signs the home ownership so that an agreement arises, and the house is still collateral. Collateral from the debtor is one of the factors that increases the bank's trust in distributing credit and is considered a form of protection for the bank as a creditor who has good intentions to help debtors who are having financial difficulties and is expected to be used properly to pay off the debtor's obligations if there is a default.

As explained above, PPJB is a house sale and purchase agreement which is a reciprocal agreement, which of course creates obligations between the parties. This means an agreement that requires someone to hand over or pay for something. PPJB does not result in the transfer of ownership rights from the developer to the buyer, so that the buyer is not legally entitled to pledge the house based on PPJB. The Developer States that the Deed of Sale and Purchase can be executed for 3 (three) months after the arrears have been fulfilled because the certificate for the house has not been separated from the main land certificate.

This is in accordance with the provisions of Article 15 paragraph (3) and paragraph (4) of Law Number 4 of 1996 concerning Mortgage Rights that the transfer of ownership rights to a house only occurs if it has been done by registering the deed of sale and purchase at the Land Office. Likewise, the Deed of Delivery of Collateral and Power of Attorney made as a form of collateral binding becomes null and void by law. The agreement to transfer collateral or guarantee and power of attorney is considered never to have occurred, so that the Bank cannot demand the implementation of the delivery of the collateral if the debtor is in default. The Bank does not have a preferred position (preferential rights) as a creditor. The Bank does not have the right to sell through a public auction which is used as collateral with the right to prioritize the payment of debt to the bank over other creditors. So it can be seen that PPJB is not an ideal (good) guarantee.

The binding of PPJB as collateral is not secured because the binding is not carried out in a formal legal manner, in accordance with applicable laws and regulations. PPJB cannot be used by the Bank as perfect and complete evidence to carry out legal actions. In addition, the binding of PPJB as collateral is also not marketable, meaning that if the credit guarantee must, needs and can be executed, the guarantee cannot be easily sold or cashed to pay off the debtor's debt. This can certainly be detrimental to the bank as a concurrent creditor.

Legal Protection Efforts Undertaken by Banks (Creditors) for Collateral Objects in Sales and Purchase Agreements (PPJB)

Referring to Article 1131 of the Civil Code, that the rights of a creditor to a debtor are all the debtor's (debtor's) property, both movable and immovable, both existing and new in the future, become collateral for all his individual obligations. The bank's obligation to the customer in the credit agreement is none other than to provide financing facilities to consumers who will buy a house on credit. In addition, it provides convenience for customers to be able to have and implement the contents of the credit agreement that has been determined at the beginning before the agreement between the parties (bank and customer). The legal protection provided to creditors can be determined based on laws and

[49]Raden Roro Faradilla Arian Permatasari, "Analysis of Legal Responsibility for Home Ownership Credit (KPR) Agreements", throughhttp://www.eprints.ums.ac.id., accessed on May 10, 2024.

[50]Ibid.

regulations governing Mortgage Rights in the form of the credit agreement itself. The credit agreement functions as evidence that explains the limitations regarding the rights and obligations of each party so that the credit activities provided by the creditor are guaranteed to be repaid, therefore the process of binding the guarantee clause is carried out.[51]

After the collateral binding process with the Mortgage Right provision clause using APHT by PPAT related to promises that protect the creditor, so that the credit agreement can guarantee the receivables given can be paid off, it is necessary to carry out the Mortgage Right imposition process in the form of a Title Deed, which is made through two stages, the registration process and then the issuance of the Mortgage Right in the form of a certificate. As proof of the existence of a mortgage right, this certificate is issued by the Land Office which contains executory powers so that if the debtor violates the promise he made, the creditor is able to execute the object being guaranteed.

Implementation of Execution of Collateral for Mortgage Rights to Resolve Bad Credit in Banking Institutions

The banking sector shows its important role in pumping up the development of the national economy. In addition to being a fund collector, banks also function to channel these funds to parties who are able to use them as a productive function. The role of this institution is regulated in Banking Law Number 7 of 1992 which was later updated in Law Number 10 of 1998. Banks also have a role as development agents, namely to support the implementation of national development so as to help improve the economy, national stability, equitable development, and other functions.

In the implementation of development in Indonesia there are obstacles, one of which is the provision of funds, to overcome this, banking should improve its function and role in providing capital and then providing convenience in issuing bank credit for people in need. Community funds collected in large amounts are the main source for banks in channeling these funds back in the form of credit to people in need. So banks are institutions that carry out intermediary functions, namely institutions that bridge between people with excess funds (surplus spending units) and people in need (deficit spending units). In accordance with the function of banking as a distributor of funds in the form of loans to the community, in reality the distribution of these loans contains quite a large risk, therefore if the results of the bank's analysis approve a loan facility application in the form of credit, then the credit provided by the bank is stated in a written agreement between the bank and the applicant (potential debtor) which is called a credit agreement.

All forms of credit provision from banks to debtors, in essence what happens is a loan agreement as regulated in the Civil Code (KUHPerdata) or Burgerlijk Wetboek, Articles 1754 to 1769 BW. With the distribution of funds to the community in the form of credit accompanied by risks in terms of credit repayment by the debtor, it shows how important the function of the credit agreement is to support development and therefore encourages us to assess whether the credit agreement from a legal perspective meets the necessary elements so that it can guarantee that the credit can be returned to the Bank after the agreed period.

Credit is given on the basis of trust, but the credit guarantee or collateral factor is the dominant factor in obtaining credit. Credit given by the bank needs to be secured. Without security, it is difficult for the bank to avoid the risks that come as a result of the debtor's default. The Bank always takes security measures and asks the debtor to bind a certain item as collateral or security in his credit to obtain certainty and security from his credit.

The distribution of funds to the community in the form of credit is not always returned by the borrower on time or according to what has been agreed. Some are not on time, some are procrastinating and some are even unable to repay the loan. Credit that is not paid on time or is in arrears can be said to be bad credit, because the funds that were originally provided by the bank to be used evenly by the community have stopped circulating. This credit jam not only affects the bank's own efforts in rotating its capital, but also harms other parties. This is because if the credit is paid by the borrower properly and in full, the bank can redistribute it to other prospective borrowers. If the borrower does not return it on time, the credit turnover will be stuck. This bad credit is a significant obstacle in banking institutions, therefore one of the materials regulated by banking provisions contained in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 which regulates the handling of bad credit by a special institution (Asset Management Unit).

Mortgage guarantee institutions can provide legal certainty regarding the binding of collateral with land and objects related to land as collateral or security, namely since the enactment of laws and regulations on Mortgage Rights on land and objects related to land. So that if there is a bad debt by the debtor, the Mortgage Guarantee Institution is expected to be able to provide a solution to the settlement of bad debts for the banking institution for land owned by the bank as the recipient of the guarantee.

When Bank CIMB Niaga implemented the activity of providing credit to its customers with land or building collateral bound by Mortgage Rights implemented by all branches of Bank CIMB Niaga. During the implementation of this credit provision activity by Bank CIMB Niaga, there were several debtors who defaulted, this caused the quality of credit activities and productive assets to become stuck. It is known that there are four groups of asset quality, namely current, less current, doubtful, and stuck. Bad credit makes the bank need to try to return the credit by taking action on the Mortgage Rights against the object used as collateral to the bank.

Debtors who are in default and cannot fulfill their obligations in paying debts according to the agreed time period in the credit agreement and make it a bad debt payment, then Bank CIMB Niaga as the creditor has the right to recover its receivables by executing the collateral that has been burdened with mortgage rights. The execution of the mortgage

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

rights is carried out based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. The guidelines for the Bank that will execute the mortgage rights are based on Article 20 of Law Number 4 of 1996 concerning the Mortgage Rights Law (UUHT), which determines three methods of executing Mortgage Rights, namely:

a. Selling the mortgage object through a public auction under the sole authority of the first mortgage holder (Article 6 of the Mortgage Law);
b. Selling the mortgage object through a public auction based on the executorial title (Article 14 paragraph 2 UUHT); and
c. Selling mortgage rights underhand based on an agreement between the grantor and recipient of the mortgage rights (Article 20 paragraph 2 of the Mortgage Law).

Of the three alternatives, in practice the bank always prioritizes and most often carries out the execution of the guarantee by selling underhand based on Article 20 paragraph (2) of the UUHT to be carried out first. The sale of the object of the mortgage by selling underhand can occur if there is an agreement between the grantor of the mortgage and the holder of the mortgage, with the aim of obtaining the results of the sale of the collateral object at the highest price that benefits all parties, both creditors and debtors, and from a legal perspective, this underhand sale is the easiest and simplest legal procedure.

In practice, the process of selling the mortgage object does not go through the announcement process in the mass media as required in Article 20 paragraph (3) of the UUHT. So if it turns out that the sale underhand cannot be carried out, then the bank chooses another execution alternative, namely by means of parate execution or based on the executorial title of the mortgage certificate and this is always chosen by the bank as a method of execution. Where Parate Execution is carried out by the bank directly executing the mortgage object without going through requesting a fiat or determination from the head of the district court.

Thus, the bank can execute the mortgage object in a faster time, more economical cost, and simpler legal procedures, compared to execution based on the executorial title of the mortgage certificate which requires fiat from the district court and requires a relatively longer time, more expensive costs and more complex legal procedures. Then the Parate Execution cannot be implemented, if there is a seizure, dispute or lawsuit filed by a third party (in the sense that it is not a lawsuit filed by the debtor himself, the husband or wife of the debtor), either in the form of a civil lawsuit, criminal or PTUN at the time the execution of the mortgage is in progress. With these legal problems, the parate execution cannot be carried out, because the Auction Office is unwilling or unable to carry out the auction of the collateral object if other disputes arise.

Execution of the object of Mortgage Rights through the gross execution of the deed of mortgage certificate that has an executorial title is carried out based on Article 20 paragraph 1 letter b of the UUHT. The Bank can submit an application in advance to the head of the district court to obtain a court fiat, to then carry out the execution of the mortgage object that is the credit collateral. In other words, without a fiat from the court, the Auction Office cannot carry out a public auction of the mortgage object.

From the explanation above, it is in accordance with the Theory of Legal Protection put forward by Fitzgerald, that in this problem formulation it is illustrated from the correlation of the parties which are limited in accordance with the provisions of the law to integrate and coordinate to protect the interests needed by the community, namely the bank or creditor. So that legal interests are useful in order to be able to protect the rights of creditors which in practice show that if the debtor defaults or breaks his promise in carrying out his obligations, then the creditor to fulfill his rights can execute the object of the mortgage based on the executorial title of the mortgage certificate.

The bank as the applicant for execution must first request fiat from the local district court, so that in carrying out this execution all stages in the execution are based on orders and under the leadership of the head of the district court, this requires a relatively longer time and more expensive costs than execution based on Parate Execution.

IV. CONCLUSIONS

Based on the results of the analysis and discussion that have been outlined, it can be concluded that:

1. Granting or encumbrance of Mortgage Rights is done by making a Deed of Granting of Mortgage Rights (APHT). If an agreement is made with a credit agreement in the form of SKMHT, then an APHT must be made to secure the credit and follow the guarantee in the agreement. So that after the main agreement, an APHT will be made as a Mortgage Right which is made by the PPAT in accordance with the laws and regulations and the Registration of the Deed of Granting of Mortgage Rights is carried out at the land office for the issuance of a mortgage certificate and land book. However, in fact there are many problems that often occur in the implementation of the credit agreement, one of which is the existence of bad or problematic credit due to the debtor not doing what should be done according to what is stated in the credit agreement, namely the debtor is late in making the payment of the credit. Therefore, Article 10 paragraph (1) of the UUHT states this rule firmly, that the granting of mortgage rights is given by being preceded by a promise to provide the mortgage rights as a guarantee for the payment of a debt, this also becomes an inseparable part of other agreements related to debts and other agreements that are interrelated with the occurrence of debt.

2. Legal protection for creditors based on decision Number 211/Pdt.G/2020/PN.Bp., is protection that can be given to creditors to execute the mortgage rights which are carried out with permanent legal force in accordance with the provisions of Law Number 4 of 1996 concerning Mortgage Rights which is one of the laws that regulates the guarantee of mortgage rights which is the legal basis for creditors with permanent legal force to provide protection to creditors with a mortgage guarantee that can be executed immediately, and can be auctioned unilaterally even though the debtor feels disadvantaged and has sued the creditor for the auction of the collateral assets that are still not able to take back their rights to the building, because there is no urgent interest and no legal basis from this decision so that it can be seen that the interests of creditors in the mortgage guarantee are prioritized and under the authority of the creditor which can show that legal protection for creditors has been fulfilled.

Suggestion

1. For the parties concerned with the creditor agreement, it is best to be able to complete each of their rights and obligations in accordance with what has been agreed, so that none of the parties commits a breach of contract that could cause losses to others;

2. Efforts to resolve bad debts should be done through non-litigation or mediation as much as possible. If there is no agreement between the parties through non-litigation, then it can be continued with litigation or litigation in court.

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