

LEGAL PROTECTION OF CREDITORS AGAINST THE EXECUTION OF COLLATERAL OBJECTS IN THE EVENT OF THE DEBTOR'S BREACH OF PROMISE AT BANK MANDIRI KC SURABAYA GENTENKALI

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Abstract— When the debtor neglects to make payments on his debt, an execution parate is made as a form of legal protection for creditors. The origin of the execution of mortgage rights can be traced back to this time. UUHT has provided a precise description of the execution that can be carried out in the event of a debtor's default, including holding an auction known as "execution parate". Empirical legal research does not only focus on the positive aspects of law but also its application or practice in the field. In addition, the methodology used in this research is qualitative. In addition, this study uses three types of legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials. This study shows that Article 6 UUHT contains requirements regarding legal protection for creditors. The form of a written agreement is another form of legal protection for creditors to be able to take back their rights from debtors with bad intentions to pay off their receivables, and banks can carry out parate executions if the debtor defaults.

Keywords— Execution Parate; Mortgage right; Legal protection.

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I. INTRODUCTION

The existence of a breach of contract is not always associated with an intentional circumstance carried out by one of the parties but can be in the form of force major or commonly referred to as a force majeure that makes the debtor fail to carry out the fulfillment of achievements to the creditor due to an event outside the debtor's power. So that in various cases regarding default it is felt to be very detrimental to creditors as owners of capital who basically also need this capital to cover all the needs of creditors in other sectors.

The bank or creditor always expects that the debtor can fulfill his commitment when giving credit in returning the credit he has received on time. In fact, not all loans issued by banks can run smoothly. It is not uncommon for loans to have problems due to the debtor's inability to return the loan on time due to an agreement in the credit contract between the debtor and the banking company [1]. Causes of credit problems such as the debtor's inability to work or his business going bankrupt and business failure as the reason for the decrease in the debtor's business income or the debtor's intention because of the bad nature of the debtor which causes him not to pay.

One of the valuable guarantees is the debtor's collateral, which serves as the main savior in the event of a credit crunch. Implementation, realization, or execution of debtor guarantees can be carried out in line with applicable legal requirements to compensate for bank losses. Moch. Isnaeni claims that much because the material collateral rights facilitate the execution of collateral [2]. The creditor has the authority to use the parate execution legal institution to carry out simple, fast and easy execution of guarantees in the event of a debtor's default. Movable property of the plaintiff owned by the defendant, such as when the defendant borrows the plaintiff's movable property but refuses to return it, he can ask the plaintiff to confiscate the item. Regarding the conditions for the placement of security confiscation, it has been regulated in Article 227 of the Herzien Inlandsch Regulation [3]. Herzien Inlandsch Reglement or commonly referred to as HIR as a guideline used as a reference in the implementation of civil procedural law trials specifically in the Java and Madura regions. From the requirements of Article 227 According to Herzien Inlandsch Regulations, to request confiscation of collateral, there must be a reasonable claim that the debtor is trying to embezzle or run away with his property while the judge's decision is waiting or before it is carried out. The plaintiff cannot enforce foreclosure of the collateral if there is insufficient evidence that the defendant's concern will cause him to transfer his property.

In fact there are still many obstacles in national banking governance, where banks often

experience credit jams caused by the intention of the debtor (breaching debtor), as well as the execution of collateral objects attached to Mortgage objects [4]. In fact, there is already a way of executing mortgages which, when compared to execution based on a mortgage deed, can be completed more quickly, at a lower cost, and more easily. This method is known as the parate executable. The creditor has the right to sell the mortgaged item in a public auction because they are the first mortgage holders.

As a form of implementation in the field, not all of the requirements in the law or other norms are carried out in line with the applicable regulations. There are still many regulatory inconsistencies and their occurrence so that of course this will be very detrimental to creditors if there are no transparent and concrete rules to implement. So that the implementation is contrary to existing regulations, it will be contrary to applicable norms and can potentially cause harm to the rights and interests of creditors if based on whether the behavior is deemed appropriate by the general population [5].

In the implementation, the debtor was unable to carry out his achievements to the creditor for reasons that were unclear and the creditor had been given a warning in the form of a warning letter 3 (three) times to the debtor, but the debtor did not carry out good faith and the debtor argued that the creditor made an attempt to violate the law by will sell the collateral object through a public auction and ask for credit restructuring on the basis of a lawsuit Article 1365 of the Civil Code which explains that every act that violates the law and brings harm to other people, obliges the person who caused the loss because of his mistake to replace the loss [6]. Furthermore, the credit restructuring proposed by the debtor is not in line with the requirements of Article 52 and Article 53 of Bank Indonesia Regulation (PBI) No. 14/15/PBI/2012 concerning General Quality Assessment. So that the debtor's actions that are not in good faith to carry out his achievements are acts of default to creditors.

Based on the description above, the urgency of this writing is to examine the legal protection for creditors in executing the object of mortgage guarantees and knowing the obstacles experienced by creditors in carrying out the execution of objects of mortgage guarantees. So that in this study the author intends to research further and raise it in a journal entitled: "LEGAL PROTECTION OF CREDITORS ON THE IMPLEMENTATION OF OBJECTS OF COLLATERAL RIGHTS IN THE EVENT OF A DEBTOR'S PROMISE AT BANK MANDIRI KC SURABAYA GENTENGKALI.

II. METHOD

Using empirical juridical research methods, namely a study that not only looks at positive legal aspects but also looks at its application or practice in the field, this thesis aims to obtain a discussion that is in accordance with the objectives of preparing analytical material. In this case the focus is on the discussion regarding the execution of the collateral object of the debtor's mortgage which has matured due to a default.

This research takes a qualitative approach, and the researcher seeks not only to collect high-quality data but also to gain a deeper understanding of the phenomena he uncovers. This is due to the close relationship between qualitative research and social reality and human behavior. The aim of the qualitative approach is to investigate, construct, or explain a statement or meaning behind reality.

III. RESULT AND DISCUSSION

1. Implementation of Mortgage Collateral Object Execution at Bank Mandiri KC Surabaya Gentengkali

In the elucidation of Article 1 number 1 UUHT it is stated that mortgage rights "are mortgage rights over immovable property and related objects, hereinafter referred to as mortgage rights, mortgage rights imposed on immovable property [7]. In the Agrarian Constitution No. 5 of 1960, including or excluding other goods including land, for the payment of certain debts that give priority to certain creditors over other creditors. as collateral must meet the criteria, namely in the form of property rights, usufructuary rights and profit rights, which are in line with the elucidation of Article 4 point 1 UUHT.

The execution of the mortgage object guarantee carried out by the bank as the creditor or hereinafter referred to as parate execution in principle will be based on the requirements of Article 6 UUHT which reads "If the debtor defaults, the first mortgage holder has the right to sell the mortgage object over the authority itself through a public auction and collects the settlement of its receivables from the proceeds of the sale [8]. Apart from that, in order to be able to execute the Mortgage object, it must be bound by a Mortgage Certificate issued by the National Land Agency. Because the Mortgage Certificate contains irah-irah with the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD", so it has the same executive power as a court decision that has permanent legal force and applies as a substitute grosse acte mortgage insofar as it concerns land rights.

Mr. Aan as part of the Home Ownership Credit hereinafter referred to as KPR at Bank Mandiri KC Surabaya Gentengkali categorizes debtors who experience bad credit as follows:

Whereas the debtor is declared out of promise if he violates the requirements of Article 13 and Article 14 point 1 Points a to f either intentionally or unintentionally as stated in Article 13 with the following reading:

"As long as the DEBTOR has not paid off the debt or the Deadline for Withdrawal and/or Use of the Credit Facility has not expired, the DEBTOR is not permitted to do the following things, without prior written approval from PT. Bank Mandiri (Persero) Tbk. Gentengkali Surabaya Branch Office:

1. Obtain new money/credit loans from other parties and/or bind themselves as guarantor/guarantor in any form and with any name and/or pledge the DEBTOR's assets to other parties.
2. Lend money, including but not limited to affiliated companies, except in the context of running daily business.

Furthermore, Article 14 point 1 Points a to f explains negligence as follows:

1. "One or more of the following actions or events constitute an Event of Negligence:
 - a) The DEBTOR's failure to pay the debt at the time and in the manner specified in the Credit Agreement.
 - b) The DEBTOR is negligent or does not fulfill the terms or conditions referred to in Article 12 and Article 13 or other requirements in the Credit Agreement and/or is negligent based on other agreements made between the DEBTOR and PT. Bank Mandiri (Persero) Tbk. Gentengkali Surabaya Branch Office or other parties, both existing and those that will be created in the future.
 - c) The Collateral Giver and/or Guarantor neglect their obligations based on the Collateral document and/or Deed of Collateral Granting.
 - d) Other parties whose debts are secured by Collateral and/or personal guarantees and/or company guarantees that are the same as Collateral and/or personal guarantees and/or company guarantees DEBTOR has been declared negligent by PT. Bank Mandiri (Persero) Tbk. Surabaya Gentengkali Branch Office.
 - e) The DEBTOR using the Credit Facility deviates from the intent and purpose of its use.

f) According to PT. Bank Mandiri (Persero) Tbk. Surabaya Gentengkali Branch Office, the financial condition, bonafidity and solvency of the DEBTOR and/or Guarantor has reversed in such a way as to affect the ability of the DEBTOR and/or Guarantor to make debt payments.

2. Legal Protection for Creditors in the Execution of Mortgage Collateral Objects at Bank Mandiri KC Surabaya Gentengkali

The bank gives credit as a creditor to the debtor, so the risk, for example, the debtor is in arrears is very high. Therefore a guarantee is needed, which is required by the bank from the debtor to guarantee loan repayment. The most commonly used collateral is a land certificate because the value or price tends to increase.

Mr. Aan said that, in Article 6 UUHT gives authority to banks to sell through an open auction the rights on their own authority and collect the list of bills from the proceeds of the sale if the debtor defaults. This is called parate execution [9]. The Mortgage Holder does not need to ask for the decision of the Head of the local District Court to carry out the execution of the Mortgage that is used as the guarantee.

Bank Mandiri KC Surabaya Gentengkali as the first Mortgage holder simply submits an application for auction to the State Property and Auction Service Office (KPKNL) which is shown to the Head of the General Auction Office (KKPU) in order to execute the Mortgage object that has been used as collateral by the debtor. Because the authority of the holder of the Mortgage Right is the authority granted by law, the State Property and Auction Service must respect and comply with this authority, explained Mr. Aan.

In addition, the approval or approval of the bank loan agreement must be carried out in writing. This is in line with the requirements of the Elucidation of Article 8 of Law Number 10 of 1998 concerning Amendment 7 of the 1998 Banking Law, which article states that a bank as a lender must enter into a written contract. The elucidation of Article 10 UUHT states that in line with the nature of the mortgage right, the gift must be a continuation of the main contract, namely the contract that establishes a legal relationship between debt and credit that is guaranteed for repayment. This agreement by giving rise to a legal relationship can be ratified by private deed or notarized, depending on the arrangement of the contents of the agreement. The existence of a written loan agreement is also a form of legal protection for creditors. Which of the following clauses of the loan agreement governs the lender's actions if the debtor does not fulfill his promise to lend.

The meaning of the creditor's actions if the debtor commits bad credit and there is no good faith even though he has been properly warned is that the bank can execute the Mortgage Object Owned by the debtor which serves as collateral in the credit agreement. In this case the basis is Article 14 point 4 which reads "If the debt becomes due as referred to in Article 14 point 3 of the Credit Agreement, then PT. Bank Mandiri (Persero) Tbk. The Surabaya Gentengkali Branch Office has the right to exercise its rights as a creditor to obtain debt repayments by exercising its rights against the DEBTOR and/or its assets, including but not limited to exercising/executing the rights of PT. Bank Mandiri (Persero) Tbk [10]. Surabaya Gentengkali Branch Office against Collateral and/or Guarantor based on Collateral Documents and Deed of Guarantee".

Obstacles Experienced by Bank Mandiri KC Surabaya Gentengkali As Creditors in Executing Mortgage Objects

Lending practices follow the 5C principles, namely H. (character, capital, capacity, financial position and collateral) in the bank's efforts to select customers (borrowers) who apply for credit. The purpose of implementing the choice of the customer (debtor) is responsible for securing bank credit distribution to prevent payment arrears. Despite the fact that banks sneak loans under the guise of prudence, there are still obstacles to the distribution of late or bad credit which may hurt the bank's wealth. The debtor's inability to pay off bank loans can be affected by various variables. The biggest factor causing delays in loan payments from customers to banks is the unstable economic situation, which causes financial difficulties for customers, which in turn causes difficulties in repaying loans.

Regarding the execution of bad credit through the parate execution mechanism which will be carried out by Bank Mandiri KC Surabaya Gentengkali, of course it will not run smoothly even though it already has the authority and the debtor is proven to have defaulted on his credit. This obstacle is felt to be very detrimental to the bank as a provider of capital, due to the efforts of the debtor who does not have good faith by stalling for the bank's time in carrying out the execution. Based on Mr. Aan's narrative, there are several things that hinder the execution process of the Mortgage Guarantee Object at Bank Mandiri KC Surabaya tilekkali, namely:

- a) Executorial title in Certificate of Mortgage is Not Effective
- b) Disagreement in the Auction Price Between the Debtor and the Auction Officer, and
- c) Presence of a Third Party Interferes with the Execution.

In addition to the several obstacles above, other obstacles that arise when the execution is about to be carried out are the debtor refusing to vacate the house which is the object of mortgage right and does not want to leave the house. Bank Mandiri KC Surabaya Gentengkali is clearly disadvantaged because of the behavior of the debtor who defends the mortgage object and does not want to surrender the house, because the mortgage object, namely the house that is legally occupied by the debtor, should have been carried out by the creditor as appropriate. guarantee for the payment of the debtor's obligations.

3. Steps that can be taken by Bank Mandiri KC Surabaya Gentengkali as a creditor if the execution order cannot be carried out

Execution of assets mortgaged by the debtor can be carried out without the need for a fiat court because it can be carried out using the irah contained in the mortgage deed, in fact banks sometimes carry out separate executions with the help of the chairman of the district court to prevent the debtor from taking defensive action. When the debtor refuses execution, the bank can file a civil lawsuit as a violation of the credit agreement between the debtor and the bank. Execution of Confiscation of Collateral Object is carried out in accordance with the situation of default.

However, if after the case is won by the bank and there is no further legal action and the debtor is not in good faith to hand over the Mortgage Object being executed to the bank, then the bank can then make a fiat request to the District Court to admonish the debtor to immediately carry out his obligations to the bank. . However, if the debtor does not carry out his obligations, the bank can request that police personnel assist the District Court bailiff in carrying out coercive measures in accordance with the relevant legislative requirements.

Another way is to ask the Chief Justice of the Supreme Court to order the execution of mortgage objects; This technique is a last resort if attempts to sell using your own authority (parate execution) are unsuccessful. In fact, banks often use this strategy even though it is a last resort. In the event of default by the Debtor, the Bank (Creditor) will usually appear before the District Court to execute the Mortgage in accordance with the executorial title stated in the Mortgage Deed. This is in accordance with the provisions of Article 224 HIR which regulates the implementation of dirty letters or deeds with executorial titles other than court orders.

Execution is carried out by way of the creditor submitting an application for the execution of the mortgage deed to the head of the District Court. The application is carried out by submitting the deed of mortgage rights to the head of the district court, combined with an application for

the issuance of a forced warrant or forced order so that enforcement can also be carried out with the help of security forces. This method is more efficient because it does not require a lawsuit in the sense that there is no need to wait for a long and expensive process.

Fiat execution is a type of execution of mortgage rights carried out by the auction house after obtaining permission or approval in the form of a stipulation from the chairman of the district court. Such an application is different from an implementation that can be implemented directly by the creditor without requiring an order or approval from the chairman of the district court. Therefore coercion is a type of coercion which because coercion is carried out with special permission from the head judge of the district court.

Auction orders are then placed on an executable fiat basis, after which the auction office performs the general sale (auction) mechanism of the mortgage. However, before implementation, the debtor receives a warning (aanmaning) so that the debtor voluntarily fulfills his obligations within a certain period of time. If the debtor does not respond after being reminded (aanmaning) or does not voluntarily fulfill his obligations, the chairman of the district court issues a binding order, followed by a confiscation order and an auction order to the auction hall.

IV. CONCLUSION

Through the results of the research above, it can be concluded that in carrying out the execution at Bank Mandiri KC Surabaya Gentengkali it is in line with the applicable legal regulations, namely based on the requirements of Article 6 UUHT which states that if the debtor fails to promise to eat, the creditor as the holder of the Mortgage Object can sell at own power through a public auction to take repayment. Which in this Article also forms the basis for the implementation of parate execution. In addition, more specific requirements are also stated in the credit agreement number: R08.SGK/0034/KPR 2017 in Article 14 numbers 2 and 4. And with the existence of Article 14 numbers 2 and 4 this credit agreement also becomes the legal basis for creditor protection if the debtor commits bad credit.

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