

LEGAL REVIEW OF THE EXECUTION MECHANISM OF MORTGAGE RIGHTS AT BANK DKI JAKARTA

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Abstract : Banking credit is one of the conventional bank businesses that has been widely used by members of the public who need funds. In carrying out these functions, the bank makes efforts to collect funds from the public by providing various types of credit. From the credit disbursed to the community, it is not uncommon for it to become problematic. This study aims to answer questions related to the mechanism of execution of mortgage rights in repaying debts from debtors of public / local government banks and the process of resolving bad credit cases and implementing mortgage execution in returning debtor assets at PT Bank DKI. This research is a normative legal research that is descriptive analysis, namely research that describes and describes the circumstances or facts that exist about the implementation of the execution of the Mortgage credit guarantee in the District Court. The approach method used is a normative juridical method, namely research that emphasizes secondary data, namely by studying and studying legal principles, especially legal principles. The results of the study show that the realization of receipts from the Mortgage Execution process every year is much lower when compared to the value of new bad credit cases submitted by PT. Bank DKI to PUPN/KP2LN. This has caused the non-performing receivables of PT Bank DKI, whose management is handed over to KP2LN, to increase in value every year.

Keywords : Mortgage Execution, Bank DKI, Non Performing Loan

Abstrak : Kredit perbankan merupakan salah satu usaha bank konvensional yang banyak dimanfaatkan oleh masyarakat yang membutuhkan dana. Dalam menjalankan fungsi tersebut, bank melakukan upaya menghimpun dana dari masyarakat dengan memberikan berbagai jenis kredit. Dari kredit yang disalurkan ke masyarakat, tak jarang justru bermasalah. Penelitian ini bertujuan untuk menjawab pertanyaan terkait mekanisme eksekusi hak tanggungan dalam pelunasan utang debitur bank umum/pemerintah daerah dan proses penyelesaian perkara kredit macet serta pelaksanaan eksekusi hak tanggungan dalam pengembalian aset debitur pada PT Bank DKI. Penelitian ini merupakan penelitian hukum normatif yang bersifat deskriptif analisis yaitu penelitian yang menggambarkan dan menggambarkan keadaan atau fakta yang ada mengenai pelaksanaan eksekusi jaminan kredit Hipotek di Pengadilan Negeri. Metode pendekatan yang digunakan adalah metode yuridis normatif yaitu penelitian yang menekankan pada data sekunder yaitu dengan mempelajari dan mengkaji asas-asas hukum khususnya asas hukum. Hasil penelitian menunjukkan bahwa realisasi penerimaan proses Eksekusi Hak Tanggungan setiap tahunnya jauh lebih rendah jika dibandingkan dengan nilai perkara kredit macet baru yang diajukan oleh PT. Bank DKI ke PUPN/KP2LN. Hal ini menyebabkan piutang bermasalah PT Bank DKI yang pengelolaannya diserahkan kepada KP2LN semakin meningkat nilainya setiap tahunnya.

Kata Kunci : Eksekusi Hipotek, Bank DKI, Kredit Bermasalah

INTRODUCTION

In today's economic development in Indonesia, various variables indicate an interrelated relationship between economic growth and bank credit growth. Based on the experience of the last few years, the ratio of bank credit growth to economic growth is 4 to 1. If the Indonesian economy can grow 6% in 2021, bank credit growth must be at least 24%. However, the bank credit growth target of 25% to support economic growth in 2021 will be hampered by liquidity problems (Annual Report of BNI, 2018).

Bank credit is estimated to only be able to grow 20% so that it can only support economic growth of 5%. This is because the banking sector will reduce the expansion of non-performing loans (NPLs) which are expected to continue to increase, in line with the increasing number of companies' performance that has been disrupted due to the global crisis (Media Indonesia, 2021). In connection with the real situation in bank credit in recent developments in Indonesia, this research examines one aspect of bank credit that can more or less influence the economic growth of society, namely the execution of credit guarantees in the form of mortgage rights in the District Court.

The legal relationship between the creditor as the provider of the credit facility (money lender) and the debtor as the recipient of the credit facility (recipient of the loan) is a legal relationship as stipulated in the Book III Civil Code (KUH) (Burgerlijk Wetboek) and specifically constitutes the legal relationship of the Borrowing Agreement (debt and credit) which is regulated in the provisions of Article 1320 of the Civil Code and Articles 1754 to Article 1773 of the Civil Code (Prodjodikoro, 1986).

The Debt and Receivable Agreement is the main agreement that governs the rights and obligations of creditors and debtors as a whole. According to the elucidation of Article 10 of the Law No. 4 of 1996 stated that the main agreement can be made in the form of private deed or notarial deed depending on the legal provisions governing the substance of the agreement. The granting of mortgage rights in a debt agreement as collateral for debt repayment by the debtor is regulated in Article 10 where the explanation states that the mortgage rights are accessors or a follow-up to the main agreement. Thus the Mortgage is abolished if the main agreement is deleted due to settlement or for other reasons. According to Article 18 UUHT it is stated that the abolition of Mortgage is caused by 4 (four) things, namely:

1. Elimination of debts guaranteed by the Mortgage.
2. Release of the Mortgage Right by the Mortgage Right holder.
3. Clearance of Mortgage is based on rating determination by the Chairman District Court.
4. Elimination of land rights burdened with Mortgage Rights.

In fact, in the implementation of the execution of the Mortgage in the District Court there are often various problems that give rise to legal uncertainty, including the Decree of the Head of the District Court which can be issued at any time to delay/suspend the process of executing the Mortgage Credit Guarantee.

The appointment of the Chairperson of the District Court often occurs when the process or stages of execution have passed the stages of *Aanmaning* (reprimand), *Executorial Beslag* (seizure of execution) and *Auction Execution* where for these stages the Chairperson of the District Court has issued an *Aanmaning Determination*, *Determination of Execution Confiscation* and *Execution Auction Determination*. Other problems in the implementation of the Mortgage credit guarantee execution are:

1. There is a civil lawsuit in the District Court
2. There is a police report
3. There is bankruptcy proceedings by other creditors against the same debtor
4. There is a lawsuit at PTUN

In various literatures regarding the law of guarantees and guarantees of Mortgage, it often only describes theories about guarantee law and theories about Mortgage. It is rare to find literature that raises issues regarding constraints or problems in the District Court in proposing the execution of the Mortgage object in the District Court to test the philosophical foundation of the Mortgage

with the reality in practice, or to test the Mortgage Law No 4 of 1996 between expectations and reality.

Based on the problems described above, this research is aimed at answering questions about how the mechanism for executing mortgage rights in repaying debts from debtors at public/local government banks and how to resolve bad credit cases and carry out execution of mortgage rights in returning debtor assets at PT Bank DKI. The results of this study will contribute to practitioners and observers of legal and government banking issues in Indonesia.

RESEARCH METHODOLOGY

This research is a normative legal research that is descriptive in nature (Soekanto and Srimudji, 1990), namely research that describes the circumstances or facts that exist regarding the implementation of the execution of Mortgage credit guarantees in the District Court. Then the general description is analyzed with the starting point of legislation, existing theories regarding the Law of Guarantees and Contracts as well as the opinions of experts who aim to find and get answers to the main issues that will be discussed further.

The approach method used is a normative juridical method, namely research that emphasizes secondary data, namely by studying and studying legal principles, especially positive legal principles derived from library materials contained in statutory regulations and provisions. especially those related to the implementation of the execution of mortgage guarantees at the District Court (Soekanto and Srimudji, 1990).

Secondary data and primary data as in research which are descriptive in nature and analyzed using a normative juridical approach, the data analysis is carried out qualitatively, meaning that the data that has been obtained is arranged in a systematic and complete manner and then analyzed qualitatively, so it does not use statistical formulas.

RESULTS AND DISCUSSION

From the analysis carried out, data is obtained that although the Mortgage has principles that seem to provide ideal legal protection for creditors as mentioned above, it turns out that the implementation of execution practices in society, in this case the District Court still faces many legal problems. by the creditor so that the process of executing the Mortgage which was expected to be quick and efficient according to these principles turns out to be protracted and not infrequently the execution fails. According to Subekti, execution is translated into execution of a decision (Subekti, 1997). Similarly, Retno Wulan Sutantio (1979) and also M Yahya Harahap (1997) all use the term execution of a decision.

This is in line with *Herziene Indonesich Reglement* (HIR) and *Rechtreglement voor de Buitengewesten* (RBG) which define execution as carrying out a decision (*Tenuitvoer Legging Van Vonnissen*), namely implementing a court decision that has permanent legal force (*in kracht van gewijsde*) by force general power assistance if the losing party is not willing to exercise it voluntarily as stipulated in Article 195 HIR and 206 RBG (Tresna, 2005). Credit is vital for development in all fields, therefore credit is always needed for business development by entrepreneurs, both large, medium and small entrepreneurs. Credit is a development support where it is hoped that people from all walks of life can participate in every government program.

Collateral is a means of protection for the security of the creditor, namely the certainty that the debtor's debt will be repaid or the execution of a performance by the debtor or by the debtor's guarantor. While the guarantee agreement is a special agreement made by the creditor with the debtor with a third party that makes an agreement by binding certain objects or the ability of a third party with the aim of providing security and legal certainty for returning credit or implementing the main agreement (the credit agreement).

Civil law recognizes guarantees that are material and individual rights. A guarantee that is material in nature is a guarantee in the form of an absolute right to an object, which has the following characteristics: it has a direct relationship to certain objects from the debtor, can be defended against anyone, always follows the object (*droit de suite*) and can be transferred (eg Mortgage, pawn and others). Meanwhile, guarantees that are individual in nature are guarantees

that create a direct relationship with certain individuals, can only be maintained against certain debtors, against the debtor's assets in general (Sofwan, 2009).

The creditor usually prefers a material guarantee agreement compared to an individual guarantee agreement, because in the material agreement it is clearly specified certain objects that are bound in the agreement, and these objects are provided to prevent bad credit from occurring in the future, namely as a certainty of debt repayment.

1. Mortgage Execution Mechanism for Debtor Debt Repayment at Regional Government-Owned Commercial Banks

Execution of Mortgage as binding credit guarantees, in the Indonesian legal system can be carried out by: (1) Parate Execution, (2) Settlement through the District Court, and (3) Settlement through the State Receivables and Auction Agency (BUPLN). Based on the wording of Article 1178 of the Civil Code, it can be concluded that: (a) provide direct implementation for mortgage holders to sell mortgage object goods, without going through a court; (b) Execution of auction sales of mortgage object goods, carried out on their own behalf by the mortgage holder without the intervention of a court or judge.

Article 200 paragraph (1) HIR and Article 216 paragraph (1) RBG, the formulation of which is as follows:

"The sale of confiscated goods is carried out with the assistance of the auction office, or according to circumstances that will be considered by the Chairperson, by the person carrying out the confiscation or other person who capable and can be trusted to carry out the confiscation or another person who is capable and can be trusted, who is appointed by the Chairman for that purpose and resides at the place where the sale must be made or near that place."

Based on the formulation of the article, after the execution confiscation is carried out, the law orders the sale of the confiscated goods. The method of sale is through the auction office, and the sale is called an auction sale (*executoriale verkoop* or *foreclosure sale*). In carrying out the auction, the Head of the District Court must ask for the intervention of the auction office, in the form of assistance in carrying out the sale of the said confiscated goods. Article 16 UUHT, which states as follows:

"If the debtor defaults, the holder of the first Mortgage has the right to sell the object of the Mortgage on his own power through a public auction and take the settlement of his receivables from the proceeds of the sale"

Legal Basis for Execution of Mortgage Rights through the Agency for State Receivables and Auctions (BUPLN): The Legal Basis for Execution of Mortgage Rights through KP2LN is regulated by Law Number 491/1960 concerning the Committee for State Receivable Affairs ("UU PUPN") with the following formulation of provisions: Article 12 of the PUPN Law, which states:

"Government Agencies and State Agencies referred to in this Article of Regulation, are required to submit their receivables whose existence and amount are certain according to law, but the guarantor for the debt does not want to pay them properly to the State Receivables Affairs Committee"

Credit rescue through legal institutions in the Indonesian legal system can be carried out in various ways, namely: (1) Subpoena, (2) Lawsuit against the debtor through the District Court, (3) Execution of the *Uitvoerbaar Bij Voorraad* Court Decision, (4) Execution of the *Grosse Deed* Recognition of Debt, (5) Execution of Mortgage, (6) Parate Execution of Mortgage, (7) Execution of Guarantor (*Borghtocht*), (8) Forced Entity (*Gijzelling*), (9) Capitalization Through Commercial Court and (10) Execution through the Committee for State Receivable Affairs (PUPN)/Directorate General of State Receivables and Auctions (DJPLN). Execution basically carries out a decision that has permanent legal force and the decision is not carried out voluntarily. Decisions that can be executed must be compensatory in nature, and executions must be ordered and under the leadership of the Chairperson of the District Court.

The execution must have characteristics in the ruling in the form of an order to punish the losing party, which is formulated in the following sentences: (1) punish or order "hand over" an item, (2) punish or order "to do" a certain act, (3) punish or order the "cessation" of an act under

circumstances, (4) punish or order to make "payments". Execution must be ordered and under the leadership of the Head of the District Court, who examines and decides cases at the first level. This is regulated in Article 195 paragraph (1) HIR or Article 206 paragraph (1) RBG if a decision at the first level is examined and decided by a District Court, then the execution of the decision is under the order and leadership of the Head of the District Court concerned.

For the implementation of decisions that have permanent legal force, two principles apply, namely the principle of general rules and exceptions to the principle of general rules. Based on the principle of general rules, execution can only be carried out on decisions that have obtained permanent legal force (*inkracht van gewijsde*) or (*res judicata*), because only in decisions that have permanent legal force, there is a form of fixed and definite legal relationship between litigants. The advantages of the Mortgage certificate, as regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land ("UUHT / Mortgage Law"), are the rights granted by the law to the holder of the Mortgage Right, in the form of an executorial right which has the same power as a court decision which has permanent legal force.

The authority of the Mortgage holder to sell in public (auction) is an authority granted by article 6 UUHT in conjunction with article 11 paragraph (2)e UUHT or based on the executorial title found on the Mortgage certificate. Announcement through mass media other than newspapers, can be done for example via radio and/or television.

2. Mortgage Execution Mechanism Based on Article 12 of Law No. 49/Prp. 1960 Concerning the Committee for State Receivable Affairs (UU PUPN)

With regard to the execution of Mortgage Rights, in addition to the provisions in the UUHT, Law Number 49/Prp. 1960 concerning the Committee for State Receivable Affairs ("UU PUPN"). This law gives exclusive authority to PUPN/KP2LN (State Receivables and Auction Management Office) to be able to execute execution without requiring a decision or court order in its efforts to execute or settle state receivables.

Based on the formulation of the provisions of Article 8 of the PUPN Law and its explanation, banks whose shares are owned by the Central Government or Regional Governments have strong and definite authority to carry out parate execution of Mortgage objects that are used as collateral by debtors. The execution of this Mortgage is carried out through the Committee for State Auction Affairs/State Auction Receivables Agency without going through a court fiat.

Pursuant to this article, it is stipulated that government agencies and entities which are directly or indirectly controlled by the State, for example Government banks, State Companies, and Companies owned by the Regional Government, are required to submit their receivables which are exists and the amount is certain according to law, if the guarantor of the debt does not want to pay it properly to the State Receivables Affairs Committee. Thus the Government/Regional Government Banks handed over the management of bad credit settlement to PUPN-BUPLN (State Receivables and Auction Agency) (Sutedi, 2006).

3. Settlement of Bad Credit Problems and Implementation of Mortgage Rights in Returning Debtors' Assets at PT Bank DKI

In carrying out the granting of credit to debtors, PT. Bank DKI applies procedures for activities that must be obeyed by debtors which include applying for credit until its repayment. Settlement of non-performing loans and write-off credits is divided into 2 (two) policy groups, namely: Group I, known as the Credit Restructuring Policy, namely the policy of PT. Bank DKI for groups of debtors who still have the will/intention to pay and still have business prospects. Group II is known as the Non Credit Restructuring policy, which is a policy for debtors who: (1) still have the political will to pay but have no business prospects, (2) do not have the will/intention but still have business prospects, (3) do not have the political will to pay and do not have business prospects.

The Credit Restructuring Policy is regulated based on the Decree of the Board of Directors of Bank Indonesia Number 31/150/KEP/DIR November 12, 1998 concerning Credit Restructuring. Based on the decree, Credit Restructuring is an effort made by Banks in the context of credit business activities so that debtors can fulfill their obligations which are carried out, among others through: (a) Reducing loan interest rates, (b) Reducing loan interest arrears,

(c) Reducing principal arrears credit, (d) Extension of the credit period, (e) Addition of credit facilities, (f) Acquisition of the debtor's assets in accordance with applicable regulations, (g) The credit convention becomes a temporary equity participation in the debtor's company.

4. Juridical Analysis of Bad Credit Settlement

Juridically, the implementation of the execution of Mortgage Rights to pay off the debtor's debt at PT. Bank DKI, cannot be separated from its legal existence as a limited liability company (PT) whose majority shares are owned by the Provincial Government of DKI Jakarta. Juridically, the existence of PT Bank DKI can be described as follows:

- a. Viewed from share ownership. The existence of PT. Bank DKI is subject to and regulated by Law Number 5 of 1962 concerning Regional Companies.
- b. Viewed from the form of legal entity. PT. Bank DKI is subject to Law Number 1 of 1995 concerning Limited Liability Companies.
- c. Viewed from the field of business, PT. Bank DKI is subject to Law number 7 of 1992 as amended by Law Number 10 of 1998 concerning Banking. Viewed from the management of banking operations, PT. Bank DKI is subject to all regulations issued by Bank Indonesia.
- d. In terms of share ownership, PT. Bank DKI by the government of DKI, then its existence is bound by Law of the Republic of Indonesia Number 13 of 1962 concerning Main Provisions of Regional Development Banks.
- e. For the management of bad debts, PT. Bank DKI is subject to Law Number 49/Prp of 1960 concerning the Committee for State Receivable Affairs.

Based on the above information, PT. Bank DKI in carrying out the execution of the Mortgage must go through the State Receivables and Auction Management Office ("KP2LN") as regulated by Law no. 49 / Prp of 1960 concerning the Committee for State Receivable Affairs ("UU PUPN"). The existence of PT Bank DKI is a banking business in the form of a PT (Limited Liability Company) whose shares are owned by the local government (the DKI Jakarta government), therefore based on the PUPN Law, any receivables from PT Bank DKI are categorized as State Receivables. Thus the settlement of bad credit at PT Bank DKI in the context of returning bad debtor loans through the Mortgage Execution mechanism, must comply with the provisions of the PUPN Law by submitting its management through KP2LN.

However, based on the data presented above, the management of PT Bank DKI's Mortgage Execution through KP2LN was not effective, and was only able to return a small amount of PT assets. Bank DKI from bad debtors. The low return on debtor debt through the mechanism of executing Mortgage Rights at KP2LN is certainly not in line with the demands of progress in the banking business where everything requires a fast and at the same time careful process.

5. Practical Analysis

Practically, the constraints on the implementation of the Mortgage Right of PT. Bank DKI on KP2LN as mandated by the PUPN Law, stated as follows:

- a. Bureaucracy that takes a long time
The bureaucracy of executing Mortgage rights by KP2LN takes a long time, so it is inefficient from a banking business point of view. The achievement of returning bad loans is very low.
- b. The results of the execution of Mortgage rights by KP2LN are often less than the total value of the principal debt and the accumulated executions that have been successfully carried out are far below the new delivery of bad loans. This, in addition to the value of repaying bad debts, is far below the proper value, it also causes an increase in the number of bad loans every year.
- c. One of the causes of the low target of returning debtors' debts through the mechanism of executing Mortgage Rights at KP2LN is the absence of sanctions or punishments in the PUPN Law, if the organizers are unable to meet the target of returning bad loans optimally.

With regard to the existence of the PUPN Law, which in the juridical analysis and practical analysis, is no longer effective as a legal umbrella in implementing Mortgage Rights in paying off Debtors' Debts, many parties have realized this. This is reflected in the issuance of a Supreme Court Fatwa (MA Fatwa) Number WKMA/Yud/20/VIU2006 which explains the separation of state assets. By quoting Article 4 paragraph (1) of Law Number 19 of 2003 concerning State-

Owned Enterprises (BUMN), the Supreme Court states that BUMN capital is and originates from separated state assets.

CONCLUSION

Based on the discussions, data analysis and analyzes of the main issues described in the previous chapters, the following conclusions can be drawn:

1. Execution of mortgage rights in repaying the debt of debtors of public banks / regional governments is subject to Law Number 49/Prp of 1960 concerning the Committee for State Receivable Affairs (UU PUPN). Based on this Law, the management of all State Receivables is carried out by the State Receivables Affairs Committee ("PUPN"). This submission is due to the fact that explicitly, Article 8 of the law states "What is meant by state receivables or debts to the state by this regulation, is the amount of money that must be paid to the state or entities that are either directly or indirectly controlled by the state" based on a rule or any reason". And the provisions of Article 12 paragraph (1) Government agencies and State Agencies referred to in Article 8 of this Peratumm are required to submit their receivables which exist and the amount is certain according to law but the guarantor for the debt does not want to pay it properly to the Receivables Affairs Committee Country.
2. The settlement of bad credit cases and the implementation of execution of mortgage rights in returning the debtor's assets to PT Bank DKI by PUPN/KP2LN turned out to be unable to run effectively and efficiently, because in practice it was not able to return debtors' debts to PT Bank DKI through the mechanism of Execution of Mortgage in an optimal amount. The actual value of receipts from the Mortgage Execution process each year is much lower when compared to the value of new bad credit cases submitted by PT. Bank DKI to PUPN/KP2LN. This has caused the non-performing receivables of PT Bank DKI, whose management is handed over to KP2LN, to increase in value every year. Obstacles faced by PT Bank DKI in carrying out Mortgage Execution through PUPN/KP2LN.

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