

JURIDIC REVIEW ON THE IMPLEMENTATION OF THE AUCTION OF COLLATERAL RIGHTS IN LOAN LOAN CASE (REVIEW OF DECISION NUMBER : 86/PDT/2015/PT-MDN)

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ABSTRACT

Credit distribution to the public is the most important business of a bank in carrying out its function as a financial institution. Credit distribution is a risky activity for banks. The purpose of this study is to find out the legal provisions regarding the provision of guarantees in credit agreements. The research method used is normative. Data analysis is obtained, which is analyzed qualitatively. Legal provisions regarding the provision of guarantees in credit agreements include the Civil Code (KUHPdata), Law Number 4 of 1996 concerning Mortgage Rights, Law Number 42 of 1999 concerning Fiduciary Guarantees and Law Number 10 of 1998 concerning Banking. Juridical review of decision number 86/PDT/2015/PT-MDN that the insurer still does not fulfill its obligations, so that in accordance with the provisions of the Credit Agreement and SUPK, PT Bank Mandiri (Persero) Tbk as the creditor has the right to declare the insurer has been negligent/ default/breach of promise and therefore declare the credit facility to be due immediately. In accordance with the specified procedure, PT Bank Mandiri (Persero) Tbk took an effort to execute a collateral auction.

Keywords: Auction, Collateral, Bad Credit

INTRODUCTION

Bank credit is channeled by banks to the public in accordance with their main function of collecting and distributing public funds. In the implementation of the provision of bank credit, it is usually associated with various requirements (M. Bahsan, 2017). Giving credit to debtors based on trust. The Bank believes that loans that have been given to debtors will be returned at a later date when the credit is due, in accordance with the conditions written in the credit agreement (loan principal, loan interest, credit period, maturity date and others) (Maryanto Supriyono, 2011) If the loans disbursed experience congestion, then the steps taken to save the credit are various. It is said to be diverse because it is first seen the cause. If it can still be helped, then the action is to help whether by increasing the amount of credit or by extending the time period. (Bending credit guarantees with dependents is carried out if a customer or debtor who gets credit from a bank makes immovable property in the form of land (land rights). (Andrian Sutedi, 2012) Guarantees received by banks can be in the form of land rights or rights to goods. In general, land rights guarantees can provide legal protection and certainty for creditors because they can provide bank security from a legal perspective and its economic value continues to increase from time to time. from time to time Land rights guarantee institutions or better known as mortgages, control of land rights, contain the authority for creditors to do something about land that is used as collateral, but not to be physically controlled and used, but to sell it if the debtor breaks his promise and take from the result in whole or in part in payment of the debtor's debt to him (Thambrin Abdullah etc., 2013)

The credit given by the bank must be returned by the debtor in the form of interest and principal payments, however, there are also many debtors who break their promises and do not pay their obligations, both interest and credit principal. Because the debtor breaks his promise, the creditor can file a legal lawsuit against the court, so it is hoped that through the lawsuit the losses suffered by the creditor can be reimbursed through the sale of the mortgaged object through a public auction according to the procedures specified in the laws and regulations. invitation. In the relationship between the customer as a bank debtor and the bank as a creditor, it is not uncommon for the bank as a lender to experience difficulties in collecting collections from customers as debtors, due to arrears of principal and credit interest that are not paid by customers as debtors (Susan Pricilia Suwikromo, 2016).

Based on the case in the Medan High Court Decision number: 86/PDT/2015/PT-MDN. Bank Mandiri has NO RIGHT to auction the company's collateral for PT. Pupuk Subur Makmur even though it is a Mortgage agreement because Bank Mandiri is a party directly involved in the civil case and is being sued as the Medan Branch Office of State Assets and Auction Services. All assets of Eddy Wijaya's company (as the original Comparator of the Pelawan) which were used as collateral for Bank Mandiri are an inseparable part of the Civil Case in question, due to the inability of PT. Pupuk Subur Makmur's fulfillment of its obligation to pay interest, installments and loan principal to Bank Mandiri is clear and tangible as a result of the non-payment of fire claims by Asuransi Wahana Tata on the machine produced by the Eddy Wijaya factory (as the original Pelawan Comparator) which was damaged by the fire. As for the problems raised in this study, how are the legal provisions regarding the provision of guarantees in credit agreements? How are the provisions for the implementation of auctions for collateral objects in credit agreements?

RESEARCH METHODS

The type of research used is normative juridical, normative legal research is research that focuses on norm (a law in the book) and this research requires secondary data (legal material) as the main data. (Edy Ikhsan, 2019) normative law that uses secondary data or legal materials as data Primary legal materials Secondary legal materials To obtain a scientific truth in journal writing, data collection techniques are used by: Literature study The method used to analyze the data is qualitative analysis

DISCUSSION

Provision of bank credit based on the Banking Law

In banking practice in Indonesia, the provision of credit is generally followed by the provision of guarantees by credit applicants, so that credit applicants who cannot provide guarantees find it difficult to obtain credit from banks. The requirement for credit applicants to provide this guarantee can hinder the business development of credit applicants to provide guarantees and can hinder the business development of credit applicants because small entrepreneurs whose business capital is very limited do not have assets that meet the requirements to be used as credit guarantees (M. Solly Lubis, 1994).

UU no. 7 of 1992 concerning Banking as amended by Law no. 10 of 1998 (Banking Law) defines credit as the provision of money or equivalent claims, based on an agreement or loan agreement between a bank and another party which requires the borrower to repay his debt after a certain period of time with interest.

Giving an item under warranty means relinquishing some of his control over the item. In principle, what must be released is the power to transfer ownership rights to the goods in any way (sell, exchange, donate). Limitations for guarantees that are material (zekelijke rechten), are different from individual guarantees (persoonlijke zekerheid) which do not have the nature of material rights. Implementation of credit guarantee role is very important because credit guarantee is an important factor in order to reduce credit risk.

The guarantee for the provision of bank credit essentially functions to ensure certainty in the repayment of debtor's debts if the debtor is in default or is declared bankrupt. In providing credit, it is related to a guarantee in the sense that the debtor believes that he will be able to pay off his credit. On the bank side, to get confidence from a debtor that the debtor will be able to pay off the loan, it will be obtained if the bank has researched and analyzed the debtor, both regarding his personality and aspects of business activities and collateral (Muhammad Djumhana, 2012)

Guarantees for granting credit or financing based on sharia principles in the sense of confidence in the ability and ability of the debtor customer to pay off his obligations in accordance with the agreement is an important factor that must be considered by the bank. To obtain this assurance, before granting credit, banks must conduct a careful assessment of the character, capabilities, capital, collateral and business prospects of debtor customers. Given that collateral is one of the elements of providing credit, then if based on other elements it can be obtained confidence in the ability of the debtor customer to repay his debt, the collateral can only be in the form of goods, projects or collection rights financed with the credit in question. (Donald Albert, 2016)

In the implementation of lending, the bank still asks for collateral from the credit applicant in addition to an analysis of the good faith and ability of the credit applicant. This is in accordance with Article 1 paragraph (23) of the Banking Law which defines collateral as an additional guarantee submitted by a debtor customer to a bank in the context of providing credit or financing facilities based on sharia principles. This additional guarantee is in the form of tangible guarantees in the form of movable goods on fixed objects or intangible guarantees.

Credit guarantees are everything that has value, is easy to cash, which is bound by a promise as collateral for the payment of debtors' debts based on credit agreements made by creditors and debtors. The credit provided is always mandated with credit guarantees with the aim of avoiding the risk of the debtor not paying his debt. If the debtor for some reason does not sell and cover the debt from the sale of the guarantee. So the function of the guarantee is to give rights and power to the creditor to get repayment of the proceeds from the sale of the collateral if the debtor does not pay off his debt at the specified time. Loans that are backed by collateral are called secured loans, while loans that are not backed by collateral are called unsecured loans. Bank credit guarantees function to guarantee the repayment of debtors' debts if the debtor defaults or goes bankrupt

Legal aspects of the auction of collateral items

As is known by the Decree of the Minister of Finance of the Republic of Indonesia No. 47/KMK.01/1996 Dated January 25, 1996 concerning Auction Hall and Decree of the Head of the State Receivable and Auction Affairs Agency (BUPLN) No.Kep.01/PN/1996 Dated January 25, 1996 stipulated provisions regarding Auction Hall. The stipulation and regulation of the Auction Hall is intended to provide wider opportunities for the public, especially the business world to conduct auction sales. Technical instructions for its implementation are determined by the Head of BUPLN.

This decision was made on August 18, 2000. Considerations were made for this decision, because the regulations governing the Auction Hall were no longer in accordance with the development of the situation. This decision consists of 11 chapters and 23 articles. Matters regulated in this decision include:

1. General Provisions (Article 1 Decree of the Minister of Finance No: 339/KMK.01/2000 concerning Auction Hall)
2. Licensing (Article 2 to Article 4 of the Decree of the Minister of Finance No: 339/KMK.01/2000 concerning Auction Hall)
3. Business Activities (Article 5 to Article 10 of the Decree of the Minister of Finance No: 339/KMK.01/2000 concerning Auction Hall)
4. Rights and obligations (Article 11 to Article 12 of Decree of the Minister of Finance No: 339/KMK.01/2000 concerning Auction Hall)

5. Bookkeeping and reporting (Article 13 Decree of the Minister of Finance No: 339/KMK.01/2000 concerning Auction Hall)
6. Prohibition and sanctions (Article 14 to Article 19 of the Decree of the Minister of Finance No: 339/KMK.01/2000 concerning Auction Hall)
7. Guidance and supervision (Article 20 to Article 21 of the Decree of the Minister of Finance No: 339/ KMK.01/2000 concerning Auction Hall);
8. Transitional provisions (Article 21 Decree of the Minister of Finance No: 339/KMK.01/2000 concerning Auction Hall)
9. Closing provisions (Article 22 to Article 23 of Decree of the Minister of Finance No: 339/KMK.01/2000 concerning Auction Hall).

The statutory regulations in numbers 1 to 3 are legislation regarding auctions originating from the Dutch East Indies Government which is still in effect. The enactment of the law or Stb is based on Article II of the Transitional Rules of the 1945 Constitution. The purpose of this article is to prevent a legal vacuum (*rechtvacuum*). While the laws and regulations from number 4 to number 9 are products of the Government of Indonesia. Most of these regulations were made during the reform era, which began in 1997.

The reform era is an era of change in all aspects of national and state life. In this era, the focus is on changes in the fields of politics, economics, and law. The legal sector is directed at the preparation of laws and regulations and law enforcement. The various laws and regulations above have regulated the definition of auction, auction preparation, implementation, auction minutes, bookkeeping and auction reporting.

Barriers to the Implementation of Auctions on Collateral Items in credit agreements and Efforts to Overcome them

In general, not every auction of collateral goods goes as it should, but in the implementation it experiences various problems obstacles. Obstacles in the implementation of the auction of collateral goods (M. Yahya Harahap, 1991).

The auction of collateral objects is intended so that the public can buy the collateral goods, so that with the auction of these objects, customers can pay off all their debts to creditors. However, often there are no auction enthusiasts. Low or no interest to buy this auction item

In overcoming obstacles in the auction of collateral goods, the KPKNL makes various efforts. Various efforts have been made are:

- a. Provide continuous subpoenas to debtors, with the aim that debtors can carry out their achievements;
- b. The auction of collateral objects will continue to be carried out;
- c. Awareness to customers;
- d. Perform continuous billing to customers.

This billing is done to customers who have good business prospects. The collection is carried out at certain times, meaning that the collection is carried out at a time when it is known that the customer has goods that can be produced and sold in the general market. Usually, when customers have objects that can be sold, they will repay their debts, they will pay off all loans, even if it is little by little.

Auction sales, which have been described previously have several obstacles, to overcome these obstacles there is an underhand sales mechanism. In addition to underhand sales which are considered to be able to overcome the difficulties that arise in auction sales, especially for banks, the provisions of the Law also stipulate the possibility to purchase collateral for yourself, even though this is done only temporarily. Law No. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking, provides clarity on various issues, including the issue of transfer of name in connection with the purchase of collateral by banks. The explanation of Article 12 A of the law referred to above states that it is possible for banks to purchase collateral either through auctions or outside of auctions with the aim of helping banks accelerate the settlement of their debtor customers' obligations.

As is known, property auctions are not easy in the sense of quickly finding interested buyers because it always takes quite a long time, even if it is announced several times sometimes it still doesn't work. At the same time, the price obtained in the auction is sometimes far from what is expected, so it is necessary to open up the possibility to give the bank the opportunity to buy it themselves, even if temporarily. The proceeds of the sale are then used to settle customer debts to the bank. If there is any remaining proceeds from the sale of the collateral, the amount is returned to the owner of the goods, but on the contrary, if the proceeds from the auction sale are insufficient, the bank has the right to collect or sue it through a civil lawsuit.

Collateral is additional collateral needed in terms of providing credit facilities. The existence of convenience in terms of credit collateral is the realization of banking based on democracy with its main function as collecting and distributing public funds, having a strategic role to support the implementation of national development in order to increase equitable distribution of development and its results, economic growth. Despite this convenience, the people are still ideal because the collateral has the task of facilitating and securing credit, namely by giving the bank the right and power to get repayment of the collateralized goods if the debtor defaults.

As for some of the considerations of the Judge in Completing the Auction for Mortgage Collateral in the case of bad credit, namely:

1. The application for appeal submitted by the Lawyers for the original Comparison of the Opponents has been submitted within the time limit and according to the procedures and fulfills the requirements determined by law, therefore the appeal can be formally accepted
2. The memorandum of appeal filed by the Lawyers for the original Appeal of the Pelawan, in principle is asking the High Court to cancel the decision of the Medan District Court number: 699/Pdt.G/2013/PN.Mdn dated October 16, 2014, by

adjudicating itself by passing a decision with Amar accepts and grants the original Appellant's resistance to the Plaintiff in its entirety, declaring that the Competitor is the correct Opponent, canceling the Execution Tender Decision No. 64/Eks/HT/2009/PN.Mdn, dated April 29, 2010, and stated that Opponents I and II were to pay court fees;

3. Against the memorandum of appeal from the original Appellant of the Opponents, Appellant I, originally PT Bank Mandiri (Persero) Tbk has filed a counter memorandum of appeal which in principle is

CONCLUSION

Juridical review of decision number 86/PDT/2015/PT-MDN that PELAWAN still does not fulfill its obligations, so that in accordance with the provisions of the Credit Agreement and SUPK, PT Bank Mandiri (Persero) Tbk as the creditor has the right to declare PELAWAN has been negligent/default/ default and therefore declare the credit facility to be due immediately. PELAWAN is obligated to return the entire amount owed to PT Bank Mandiri (Persero) Tbk. In accordance with the specified procedure, PT Bank Mandiri (Persero) Tbk took an effort to execute the collateral by submitting an execution fiat from the Head of the District Court. So that the things taken by PT Bank Mandiri (Persero) Tbk is a natural thing to be taken by all creditors holding mortgage rights. Therefore, it is clear that PELAWAN has bad faith in delaying and or hindering the execution of collateral by PT Bank Mandiri (Persero) Tbk in order to pay off PELAWAN's obligations to PT Bank Mandiri (Persero) Tbk based on the Credit Agreement.

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