

The Cancellation of the Auction Object Right Dependents Guarantees in Terms of the Law Number Year on 4 1996 Right Dependents (A Case Study of Decisions No: 12/PDT.PLW/2019/PN.PBR)

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ABSTRACT

Is a bank business entities in the financial sector that their role to collect and distribute the funds function where the banks own very helpful for the community in implementing economic activities , as a task of bank that channel funds to the product masyarakat with banking can later be employed by the common people . One of the products of the banks that were most on credit are actually looking for , that is kind of the business of a bank that provides funds in a specified number of bank customers to use in their products this bank customers must give credit to the bank if deemed to be used as collateral hutang-piutang customers cannot melunasinya however these problems is often appearing was rooted in the execution process , where a bank often had difficulty non-performing loans by a debtor and then want to do the execution of objects to guarantee bank can not executes it . Because the execution in is by a court.

Keywords: *Credit, collateral, right dependents, nullification, execution*

1. INTRODUCTION

Guaranteed law in Indonesia itself has existed from the time of the Dutch East Indies government. In the Civil Code itself initially only regulates two types of guarantees, namely the pledge regulated in articles 1150-1160 Civil Code and mortgages are regulated in Article 1162-1232 of the Civil Code, the designation of 2 different types of guarantees themselves where Credietverband is a legal provision relating to the imposition of guarantees for people of the earth sons (native Indonesians) who are self-imposed are property rights, land use rights (HGB), and land use rights (HGU) and for Europeans the legal provisions relating to mortgages, but based on several factors cause the guarantee law itself at this time less developed.

As we can see where the distribution of collateral law itself has been divided into several types that apply in Indonesia with different designations, namely: Pawn (Article 1150 - 1160 Civil Code) which is intended for movable objects, Fiducia (Law number 42 of 1999) which intended for movable and immovable objects, Mortgage rights (Law number 4 of 1997) intended for immovable objects, warehouse receipts (Act number 9 of 2011) are intended for crops or foodstuffs, as well as mortgages

intended for immovable objects based on their size determined by law (1)

If we look at Law Number 5 of 1960 Article 51 there has been the provision of special institutions that guarantee strong and can be charged to land rights and replace mortgages and credietverband and because there is no complete regulation of the law (2)

The main purpose of the distribution of the types of collateral itself is considered important for certain interests given that each object that has economic value / which can be used as collateral has different properties - also to avoid overlapping between one rule with rules others about guarantees and avoid problems that arise later days, however, it does not rule out the possibility of disputes or problems in the community as well as the issues that the writer adopts based on Decision Number 12 / Pdt.Plw / 2019 / PN Pbr which initially Yusni Ritongan made a loan agreement to the creditor namely the Panin central bank KPR amounting to Rp. 540,000,000 (five hundred forty million rupiah) for the facility to provide a home ownership agreement. It should be noted that this agreement is called a credit agreement in which the money supply agreement or the equivalent is with it and the parties mutually agree.(3) then the debtor gives a guarantee that is borne by the mortgage right in the form of a shop house, this is in line if we see the essence of the

mortgage right where the binding of credit guarantees is done if a customer or debtor gets credit from a bank, which makes immovable property in the form of the following land or not. The following items are included as collateral without the debtor physically delivering the collateral (4).

To the creditor in the middle of the loan repayment period Eli Yusni Ritongan as the Debtor cannot make payments to the Panin central bank KPR as the Creditor even the creditor has performed procedures in the form of summons, subpoena, even negotiations to the Debtor but the Debtor still does not heed the Achievement that has been promised, so that the creditor submits an Application for Execution (Aanmaning) to the Pekanbaru District Court before the auction on October 1, 2018 to pay debts from the Debtor but in decision no. 12 / Pdt.Plw / 2019 / PN The Pbr Stating the auction for the object of guarantee has no legal force.

The basis of the consent in analyzing this issue the author uses the main reference of Law Number 4 of 1996 concerning Liability, but it is necessary if we are not fixated on the Act alone but also pay attention to the Hierarchy of the Act for that we also use Government Regulation number 24 Year 1996 Regarding land registration and also the extension of Government Regulation number 24 of 1996 which specifically regulates the auction namely the Minister of Finance number 93 / Pmk 0.6/2010 concerning Guidelines for conducting the auction and Regulation of the Minister of finance Number. 106 / PMK.06 / 2013 of 2013 on amendments to the previous implementing regulations, therefore we will explain in detail the other chapters.

For this reason, based on the decision of the author, the writer can draw conclusions from it and make this scientific writing titled "The cancellation of the auction object for Underwriting Rights is reviewed from Act Number 4 of 1996 concerning Mortgage Rights (Case Study of Decision Number: 12 / Pd.t.Plw / 2019 / PN.Pbr)

1.1. Formulation of the problem

How is the legal effect of canceling the auction for the object of mortgage for creditor, in view of Law number 4 of 1996 concerning Mortgage Rights?

1.2. Legal Research Methods

What is meant by legal research is a scientific study that studies a particular legal phenomenon by conducting in-depth analysis and examination of legal facts and then from the results of the analysis and examination will seek a solution to the problems arising from the symptoms concerned (5). The author in conducting research that is the type of research that will be used in this study is a research method for academic activities. The study uses legal materials consisting of primary legal materials and secondary legal materials, as well as non-legal materials.

Researchers use a type of statute approach (statute approach) and a case approach (Case Approach). Data analysis will be done using descriptive research specifications which will be analyzed by processing the material carried out by selecting secondary data or legal material, then classifying according to the classification of legal materials and compiling the results of the research systematically.

2. BACKGROUND

2.1. Credit Agreement Analysis

In meeting their needs, of course each person has a different way and each person also has different levels of needs, such as in the problems that the writer adopts to do research, in these problems Eli Yusni R referred to as a customer or debtor and second parties is PT PANIN BANK as a Creditor, these two parties are the "Main Actors" in accordance with what has been explained in detail in the previous Chapter where Eli Yusni Ritongan submits a request to use one of PT PANIN BANK's bank products namely Home Ownership Credit the main purpose of Eli Yusni Ritongan himself actually the same as what was explained earlier, namely improving his standard of living.

Eli Yusni Ritongan submits an application for the use of one of Panin Bank's products in the form of such credit, after going through a certain process PT PANIN BANK is willing to provide a loan of Rp 540,000,000 (Five hundred forty million rupiah) to Eli Yusni Ritongan and as a Debtor or customer of PT PANIN itself Eli Yusni is also willing to follow the provisions contained in the credit agreement so that both parties agree and are bound to the Agreement.

the Legitimate requirements are an agreement and in this article there are at least 4 conditions that must be fulfilled for an agreement said to be Legitimate and let's examine one by one the conditions with the credit agreement above.

- a. Agree, in this case Eli Yusni Ritongan and the Panin Party need to reach an agreement but before entering into an agreement the two parties will certainly go through a certain procedure such as the Panin Bank conducts identity checks on prospective customers and conducts an assessment to provide quality credit with reference to the 5C bank principles (Character, Capacity, Capital, Collateral, Condition Of Economics) and for prospective Debtors or Customers to see more about the contents of the agreement and what benefits are obtained such as service, interest rates, and other matters that may be considered by the candidate Debtor to agree to the existing agreement.

In this case the Creditor and Debtor have agreed to be bound by the agreement seeing from the signing of the credit agreement that symbolizes

the agreement of the parties about what was agreed with each consideration they have.

1. Competent, in this second condition the Creditor and Debtor at the time of carrying out the agreement or in carrying out the legal act are both declared Capable to perform legal actions as bound in an agreement, where Eli Yusni Ritongan as the debtor when carrying out the agreement is 43 years old while the Panin party The bank is seen from the status of competency or whether it refers to the status of the legal entity. For that reason, both parties in implementing this agreement have fulfilled the requirements of Capability.
2. Specific Subjects / Objects, where in implementing the loan agreement the object is a Loan in the form of providing a sum of Rp.540,000,000 (Five queens forty million rupiah) to be given to the Debtor.
3. Halal Causation / Allowed, briefly the purpose of this fourth condition is that everyone is given the freedom to form an agreement that binds the parties but with an appeal may not be in an agreement containing things that are contrary to the Law.

In a credit agreement such as that made by PT PANIN BANK and Eli Yusni Ritongan is an agreement that does not conflict with the law. Because in addition to having fulfilled the four SAH terms of an agreement, bank products in the form of credit or the use of credit have been clearly regulated and allowed in the Banking Act and every bank that stands under SAH must be registered under the competent authority.

If you see and examine the conditions given by the law regarding SAH and bind an agreement, the agreement made by the creditors and debtors is already SAH and is binding on the parties according to the applicable positive law. Departing from the agreement that has been SAH and Binding an agreement then the next thing that we highlight is the form of the agreement that has been agreed upon by the parties.

In the Civil Code the third book on the Agreement to adhere to the principle of freedom of contract when the subjects of the law are given the freedom to form an agreement in accordance with the wishes of the parties.

The background of the emergence of the principle of freedom of contract is that there are differences or inequality of interests between one party and another and the occurrence of an agreement or contract is reached by negotiation or bargaining between the parties with the aim of meeting their respective interests in other words Contract or agreement bring together different interests, especially in economic activities or commercial activities (6) If you look at the form of agreements relating to banks in general form. the agreement used is the "standard agreement" where the agreement has been formed in the Form Format and the contents of the agreement have been determined by one of the parties only, for that agreement made between the Debtor and the Creditor here is an

agreement that has been made and formed by the PANIN BANK and given to ELI YUSNI RITONGAN, here the Debtor has no choice such as negotiating an agreement to be made due to the Dominant Position factor owned by the Creditor so that the alternative to Eli Yusni is Take it or leave it.

From what we see here it turns out that Dominant Position is one of the factors that influence a person's agreement on an agreement, this is in line if we look at the position between the creditor and the debtor where the debtor is the party who needs a loan in order to achieve what was the original debtor's goal, meanwhile the creditor party who has the capital.

However, the validity of the standard agreement or standard contract itself as the home ownership loan agreement that binds the parties is unquestionable, the agreement is still valid according to the law but which is needed to be considered as long as the standard agreement does not contain clauses that are prohibited by law laws such as the Exoneration Clause which only contains the RIGHT of one of the parties then the agreement is contrary to the Law, This is also confirmed by Sutan Remy Sjahdeni, who argues that there is a "one-sided" condition wherein an agreement only or mainly includes the rights of one of the parties (ie the party preparing the standard agreement) without including what are the obligations his party and vice versa only or mainly mention the obligations of the other party while what is the rights of the other party is not stated. (7) Departing from that after the agreement has been agreed and binding on the parties, both the creditor and the debtor carry out the contents of the contract, such as the Debtor based on the request for credit to Panin bank and given to Eli Yusni Ritongan in accordance with what was proposed in the amount of Rp. 540,000,000 (five Hundred forty million rupiah) and the Debtor itself also carries out its obligation to repay its loan to the Creditor in accordance with the agreement where the Debtor makes installments on the loan of Rp 6,432,465 (Six million four hundred thirty-two thousand four hundred and sixty-five rupiah) per month and the installments will run for 120 months (10 years) from the date of agreement.

When looking at the principles of the Consensualism Principle, the Pacta Sunt servanda Principle, the Principle of Personality, and the principle of good faith, then everything goes accordingly because it is proven by the parties agreeing to the credit agreement and where after being agreed upon the parties carry out what was agreed on the basis of initiative without coercion, this is certainly in line with the Pacta Sunt Servanda Principle, the Goodwill Principle seen from how to carry out each of the Rights and Obligations, as well as the principle of personality which means the implementation of an agreement is based on one's own volition.

Credit agreements that are binding on the parties are said to be the principal agreement or the main agreement where as a result of the existence of the principal agreement, there will be an additional agreement, namely the agreement agreement, in general the additional agreement concerning the collateral for the loan.

In the Credit Agreement that is carried out against the debtor and creditor, there is also an access agreement in the form of the appointment of a collateral object imposed by the Underwriting Right in the form of a House owned by the debtor in order to facilitate credit or be a guarantor for debts to creditors at any time at any time by the Default Debtor.

The surrender of the Debtor's shophouse does not mean that the debtor loses his ownership rights to the object. The object is physically controlled by the debtor, but here the creditor is given the right to transfer the object to a third party with the purpose of getting repayment and becoming the preferred creditor.

Give up your own credit the main purpose is payment of debts from debtors if in the future the debtor is not able to make repayments to the creditor in accordance with the

2.2 Analysis of collateral object execution

The inability to fulfill the promised achievement is caused by many factors such as internal or external factors, the situation that most often occurs in practice is an external situation which originates beyond the human ability itself such as natural disasters, public policies and other factors, such as those that occur in Eli Yusni Ritongan from what has been explained above, which specifically describes the beginning of the issue. Appears on both sides for that the first thing we make the basis of is the Principle of Mortgage, Execution, and the Bank Principle.

Eli Yusni Ritongan stated the Default of the credit agreement they agreed on because no achievements were made in accordance with what was in the agreement and had implications for bad Credit, a debtor is said to experience Bad Credit if it meets the following elements (9).

- a. There are arrears in installments for both interest and principal for a minimum period of 3 months
- b. There are 3x letters of Rating or summons intended for Debtors
- c. The emergence of operational losses caused by delays or rules for repaying loans by the debtor

From what we see on the elements of bad credit, if we look back at the problems above, it is only natural that if the debtor is declared bankrupt by the bank, the bank in this case does not give status to the debtor just like that without any prior assessment.

After it is declared that Panin Bank's bad loans, like banks, generally have efforts to settle debtors who cannot continue their achievements, such as :

- a. Rescheduling which, in which the bank provides changes in credit terms regarding the term of the loan installment payments

time or value that has been promised, if we look at article 1131 of the Civil Code which contains "All items belonging to the debtor movable or immovable property or existing or future goods will be a liability for all individual engagements." Article 1131 is indirectly about dependents on one's debts, but the difference in this article is not legally bound and the momentum of use is different. (8).

Eli Yusni ritongan himself, this provides a Guarantee that is borne by the Underwriting Right for protection to both parties where the creditor gets a guarantee on repayment and the debtor on the mortgage Right becomes a barrier against confiscation of personal property for the repayment of his debt unless in carrying out the execution the object is not sufficient for paying off debts.

- b. Terms of repayment, withstand the contents of the agreement regarding when to repay the loan credit notes may not be about the maximum credit balance
- c. reassignment, change of credit terms

Eli Yusni Ritongan's own reason was stated that non-performing loans were not caused by Panin Bank not to provide the efforts to resolve the problems as described above, but here the settlement efforts had to fulfill a series of assessments by banks in accordance with the Principles they had as stated by Rahmi Artati Bank Representative Indonesia he said that there is an assessment of the quality of assets or credit for a Credit Restructuring policy which consists of three main pillars, the first is the economic outlook, the second is the condition of the debtor, the third is the accuracy of the principal and interest payments.

The Restructuring Policy itself is not intended by all debtors, therefore the Bank In this case which is based on 3 POJK Principles provides certain conditions if the debtor can be given such a policy namely (10) :

- a. Decreasing debtor income sources that are not too significant so that only by extending the time of the loan is a way that can be given to the debtor and the payment follows the ability of his income to decline
- b. There has been a drastic reduction in income sources due to a Force majeure situation beyond human capability such as fire, earth earthquake, flooding, and other things that have caused debtor income to fall. so that the installments in accordance with his new capabilities are very far down so that the extension is done at the same time reducing the interest on the loan, but the bank only provides a maximum time for 6 months
- c. Capital from business activities is destroyed / lost due to Force Majeure but only given a bank no later than 4 months

From what has been answered above that we can see the Panin Bank Not not having good faith in providing

opportunities to the Debtor namely Eli Yusni Ritongan in opening opportunities for problem solving, but indeed the bank also as a financial sector business entity that Profit Oriented may not ignore the Principles existing principles as above.

Here the Creditor based on the party that has the right of suspension in the certificate has the authority to execute the object of collateral which is charged because the encumbrance certificate contains the right of the person who has the ability to execute that is condemned by the court's decision and the promises made therein (11).

This is also confirmed by Article 6 of Law number 4 of 1996, it is said that the mortgage rights is said to the first rank Mortgage holders if the debtor fails to promise, the creditor has the right to proceed with his own power in public to take payment of debts. Here it is clear that based on the Mortgage Certificate which states that Panin Bank is the holder of the first rank, it is appropriate for the creditor to take repayment of what is due.

In carrying out the sale of collateral objects, the Underwriting Right Act itself provides several options in carrying out the execution as explained above, in practice the most frequent way done by creditors both banks or other parties conducting business in this sector are two ways namely the Execution Parate contained in article 6 of the Underwriting and Execution Rights Act based on the executable title contained in article 20 of the Underwriting Rights Act.

Both of them in the UUHT certificate themselves are indeed the same as having the execution Rule, but the method used is different if the Execution Parate of the Bank is given the right to sell collateral objects in public on their own volition different from Article 20 which must require Fiat from the competent National Court.

Here the Panin Bank in carrying out the sale of collateral in the manner specified in Article 20 based on the Executorial Title and does not use the execution parate, so Panin Bank submits an application to the Pekan Baru Negri Court to execute the request for execution and is forwarded to the party implementing the Auction, namely the KPKNL.

In the process, we should not only refer to the Law, just like holding onto the Mortgage Law and need to look at the Hierarchy of statutory regulations to get an increasingly perspective of view. The author looks at Government Regulation number 24 of 1997 concerning land registration, in this Government Regulation Execution of collateral objects is not regulated in detail but only the Registration of Rights to the Auction transfer contained in article 41.

Because it is not very regulated in detail by the Law of Minister of Finance Regulation No. 93 / PMK.06 / 2010 concerning Guidelines for Conducting auctions, in this Ministerial Regulation clearly stipulates applications for auctioning up to the sale of the auction objects according to this Ministerial Regulation under Article 10 wishing to carry out the auction must submit a written application letter to the KPKNL Party and accompanied by Supporting documents.

In addition to the Prihal application related to the Ministerial Regulation concerning the case, the problem lies in Article 24 concerning Cancellation and Article 41 concerning the announcement of the auction, which means that the cancellation of the auction that will be carried out can only be canceled at the request of the seller or a provisional determination or decision of a public justice institution. and if you see the prerequisite of the announcement of the auction which is an administrative requirement, then it is determined that the object to be executed must attach a Notification Letter to the auction party 7 days before the auction announcement is carried out by the KPKNL.

From the explanation above, Minister of Finance Regulation number 93 / PMK.06 / 2010 regarding administrative requirements that must be fulfilled can be seen from the court that forwarded the notification letter to the debtor but after the request was forwarded by the Negri Court for auction to the KPKNL and at when this momentum the debtor filed a lawsuit against resistance.

So that the implication of the cancellation of the execution to be carried out by the creditor, indeed the Law gives the right for anyone to the Debtor to make a lawsuit against the object to be auctioned by filing the lawsuit during the process of requesting execution or at the announcement of the object to be auctioned off.

But we also need to look at the Bank as the Holder of the Underwriting Right itself, where with the intention to avoid disputes in the future he actually chooses the execution process through the court which we are equally aware of in practice. Execution through court is far more complicated because we have to issue more costs are appealed through direct application procedures so that the Principle of Execution of Mortgage regarding the implementation of Easy, Fast and Simple is certainly the opposite.

Indeed, one of the difficulties encountered by the public is one of them is the lack of understanding of the applicable regulations, where if from Law number 4 of 1996 concerning mortgage rights to financial regulation of the Republic of Indonesia number 93 / PMK.06 / 1996 which clearly provides ways the method of execution is valid and valid but there is a Supreme Court Circular Letter (Sema)

Number 4 of 2016 concerning the Enforcement of the Results of the Plenary Meeting of the 2016 Supreme Court Room which recommends that those who wish to carry out the execution must go through a court process first and this is certainly a big question. to the public about the certainty of the existing Law.

Looking at the practice, Ery Subagio from the Directorate General of State Assets who occupy the special handling structure. The auction office also said that in practice, both parate methods are still valid and even though the Supreme Court Circular Letter does not help solve the problem, even from execution through the court or based on Fiat Judgment also still causes quite a number of problems.

From here we see the creditor performs all procedures as emphasized in the law but, because the Negri Court has given a decision that has a permanent legal force whose content is to suspend the guarantee it has implications for the bank itself, the Bank in this case experienced certain impacts such as :

- a. Banks will suffer losses which are caused by disruption of the mobility of funds to revive society, as we know the main purpose of banks is to collect funds back to the public.
- b. Banks in this case incur a second loss due to all costs incurred through the court because the bank as the party applying for execution will incur more costs than ordinary execution and this is certainly very detrimental to the bank
- c. The next impact is that we need to look at the national scale, if similar problems continue to occur and the banks in this case are always in a similar position, according to Rahmi, as an Executive Analysis from the Indonesian Bank, the impact of the bad credit or NPL will force the banks to strengthen the structure capital For this purpose, it may be that banks will increase the allowance for earning assets losses (PPAP) and the subsequent consequences when banks try to strengthen the capital structure and this will automatically reduce the ability

Reducing the ability of banks to expand credit will have a negative impact on the country's economy and the negative impact of the global crisis makes the role of several sources of capital to support economic growth such as portfolio investment in the capital market, foreign direct investment (FDI), and private capital from the private sector.

3. CONCLUSION

Based on the above problem as has been raised by the Author, in submitting an application for the use of bank products through Assessment based on the 5C Principle in

analyzing prospective customers, the bank panin states that the Debtor Party, Eli Yusni Ritongan, is stated that banking products can be in the form of home ownership loans, after which both parties bind themselves to credit agreements in the form of standard agreements in which banks use this agreement to stabilize the external market) and facilitate negotiations.

In this way, the affected bank certainly does not get legal certainty from the applicable law and the agreement made by both parties so that the decision of the new Pekan Negri District which has the permanent law effect implies as follows :

- a. Banks will suffer losses which are caused by disruption of the mobility of funds to revive society, as we know the main purpose of banks is to collect funds back to the public.
- b. Banks in this case incur a second loss due to all costs incurred through the court because the bank as the party applying for execution will incur more costs than ordinary execution and this is certainly very detrimental to the bank
- c. The next impact is that we need to look at the national scale, if similar problems continue to occur and the banks in this case are always in a similar position, according to Rahmi, as an Executive Analysis from the Indonesian Bank, the impact of the bad credit or NPL will force the banks to strengthen the structure capital For this purpose, it may be that banks will increase the allowance for earning assets losses (PPAP) and the subsequent consequences when banks try to strengthen the capital structure and this will automatically reduce the ability of banks to expand credit (to the real sector).

Reducing the ability of banks to expand credit will have a negative impact on the country's economy and the negative impact of the global crisis makes the role of several sources of capital to support economic growth such as portfolio investment in the capital market, foreign direct investment (FDI), and private capital from the private sector.

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