

THE EFFECT OF THE EXECUTION OF THE SALE OF THE RIGHT OBJECT ON THE POSITION OF BANK CREDITORS

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ABSTRACT

The results of this study show that the right of liability is the object of guarantee that is most in demand by creditors (banks) as debt collateral. The value of the rights contained in the certificate rights of dependents has an important influence in determining the position of creditors as creditors who have preferential rights or are only limited to as a concurrent creditors. If the value of the dependent rights has greater value than the debtor's debt, then the creditor's position as the holder of the liability right is the preferred creditor, which takes precedence over repayment of it over other creditors. However, the determination of the creditor's position as a preferred creditor or not can also be viewed from the proceeds of the sale of the object of liability from the results of auction execution. If the selling price of the object of liability is greater than the debtor's debt, the creditor has the right to take precedence over full repayment by taking the proceeds. Net sales are only limited to debtors. Meanwhile, if the proceeds from the sale of the object of liability are smaller than the debtor's debt, then the remaining debt of the debtor positions the creditor as a concurrent creditor meaning that the repayment of the remaining debt is divided equally with other creditors.

Keywords: Dependents; Execution Results; Position of Creditors

Introduction

The implementation of economic development both carried out by individuals and business entities is certainly inseparable from funding. In general, funding is obtained by borrowing from banking institutions in order to be able to carry out and meet operational and other certificate their needs so that economic development activities continue to run accordingly Lan (Rosana & Jogjakarta, 2019). Banking or banks are institutions that have the main function of channeling and providing funds or capital to individuals and companies in need (Yoyo Sudaryo et al., 2021). The provision of funds by banks is carried out by observing the principle of prudence, one of which is by binding the debtor(customer) with the creditor (bank) in a credit agreement if the debtor as qualified be accepted by the Bank as a trusted recipient of funds.

A credit agreement is an agreement between the creditor and debtor for an amount of money that has been handed over by the creditor and the debtor must return a sum of money along with Interest within a certain period according to mutual agreement

(Mihardjo, 2022). A credit agreement is a basic agreement that is generally accompanied by an additional agreement (accessor) in the form of binding guarantees (Hasan Basri, 2021). The guarantee here is intended to provide protection for creditors if, in the future, debtors break promises by making credit must (Natania et al., 2020)

Material guarantees that are in great demand and considered the safest by creditors are Hak Jaminan (Atikah, 2020). The object of the Right of Liability here is in the form of land with properties that are easy to sell, relative prices increase from year to year, there is evidence of ownership of the right that is difficult to fake, and gives a privileged position to creditors, namely in terms of debt repayment takes precedence over other creditors, hereinafter known as creditors preferred (Isnaeni, 2016). The object of liability can also be pledged for some debtor debts if the value of the collateral object is considered sufficient to guarantee these debts, so the term arises rank in the Right of Dependents as regulated in Article 5 paragraphs (2) and (3) of the Law. The existence of a rating of the dependent rights determines the precedence of repayment of creditor receivables based on the proceeds of the sale of the dependent object (Slamet, 2017).

The execution of the rights of dependents is also easier. If the debtor has broken the promise, then the creditor as the holder of the dependent right is given the authority to execute the object of the dependent righting in the form of land in order to take precedence over the repayment of receivables either by auction or underhand as stipulated in Article 6 and Article 20 of Law Number 4 of 1996 on Rights Dependents on Land and Objects Related to Land (UUHT). The provisions of Article 6 explain that: "If debtor default, the holder Right of Liability first has right to sell the object of Right Dependent on his own power through public auction and take repayment The receivables from the proceeds of the sale".

To be able to execute in an easy and sure way, it is important for creditors to know, namely registering the encumbrance of dependents first to the land office where the object is located, then by the local land office issued Certificate Haki Defendant consisting of the Land Book of Rights of Dependents and a copy of the Deed of Encumbrance Rights of Dependents bound in one document (Harsono, 1999). In the certificate, the rights of dependents are listed as the irahs "For the sake of justice based on the One Godhead", which has the same secretary power as the judgment court as stipulated in Pasal 14 paragraphs (2) and (3) of the UUHT.

The execution of the dependent is carried out by taking into account the value of the dependent rights and the number of receivables stated in the credit agreement and the deed of encumbrance which is an accessory agreement in the form of binding guarantees. In the practice of banking credit agreements, banks as creditors determine the amount of the value of the Dependent Rights as 120% (one hundred twenty percent) of the debtor's debt value, this amount can also change in accordance with the agreement or internal rules of the Bank itself (Mihardjo, 2022). The determination of the value of the dependent rights with a value greater than the debt is so that the creditor has a position

as a preferred creditor. If the value of the dependent rights contained in the agreement is smaller, then the creditor's preference rights cannot be attached to it, meaning that in the event of debt repayment is generalized with other creditors as stipulated in Article 1131 and Article 1132 of the Code Civil Code. Such creditors have the position of concurrent creditors. The determination of the value of the right of custody, when associated with the proceeds of the sale of the object of the right of liability and the amount of creditor receivables greatly affects the position of the creditor in terms of repayment of receivables, whether the creditor concerned becomes a preferred or concurrent creditor. This is important to know, as a form of legal protection for creditors in obtaining repayment rights from debtors through the auction execution process.

Research Method

This study uses normative juridical methods in examining the problems in this article. The second approach used is the statutory approach (statute approach) and conceptual approach. This research uses primary data obtained through regulations legislation especially UUHT and the Civil Code, and based on doctrine and opinions para sarjana and secondary data collected through searching the literature. In addition, the data is analyzed qualitatively and then presented In a descriptive method."

Result And Discussion

Credit is a term related to a bank, which contains the meaning of lending money or funds to individuals or business entities that are trusted by being bound by an agreement called a credit agreement. The term credit can be found in Article 1 number 11 of Law g Number 10 of 1998 concerning amendments to Law Number 7 of 1993 concerning Banking (hereinafter referred to as the Banking Law), which explains as follows: "Creditis the provision of money or bills that can be likened to it, based on agreement lending and borrowing between the bank and other parties that oblige party borrower to pay for the debt u after a period of time certain with the giving of flowers"

Credit agreement principal agreement which obligator (pasta de contravened obligatory) which arises because of an agreement between creditors and debtors on the matters agreed upon and becomes the basis for the emergence of other agreements known as additional agreements accessor agreements, namely material guarantee agreement. The object of material security that is considered the safest by creditors, in general, is the object of land rights, namely the Right of Dependent. The objects of land rights that can be encumbered with dependent rights are regulated in the provisions of Article 4 and Article 27 of the UUHT, namely: property rights, building use rights, business use rights, Right of use, and property rights over flats.

The creditor's interest in material guarantees in the form of rights of dependents because it has the following characteristics:

1. Precedence of repayment of creditors' receivables (droiti de preference);
2. Follow where the object of the guarantee is located (droit de suite);
3. The existence of a principle of specialty and a principle of publicity; and

4. No bail can be placed on bail by the court;
5. The object of the right to insolvency is not included in the bankruptcy model;
6. Easy and sure execution of collateral objects.

The granting of dependent rights, which must be based on the main agreement, can be observed in the provisions of Article 10 paragraph (1) of the UUHT which explains that: "The granting of Dependent Rights is preceded by a promise to give Dependent Rights as a guarantee of repayment of certain tang, which is set forth in and is an integral part of the agreement debts the person concerned or any other agreement giving rise to the debt. (HS & SH, 2021)

The right of liability as an additional agreement, explained in the general explanation of paragraph 8 of the UUHT, namely: "Since Liability by its nature is a follow-up or an accessor to a receivable trecento, which is based on one agreement debts other agreements, then their birth and existence are determined by the presence of receivables guaranteed repayment....".

Credit agreements and Property Guarantee Agreements in this case are Rights of Dependents made by deed of Land Deed Making Officer (PPAT) known as a Deed of Encumbrance of Rights of Dependents (APHT) is a form of internal protection made by the parties concerned from possible losses arising in the future due to non-fulfillment of achievements (Isnaeni, 2016). The main substance contained in Article 11 paragraph (1) of the UUHT explains the points that must be listed in the APHT, namely: "Nama and identity of the parties, both grantors and holders of Dependent Rights; the domicile of the parties; the amount of debt secured by the Right of Liability; determination of the value of the Right of Dependents; and a clear description of the object of the guarantee of the Right of Dependent".

Based on some of the things mentioned above, the thing highlighted by the author is about determining the value of dependent rights, because one of the determinants of the creditor's position as a preferred or concurrent creditor can be seen from the value of receivables and the installation value of dependent rights contained in the APHT. The value of the dependent rights here is interpreted as the amount of the burden of dependents installed (which overrides) the collateral object with a maximum limit so as to make the position of the creditor holding the Dependent Rights become a preferred creditor for the results of the execution of the object of the Dependent Rights concerned (Arba et al., 2021)

The determination of the value of the dependent rights does not have to have the same amount as the value of the debtor's debt. However, the suggestion of the value of dependent rights generally has a nominal amount greater than the credit value, this is a form of anticipation of creditors from the possibility of fines or bloated interest (Satrio, 1997). These provisions can be seen in Article 3 paragraph (1) of the UUHT, namely:

"The debt guaranteed for repayment with the Right of Liability may be in the form of existing or agreed debt with a certain amount or an amount which at the time the application for execution of the Right of Liability is submitted can be determined based on a debt-receivable agreement or other agreement giving rise to the relationship between the debts concerned"

In banking practice, the average value of the dependent rights is determined to be 120% (one hundred twenty percent) of the debtor's debt value, but the figure is not absolute but still preferably based on the agreement of both parties, namely creditors and debtors (Mihardjo, 2022). The purpose of installing a value of the dependent right higher than the debtor's debt is to determine the position of the creditor of the holder of the dependent right as the party who takes precedence or prioritizes repayment over other creditors. If the value of the debt is greater, the legal consequences that arise are that the creditor holding the dependent right is equalized with other creditors or referred to as concurrent creditors.

The right of liability can be burdened with several debtors with conditions if the value of the collateral object has sufficient value to guarantee some of the debts concerned, so the term appears to be ranked in the rights of dependents as regulated in Article 5 paragraphs (2) and (3) of the UUHT. Regarding the repayment of boor debts, it is determined based on the order of the ranking of dependent rights taken from the proceeds of the sale of dependent rights objects both carried out by auction execution and under the hand. One of the main conditions for execution to be carried out against the object of the insured right is if the dependent has been registered at the land office where the object is located, as Article 13 paragraphs (4) and (5) of the Law, which basically explains that the dependent rights are born on the date on which the land book is made and on that date the creditor is domiciled as a creditor who takes precedence in terms of repayment of receivables (Droit de preference). When the registration has been completed, the local land office issues a certificate of indemnity as proof of attachment of the dependent rights in the land and object in which are listed the girahs "For Justice Based on the One and Only Godhead". Based on the Explanation of Pasal 14 paragraphs (2) and (3) UUHT explains that: "The graphs included in the certificate of Rights of Liability and in the provisions of this paragraph, are intended to affirm the existence of executory power on the certificate of Rights of Custody, so that if the debtor defaults, it is ready to be executed as well as a court decision that has obtained permanent legal force, through procedures and by using the institution of separate executie in accordance with Civil Procedure Code regulations".

Talking the repayment of creditors whether carried out through auction execution or underhand sales as stipulated in Article 20 of the Law, is based on the actions of debtors who have committed a breach of promise or default. Article 1238 of the Civil Code explains that: "The debtors declared negligent by the warrant, or by deed of that kind, or by virtue n of the engagement itself, i.e. if this engagement result from the debtor shall be deemed negligent by the lapse of a prescribed time". Debtors who have neglected

their obligations by not paying debts in accordance with the agreed time provisions, then the property in the form of land is used as an object of liability execution can be carried out (Khoidin, 2017). Debtors who have manifestly broken promises or defaults, then the dependent rights provide a solution by selling the guarantee keeping in mind the provisions of Article 20 UUHT, as follows:

1. Persecution based on a promise to sell the collateral object yourself (prate executive);
2. Persecution based on the executory title on the certificate of Liability; and
3. Execution through underhand sale by agreement.

In practice, among the solutions described above, creditors prefer the execution process through auctions. This is based on the reason for obtaining the highest price in the process of selling the object of liability. The definition of auction can be found in the provisions of Article 1 paragraph (1) of the Minister of Finance Regulation Number 213 / PMK.06 / 2020 concerning Auction Implementation Guidelines, namely: "The sales charcoal that is open to the public with quotations in writing and or orally that increases order decreases creases to reach the highest price that Is preceded bye with the announcement of auction".

According to M. Yahya Harahap, the auction is defined as the sale of goods in public which is carried out with an increasing bid value, with the approval of Increasing Increase with the registration of price, which was previously announced in advance, to provide an opportunity for people to be present to buy by bidding prices up and down either by invitation or because of seeing announcements (Salim & Subagyo, 2022)

The thing that can be highlighted in the process of execution of the object of liability through public auction is the proceeds of the sale of the object. If the proceeds from the sale of the object of liability are less than the value of the receivable, then the remaining debtor results in the creditor being a concurrent creditor (Hutapea, 2020). This certainly affects the repayment of receivables that must be divided equally with other creditors as stipulated in Article 1131 and Article 1132 of the Civil Code. Such a position certainly does not benefit creditors who hold dependent rights and who should take precedence over repayment.

The position of creditors both as concurrent creditors and preferred creditors, can be known from the relationship between the value of the liability, debtor debt, and the proceeds of auction sales (Maharani, 2020), as follows:

- a. Creditor is positioned as a preferred creditor by obtaining full repayment of the debt if the value of the indemnity and the proceeds from the sale of the object of the indemnity are greater than the amount of debt of the debtor.
- b. Creditors are positioned as preferred creditors by obtaining full debt repayment when viewed in terms of sales proceeds obtaining a selling price greater than the value of rights dependents and the value of their receivables.
- c. Creditor as a concurrent creditor, if the value of the debt is greater than the value of the dependent rights and the proceeds of the sale.

- d. The creditor is positioned as a concurrent creditor for the remaining debt of the debtor if the proceeds from the sale of the object of liability are less than the amount of debt and the value of the right of the dependent.

Based on the description above, if further examining the debtor's debt, the value of the dependent rights and the proceeds of the sale of the dependent objects through auction have a close relationship as a determinant of the position of the creditor in case of repayment of his receivables. Creditors are certainly prioritized and given privileges in repaying debts in full if the value of the dependent rights and the result of the sale of the object of the liability are greater than the debt debtor. If the opposite happens, then for the remaining debt or debt that has not been paid, put the creditor as a concurrent creditor (Prayoga, 2022).

For creditors who have obtained full repayment, and there is residue from the sale of the object of liability, UUHT provides legal protection for debtors. The remaining sale of the object of liability after the debtor is paid off, the creditor must return the remaining money to the debtor as his right (Maurizkha, 2022). This has been regulated in Article 6 of the UUHT which explains that: "if the debtor defaults, the holder of the first g of the Dependent Rights has the right to sell the object of the Dependent Rights on his own power through a public auction and take repayment of his receivables from the proceeds of the sale".

In the Substance of the above article, there is the phrase "..... take repayment of receivables from the proceeds of the sale", which is then explained in the Explanation to Article 6 of the UUHT as follows: "... The holder of the Right to Cover has the right to set sell object Right of Liability through public auction without requiring further approval from the grantor of the Right of Liability and then take repayment of the receivables from the proceeds of the sale earlier than other creditors. The remaining proceeds of the sale remain the rights of the grantor".

Based on the explanation above, it can be said that the creditor has the right to execute the object of the dependent right if the debtor breaks the promise or defaults by taking from the proceeds of the sale of collateral objects, with a note only limited to the amount of the debtor's debt, and the rest remains the right of the debtor (Leo, 2016).

Conclusion

The value of the dependent rights contained in the APHT that has been registered at the local land office and has been issued a certificate of pendent rights has the function of determining the position of creditors. If the debtor defaults on a promise that can be carried out the execution of the object of the dependent right prioritizes the repayment of creditors. If the value of the dependent rights listed in the APHT has a debt value greater than the debtor's debt, then the preferred right is attached to the creditor r, and vice versa applies if the value The greater the debt the creditor is positioned as a concurrent creditor.

The determination of the position of creditors is not only assessed limited to the value of the rights listed in the APHT but also influenced by the results of the auction sale. If the proceeds from the sale of the liability are greater than the amount of the debt the creditor is entitled to the introduction of full repayment of the debt. If the proceeds of the sale of the object of liability are less than the debtor's debt, then the creditor is entitled to repayment of the debtor's debt from the proceeds of the sale, but The remaining debtor positions the creditor no longer as a preferred creditor but as a concurrent creditor.

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