THE URGENCY OF MORTGAGE AGREEMENT AS AN EFFORT TO REALIZE THE TRUST BY BANK AS CREDITOR

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Abstract

This study focuses on the legal certainty of the implementation of loans for mortgage rights which are the object of collateral in the form of money-valued objects when bad loan occurs, which are regulated in the main agreement as an effort to manifest the trust of creditors of banking institutions whose existence is highly sought after by the Indonesian people. The method used in this study focuses on the normative with the conceptual approach and statute approach. The results of this study indicate that Credit agreements must be considered by the bank as creditor and by the customer as the debtor, considering that credit agreements have a vital function in granting, managing, and managing the credit itself. The existence of a guarantee in a bank credit agreement is significant, namely as a means of legal protection for bank security in overcoming risks. There is a certainty that the debtor customer will pay off his loan. This is based on the explanation of Banking Laws, PBI, and POJK, which requires banks' caution as creditors for loans to debtors based on the belief in the debtor's ability to pay off his obligations as agreed in the agreement. The land is material security which is most in demand by banking institutions as security of mortgage rights. The use of land as a trusted and consumptive credit is based on the consideration of the safest land and has a relatively high sale value. The urgency of objects Securing mortgage rights as stipulated in the credit agreement cannot be separated from the guarantee itself. Credit guarantees are always stated in an additional agreement, namely the Collateral agreement. The need for funds by people or institutions provides credit by providing excellent services and providing legal protection for the

parties in the transaction so that no one is harmed in the transaction. The state provides legal protection by stipulating legal regulation relating to credit so that banks as creditors have legal certainty in the process of executing credit collateral objects for optimal repayment. Mortgage Law states that creditors have full rights in executing debtor's collateral goods when bad loans do not have to go through litigation.

Abstrak

Kajian ini menitikberatkan pada kepastian hukum atas pelaksanaan pinjaman hak tanggungan yang merupakan objek agunan (tanah) bernilai uang pada saat kredit macet terjadi, yang diatur dalam perjanjian pokok sebagai upaya mewujudkan kepercayaan kreditur. Lembaga perbankan yang keberadaannya sangat dicari oleh masyarakat Indonesia. Metode yang digunakan dalam penelitian ini menitikberatkan pada normatif dengan pendekatan konseptual dan pendekatan perundang-undangan. Hasil penelitian ini menunjukkan bahwa perjanjian kredit harus diperhatikan oleh bank sebagai kreditur dan oleh nasabah sebagai debitur, mengingat perjanjian kredit memiliki fungsi yang sangat penting dalam pemberian, pengelolaan, dan pengelolaan kredit itu sendiri. Keberadaan jaminan dalam perjanjian kredit bank sangat penting, yaitu sebagai sarana perlindungan hukum bagi keamanan bank dalam mengatasi risiko, sehingga terdapat kepastian nasabah debitur akan melunasi pinjamannya. Hal ini berdasarkan penjelasan Undang-Undang Perbankan, PBI, dan POJK yang mensyaratkan kehati-hatian bank sebagai kreditur dalam memberikan pinjaman kepada debitur berdasarkan keyakinan akan kemampuan debitur untuk melunasi kewajibannya sebagaimana disepakati dalam perjanjian. Tanah merupakan jaminan material yang paling diminati oleh lembaga perbankan sebagai jaminan hak tanggungan. Penggunaan tanah sebagai kredit terpercaya dan konsumtif didasarkan pada pertimbangan tanah yang paling aman dan memiliki nilai jual yang relatif tinggi. Urgensi Objek Pengamanan Hak Tanggungan sebagaimana diatur dalam perjanjian kredit, tidak lepas dari jaminan itu sendiri. Penjaminan kredit selalu tercantum dalam perjanjian tambahan yaitu Perjanjian Agunan. Kebutuhan dana oleh orang atau lembaga merupakan salah satu unsur pemberian kredit dengan memberikan pelayanan prima dan memberikan perlindungan hukum bagi para pihak yang bertransaksi agar tidak ada yang dirugikan dalam bertransaksi. Negara memberikan perlindungan hukum dengan menetapkan peraturan perundang-undangan terkait perkreditan agar bank sebagai kreditor memiliki kepastian hukum dalam proses pelaksanaan objek

agunan kredit untuk pelunasan yang optimal. Undang-Undang Hipotek menyatakan bahwa kreditor memiliki hak penuh dalam mengeksekusi barang agunan debitur ketika kredit macet tidak harus melalui proses pengadilan.

Keywords: Agreement; Creditor, Mortgage, Perjanjian, Kreditur Perbankan, Hak Tanggungan

Introduction

The bank is a provider of banking services for customers. Article 3 of Banking Law No. 10/1998 explained that Indonesian banking's main function is to collect and channel public funds. This function is an intermediary institution in which the bank acts as a collector and channel of public funds. Banking in Indonesia was built to support equitable economic growth and national stability towards improving the welfare of the people at large. Banks are financial institutions that handle not only debits but also credits. Banks provide facilities for lending, receiving, and storing money, building a gap between lenders and borrowers. Banks not only deal with saving money but also make money from providing loans.[1] Banks are unique because of their obligations, issuing banknotes, coins, and deposits that are considered a means of first payment as a medium of exchange, which is the definition of money. Therefore, banks can create additional money by providing loans when needed by individuals, businesses, and the government (with the central bank's help). Innovating banks are largely a function of intense competition. Therefore they are at the forefront of the development of the modern world, not only in banking but also in the broader financial market.[2]

Most economic tasks are handled mainly by national scale banks apart from banking business activities such as financing and loans made by bankers to customers because the national banking system is isolated. The ability to hold on to large amounts and issue above-

[1] Prabhavathi K, Dr. Dinesh G P, Banking: Definition and Evolution, International Journal of Scientific & Engineering Research Volume 9, Issue 8, August-2018 745 ISSN 2229-5518, https://www.ijser.org/researchpaper/Banking-Definition-and-Evolution.pdf accessed on February 2021

[2] AP Faure, Banking : An Introduction, 1st Edition, Quoin Institute (Pty) Limited & bookboon.com, hlm. 7 http://lib.ibs.ac.id/repository/banking-an-introduction.pdf accessed on 17 February 2021

average loans that make losses is not a problem for the bank, whereas its reputation and history are essential. Many banks provide loans to customers for their economic recovery.[3]

The banking industry is one of the lifebloods in a country's economy. The existence of a bank in the community, especially for business people, is an important thing. Banks have a strategic role in national development to carry out sustainable development in realizing a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This strategic role is due to the bank's primary function, which functions to collect funds from the public and function to channel these funds back to the community in the form of credit.

Article 1 point 2 of the Banking Law regulates the definition of a bank that a bank is a business entity that collects funds from the public in the form of credit and/or other forms to improve the standard of living. Definition of bank The Banking Act has not yet confirmed the term conventional bank. The term conventional bank has only recently appeared in the Islamic Banking Law. The definition of a Sharia bank based on article 1 point 7 is a bank that carries out its business activities based on Sharia principles. According to its type, it consists of Sharia commercial banks and Islamic public financing banks.

One of the bank business activities regulated in article 6 of the Banking Law is to provide credit to people who need loan funds to restore the economy in the modern era. Providing credit by banks as creditors, of course, has an agreement that contains the rights and obligations of creditors and debtors. A customer as a debtor must hand over the collateral object in the amount of money to the creditor to pay off the debt if the customer is unable to pay it.

A credit agreement is defined as an engagement by a party with a guaranteed right. The guarantee agreement makes a promise by binding particular objects as collateral objects by the debtor's ability. This aims to provide legal certainty in returning credit funds based on

[3] Prabhavathi K, Dr.Dinesh G P, Banking: Definition and Evolution, International Journal of Scientific & Engineering Research Volume 9, Issue 8, August-2018 745 ISSN 2229-5518, https://www.ijser.org/researchpaper/Banking-Definition-and-Evolution.pdf accessed on February 2021

the principal agreement on the guarantee.[4] The granting of credit by the banking creditor certainly follows the legal relationship in the agreement called the credit agreement. The agreement requires an agreement from the creditor and the debtor by prioritizing the element of interest in terms of credit or granting loan funds to the debtor. Subekti states that the term agreed has the meaning of adjusting the two parties' understanding and intent. Thus, the agreement becomes an urgency in wanting an agreement to occur, although it is not one-way but has reciprocity by both of them with each other.[5]

Banks consider collateral institutions to be the most preferred effective and safe institutions, including guarantees of mortgage rights in the form of land and which are attached to land such as buildings of economic value. This is because the land is easily identified as the mortgage's object, clear and certain to its creditors.[6] Thus, the use of mortgage rights execution institutions is the fastest way to pay off debts so that funds that banks have issued can be immediately paid and can be re-used by other debtors.

Nindyo Pramono stated that a bank is a public trust institution with a very good vision and mission as an institution assigned the task of carrying out the mandate of nation-building to achieve a better standard of living for the people. Article 29 (3) and (4) of the Banking Law regulates the relationship between banks and customers, namely that in providing credit or financing, banks are required to adopt methods that are not detrimental to the bank and the interests of the customer entrusting their funds to the bank and for the benefit of the customer, the bank is also is obliged to provide information

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[4] Evie Hanavia dkk, "Eksekusi Hak Tanggungan Berdasarkan Title Eksekutorial dalam Sertifikat Hak Tanggungan", *Repertorium*, No. 1, (2017), 22. https://media.neliti.com/media/publications/213261-none.pdf accessed 02 April 2020.

[5] Catur Budi Dianawati dan Amin Purnawan, " Kajian Hukum Jaminan Hak Tanggungan Yang Dilelang Tanpa Proses Permohonan Lelang Eksekusi Ke Ketua Pengadilan Negeri", *Jurnal Akta,* No. 2 (2017), 126. http://jurnal.unissula.ac.id/index.php/akta/article/viewFile/1755/1315, accessed 02 April 2020.

[6] Retnowulan Sutantio, *Penelitian tentang Perlindungan Hukum Eksekusi Jaminan Kredit*, Badan Pembinaan Hukum Nasional (BPHN) (Jakarta: Departemen Kehakiman RI, 1999), p. 8.

accompanied by the possibility of risk of loss in customer transactions conducted through the bank.[7]

According to Nindyo Pramono, four bases occur from the legal relationship between banks and customers, namely: the principle of trust, the principle of confidentiality, the principle of prudence, the principle of knowing your customer. The principle of prudence is crucial for banks to provide credit to customers in writing in an agreement. The principle of caution in credit or financing is also regulated explicitly in article 3, number 1 POJK No. 42 /POJK.03/2017 concerning Obligations to Prepare and Implement Bank Credit or Financing Policies for Commercial Banks. This means that banks apply a prudent system in providing loans to customers to minimize bank losses as a banking institution in Indonesia.

Mortgage rights are one of the most preferred credit guarantees by the customer through the bank. Collateral for objects that are easy to carry in the form of certificates, including certificates of houses, buildings, and land, have a high enough selling power so that customers apply for credit from banks in large enough quantities. The same thing also happened in several countries such as Australia, Canada, Denmark, Netherlands, Germany, Spain, and England. In short, the presence of a mortgage as collateral for the credit of objects in the form of immovable objects provides benefits to the bank. However, of course, the bank has principles and criteria so that credit can be carried out based on the principal agreement and access agreement.[8]

Security rights are credit guarantees that have their own legal rules, but this can be done through banking institutions in practice. Collateral for objects in the form of land is most preferred by banks as a form of legal protection for bank credit repayments. The principles mentioned above have an impact on their implementation along with specific legal arrangements such as the Banking Law No.10/1998, KUHPerdata, Law on Mortgage No.4 / 1996, PBI No.3 / 10 / PBI /

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[7] Nindyo Pramono, *Bunga Rampai Hukum Bisnis Aktual*, Bandung, Citra Aditya Bakti, 2006,p.243

[8] Michael Lea , Alternative Forms of Mortgage Finance: What Can We Learn From Other Countries? (US : San Diego State University, 2011), p. 7. http://absalonproject.com/wp-content/uploads/2010/12/Harvard-Lea-110v5.pdf, accessed 02 April 2020.

2001, PBI No.14 / 15 / PBI / 2012, POJK No.18 / POJK.3 / 2016, POJK No.42 / POJK.3 / 2017, and POJK No.40 / POJK.3 / 2019.

Dependents have special characteristics, one of which is implementing an easy and certain execution when the debtor fails to promise. Act No.4/1996 has stipulated in article 6 and article 20 letter a which regulates parate execution implementation. Namely the execution of guaranteed mortgage rights. Although the provisions and definitions of execution are also regulated informal civil law, it is deemed necessary to stipulate in the Mortgage Act relating to collateral execution for defaults. Thus, the presence of excess parate in the mortgage right as the implementation of the execution of the credit guarantee at the banking institution certainly greatly strengthens the position of the banking sector as the creditor of the mortgage right holder who provides loan funds written in the agreement to be able to execute the debtor's guarantee when the debtor commits bad credit.

Execution of Collateral Rights Held In Article 6 Execution of Sales of Mortgage Rights Objects can only be done through a Public Auction, Without Having a Long Process with Fiat the Head of District Court. The facility is more effective in the execution of court decisions that are decided by a permanent law. This article also provides protection to creditors from debtors' inappropriate, improper, or bad faith. Article 6 is also prepared as the main supporting pole for the banking creditor in obtaining the acceleration of the payment of the receivables so that the receivables that have been returned to the creditor can then be used again for financial turnover. Undoubtedly, article 6 of the mortgage law as a legal basis for the entry into force of the default execution debtor compilation execution is used as an excellent facility by investment needs in Indonesia.[9] This research uses normative legal research with a statutory approach and an analytical approach taken from primary sources in the form of various legal regulations related to agreement mortgage as an effort to trust banks as credit providers, and secondary sources from various literature, both books, and journals articles, then processed. by analyzing descriptively.

[9] Anton Suyatno, *Kepastian Hukum dalam Penyelesaian Kredit Macet Melalui Eksekusi Jaminan Hak Tanggungan Tanpa Proses Gugatan Pengadilan (* Jakarta: Kencana, 2016), p. 19.

Normative legal research, also called doctrinal legal research, that is, studying positive legal research, in this case, is written legal material.[10] The approach used uses the conceptual approach and statute approach. The legislative approach is the focus and central theme in research.[11] The conceptual approach, philosophically said Ayn Rand[12] the concept is interpreted to have special characteristics. This study's concept is more to the theories in civil law, namely the mortgage guarantee agreement. The primary legal material used is in the form of legal regulations relating to security guarantee agreements. Primary legal material is considered necessary because it has a main element in the completion of normative research. Secondary legal material in the form of a legal book has a strategic position because in the legal book found the thoughts of legal philosophers who then thought of some of them developed more specifically into legal theory. This second material is beneficial because it can broaden the spectrum of legal analysis and argumentation from publishing legal journals or law reviews by researchers' needs. Legal encyclopedias are also useful for seeking understanding in legal terms, legal concepts and legal adage. Primary legal material collection techniques are carried out by collecting legislation on mortgage rights, agreements stipulated in Burgerlijk Wetboek, credit agreement in legal regulations other than the law, and so forth. Whereas the technique of gathering secondary legal material is more to concepts or theories relevant to the central issue by completing it in the bibliography. Legal material analysis techniques also use descriptive techniques, namely by describing an event or phenomenon that is rife in the community, such as the enforcement of a mortgage guarantee agreement as an effort to manifest creditor's trust in a loan of funds for the people who need it with the right to guarantee.

The Urgency of the Mortgage Guarantee Agreement in the Provision of Credit

[10] Jonaedi Efendi & Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris* (Jakarta: Kencana, 2016), p. 234.

[11] Jonaedi Efendi & Johnny Ibrahim, *Metode Penelitian*……..,p. 132.

[12] Aynd Rand, *Pengantar Epistemologi Objektif,* Penerjemah, Cuk Ananta Wijaya (Yogyakarta: Bentang Budaya, 2003), p16.

An agreement is defined as an event in which two people or two parties promise each other to do something or an agreement is made by two or more parties, each of which agrees to obey what is stated in the agreement. Meanwhile, the credit agreement is an actual principal agreement. As a principle agreement, the guarantee agreement is the accessory. The guarantee agreement can be terminated depending on the principal agreement. Real is a credit agreement determined by the bank's transfer of money to the customer as a debtor.[13]

The agreement is defined as a contract in the transaction of economic activities. The agreement has an urgency about business activities in the economy in Indonesia. The relationship between agreements in guaranteeing mortgage rights is significant, considering that the basis of loan fund transactions provided by lenders is that creditors of banking institutions require a legal basis to provide legal certainty. The agreement can be implemented if it has fulfilled several elements including: (1) There is an agreement between the parties that bind themselves to a certain agreement (Article 1321-1328 Civil Code), (2) Able to act in agreement (Article 1329-1331 Civil Code), (3) A certain subject matter which means that the nature and the area of the object in the contract can be found. This is regulated in articles 1332-1334 of the Civil Code, (4) A reason is not prohibited, meaning that the contract's clause does not violate public order, decency, and applicable regulations.[14]

The term *zekerheid* or cuatie is approved from the Dutch language, which is Guarantee. *Zekerheid* itself contains general methods - how creditors provide full collateral in addition to the debtor's general liability for his goods.[15] Meanwhile, the Guarantee Law is also equated with the term in the Dutch language zakerheidesstelling, [16]which is a statutory regulation that applies to collateral guarantees - a person's debts against debtors. Therefore, everything that someone does in the

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[13] Hermansyah, *Hukum Perbankan Nasional Indonesia* (Jakarta, Kencana, 2005),p.71.

[14] Toman Sony Tambunan & Wilson R.G. Tambunan, *Hukum Bisnis* (Jakarta: Kencana, 2019), p. 56.

[15] Salim HS, *Perkembangan Hukum Jaminan di Indonesia* (Jakarta: Rajawali Press,2004), p. 21.

[16] J. Satrio, *Hukum Jaminan Hak – Hak Jaminan Kebendaan (*Bandung : PT. Citra Aditya Bhakti, 2007), p. 2.

affairs of a money loan already has something to regulate what is called a Guarantee on someone or the law of Guarantee.

Salim HS states that for the implementation of the lender required fulfilment is not by the Guaranty law, namely written legal rules, the existence of the giver and recipient of the Guarantee, the existence of a guaranteed object or good that can be spent, which can be transported, and the availability of financial assistance provided by the institution requested such as a bank or non-bank institution as the collateral provider, known as the creditor.[17] The Guarantee Agreement submitted in this study discusses the agreement of the parties approved in the agreement which contains the award of the giver and receiver of the Guarantee for assistance relating to money used as collateral when the debtor for default. In fact, such as banks and non-banks, the material collateral is more valuable than the individual collateral, which is well known in the Guarantee Act.

According to article 2 (1) Decree of the Board of Directors of Bank Indonesia No.23 / 69 / KEP / DIR concerning Credit Guarantee, the guarantee is defined as a bank's confidence in the debtor's ability to pay off credit as agreed. Article 1 point 23, collateral is an additional guarantee given by a debtor customer to a bank to provide credit or financing facilities based on Sharia principles. The guarantee's function is to convince the bank or creditor that the debtor can pay off the credit given to him by the credit agreement that has been mutually agreed upon.

Guarantee law is a set of provisions that regulate or relate to guarantees in the context of debt and receivables contained in various laws and regulations currently in force. Providing credit as a form of lending money. People who need funds can apply for credit to the bank by meeting the bank's requirements and procedures. In general, banks make judgments from a legal and economic perspective on the object of credit collateral submitted by a prospective borrower before accepting it based on the applicable legal regulations and internal regulations. Credit guarantees approved and received by the bank will

[17] Salim HS, *Perkembangan Hukum Jaminan di Indonesia* (Jakarta : Rajawali Press, 2004), p. 7-8.

have several functions and one of them is to secure credit repayment if the borrower breach of contract.[18]

A credit extension will be based on a credit agreement, where a loan agreement becomes the basis of reference in the credit agreement. The Civil Code itself does not specifically regulate credit agreements. The Civil Code only regulates debts that occur due to borrowing money based on article 1756.[19]The agreement is generally regulated in article 1313 of the Civil Code. According to Soedjono Dirdjosisworo, a contract is a promise or a set of promises. As a result of denial or violation of the law, it provides restoration or stipulates obligations for those who break the promise accompanied by sanctions for its implementation.[20] A guarantee agreement is a guarantee that arises because of the main agreement. The guarantee agreement is an assessor agreement (accessor), which is an agreement attached to the main agreement or it can be said to be a tail agreement because this agreement cannot stand alone. The agreement arises and cancels depending on the main agreement. The guarantee agreement serves the principal agreement and is held for the principal agreement's benefit and provides a solid and safe position for creditors. The guarantee agreement is a special agreement made by the creditor together with the debtor by binding particular objects to provide security and legal certainty for credit repayment or implementation of the principal agreement.[21]

In practice, the form and material of a credit agreement between one bank and another are not the same. This is done to adapt to their respective needs. The credit agreement does not have a generally accepted form, it is just that in practice it usually includes the definition of the terms that will be used in the agreement, the amount and time limit for the loan, as well as loan repayments, interest, and

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[18]Bahsan, *Hukum Jaminan dalam Jaminan Kredit Perbankan Indonesia*, (Jakarta, PT.Rajagrafindo Persada,2010),p.4

[19] H.R.M. Anton Suyatno, *Kepastian Hukum Dalam Penyelesaian Kredit Macet Melalui Eksekusi Jaminan Hak Tanggungan Tanpa Proses Gugatan Pengadilan*, (Jakarta, Kencana, 2018),p.31

[20] Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, (Bandung, PT. Citra Aditya Bakti,2013),p.244

[21] H.R.M. Anton Suyatno, *Kepastian Hukum Dalam Penyelesaian Kredit Macet Melalui Eksekusi Jaminan Hak Tanggungan Tanpa Proses Gugatan Pengadilan*, (Jakarta, Kencana, 2018),p.88-89

penalties if the debtor is the default. All these things are then standardized so that finally, a standard agreement is formed in the bank credit agreement. In a standard agreement, a balance between the parties is required. Clauses should not be placed or their form is difficult to see or cannot be read easily, or their expressions are difficult to understand.[22]

Credit agreements must be considered by the bank as creditor and by the customer as the debtor, considering that credit agreements have a very important function in granting, managing, and managing the credit itself. The existence of a guarantee in a bank credit agreement is very important, namely as a means of legal protection for bank security in overcoming risks, so that there is a certainty that the debtor customer will pay off his loan. This is based on the explanation of Article 8 of Law No.10/1998, which requires caution by banks as creditors for loans to debtors based on the belief in the debtor's ability to pay off his obligations as agreed in the agreement. The land is material security which is most in demand by banking institutions as security of mortgage rights. The use of land as a trusted and consumptive credit is based on the consideration of the safest land and has a relatively high sale value.[23]

The mortgage guarantee institution is used to bind the object of the debt guarantee in the form of land or objects related to land. Mortgage rights are regulated in legal regulations, namely Law No.4/1996. With the enactment of the Mortgage Rights Law, the mortgage regulated in the Civil Code and the previous credit verband is used to tie land as debt collateral, henceforth it cannot be used by the community to tie land as debt collateral. In brief, it can be explained that Law No.4/1996 has characteristics including, giving priority or precedence to the holder, always following the object of debt collateral in the hands of whomever the object is located, fulfilling the principle of specialty and publicity, easy and the execution.[24]

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[22] Muhammad Djumahana, *Hukum Perbankan di Indonesia*, (Bandung, Citra Aditya Bakti, 2000),p.387

[23] Herowati Poesoko, *Parate Executie Objek Hak Tanggungan* (Yogyakarta: Laksbang Pressindo, 2008), p. 4.

[24] M. Bahsan, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, (Jakarta: PT. Rajagrafindo Persada, 2010),p.23-24

As previously explained, lending refers to the provisions of the agreement law as stipulated in book III of the Civil Code, namely the agreement between a bank and a prospective debtor to obtain credit from the bank. The Banking Law does not specifically regulate the credit agreement as to the basis for granting credit, it is not even included in the provisions of the Banking Law. However, in the Cabinet Presidium Instruction Number 15 / EK / 10 Jo. Bank Neraca Indonesia Unit 1 Circular Number 2/539 / UPK and Bank Negara Indonesia Circular Letter Number 2/643 / UPK / Pemb.[25] Meanwhile, credit in any form and practice a credit agreement is called a credit contract.

The credit agreement clause must contain a minimum relating to (1) Provision of credit given the maximum amount of credit, the period of repayment credit, the purpose of the credit application, the form and limit of the credit license. (2) Determination of interest rates, costs arising from credit costs such as stamp duty, provisions, and fines for excess withdrawal. (3) Bank institutions impose bank regulations on the charging of current accounts or debtor credit accounts for interest rates/interest rates on excess interest and interest for those who pay arrears and various costs arising from the implementation of matters adjusted by banks supported by debtors. (4) A statement from the debtor of the imposition and all assets of the debtor is made as collateral for the repayment of credit (Representations and guarantees). (5) Learning the response requirements must be taken in advance by the debtor to be able to withdraw credit for the first time or be known as the previous Terms. (6) Credit borrowers must fulfill obligations and act on permanent credit agreements known as affirmative and negative agreements. (7) Steps of banks in supervising and saving credit. (8) The domicile address of the debtor becomes part of the credit agreement clause approved in the dispute in interbank credit and priority as a debtor. (9) The Bank may terminate the credit agreement at any time and for a moment will collect all of the following money with interest and other costs incurred (Default event/trigger clause opeisbaar clause). (10) The final step is to sign the parties by making the credit agreement

[25] H.R.M. Anton Suyatno, *Kepastian Hukum dalam Penyelesaian Kredit Macet Melalui Eksekusi Jaminan Hak Tanggungan Tanpa Proses Gugatan Pengadilan*, (Jakarta: Kencana, 2018),p.98

effective.[26] Concerning the element of risk, the provision of credit by banks to borrowers of course has business risks for the bank. The risk here is the risk of the debtor's inability to pay installments or pay off his credit due to certain undesirable things. The longer the period or grace period is given for credit repayment, the greater the risk for the bank. In providing credit, banks are required to apply the 7P (personality, party, purpose, prospect, payment, profitability and protection) and 5C (character, capacity, capital, condition of the economy, collateral) formulas. Loans granted based on the principle of prudence by applying the 5C are expected to place credit at good credit quality or performing loans. It is hoped that good credit quality can provide large income for the bank and good liquidity so that public funds are stored in the bank to be safe. Every credit that has been approved and agreed upon between the creditor and debtor must be stated in a written agreement. In banking practice, the form and format of the credit agreement are submitted to the bank concerned.

Aspect approved by the law and legal certainty, the execution of the approved execution should provide legal certainty, because with the execution, what must be approved the legal purpose of seeking legal certainty becomes realized and also involves legal protection for those who get the right to a case decision. civil order from execution approved.[27] Dependents are collateral rights on land and are attached to land to demand the repayment of debts by the borrower of the creditors to the creditor bank so that it has the main position of other creditors. Debt repayment agreed here, the creditor has the right to sell the object needed, credit credibility, dependents utilizing sale through land auctions by the law in force in Indonesia, with the right to overtake other creditors. Therefore, the guarantee of mortgage rights has a higher level of legal requirements.

The bank's obligation to have and implement credit guidelines is based on Article 8 (2) BI Directors Decree No.27 / 162 / KE / DIR. The Decree of the BI Board of Directors stipulates the obligations of all banks to own and implement bank credit policies in the implementation of their credit activities and attaches guidelines for

[26] Rachmadi Usman, *Aspek – Aspek Hukum*……, p. 273.

[27] Mohammad Saleh dan Lilik Mulyadi, *Bunga Rampai Hukum Acara Perdata Indonesia : Perspektif Teoretis*, *Praktik dan Permasalahannya*, Cetakan ke-1 (Bandung: Alumni, 2012), p. 416.

drafting bank credit policies, containing prudential principles in credit, credit organization, and management, credit approval policies, credit documentation and administration, supervision. credit, and problem credit settlement.

As explained above, providing credit carries the risk of failure or bottlenecks in repayment, which affects the health of the bank. Article 11 of the Banking Law regulates the maximum credit limit (BMPK). BMPK provisions are specifically regulated by PBI No.7 / 3 / PBI / 2005 and the amendments to PBI No.8 / 3 / PBI / 2006. The LLL set for borrowers or groups of borrowers not related to the bank is not more than 30% of the bank's capital according to the stipulations of Bank Indonesia and the parties related to the bank do not exceed 10% of the bank's capital.

To have protection and certainty, the creditor has a "right base" on a certain object specifically designated for bank credit purposes. The basis of rights is realized in the form of signing a credit guarantee, with a certain guarantee object. This guarantee agreement is an assessment of the main agreement. The safest credit guarantee is collateral for property in the form of land and buildings attached to the land. The convenience provided by the Mortgage Rights Law when the debtor is in default, based on article 6 in conjunction with article 20 (1) letters a and b and (2), the execution of the collateral object can be achieved in three ways, namely parate execution, executorial title, and sales underhand.

Creditors of the mortgage have special rights, the right to sell goods directly or known as parate execution. Parate execution is executed specifically in special legislation. To provide legal approval and certainty, creditors deserve to have rights to certain objects, indeed needing specifically for the benefit of bank credit. The realization of this right forms the signing of a credit guarantee agreement made by the creditor and the debtor, with the object of the collateral determined as well.

According to Yahya Harahap, a credit transaction protected by collateral or a secure transaction against a loan, the debtor gives the collateral item as protection for fulfilling payments to creditors. Debtors who are responsible for debt repayment according to the agreement, do not meet the fulfillment requirements that can be approved (imposed) through the execution of collateral goods through

auction sales by creditors or a business court, categorized as transactions supported by Collateral, guaranteed debt, creditors, and the creditor is in a safe and secure position (creditor guaranteed), then from a legal standpoint, it is agreed to settle the payment protected by collateral, so that it is categorized as safe in selling through the implementation of security through the court.[28]

In principle, there is no debt then no collateral. Article 1131 of the Civil Code states that the assets of the debtor constitute a debt guarantee for all creditors who lend to the debtor. Every creditor has the right to the sale of all debtors' collateral according to Article 1136 of the Civil Code which is based on the balance by the principle of proportionality, the amount of the individual receivables on a pari passu basis based on the principle of pro-rata equally. It means that there is no prioritization or priority from the creditors unless there is only a creditor, can take the entire proceeds of the sale, if the proceeds meet the repayment of bad loans.[29]

The Mortgage Rights Act No.04/1996 was approved regarding the implementation of parate executie conducted by creditors as lenders. Based on article 1178 of the Civil Code, regulates the implementation parate to mortgage holders/mortgage rights regarding direct implementation for mortgage holders to sell goods Guaranteed mortgage rights without a court process, carry out the sale carried out by way of transfer by the creditor without any intervention. For the rights of the mortgage holders and their implementation to be legal according to the law, several things must be fulfilled: (1) Must be written in the full clause with members supported by the mortgage rights holders to sell the items guaranteed by the mortgage rights. (2) This clause is referred to as *eigenmachtige verkoop*, that is based on the agreement, the debtor gives the creditor rights by selling the object of the mortgage right without going through a trial, if the debtor has been approved, or paid with a request for payment, the interest sought, is payable. Then, those things are poured into the deed of mortgage right legally and binding.

Execution of article 1178 jo. Article 1211 The Civil Code is carried out in public by auction officials at the request of the creditor

[28] Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata* (Jakarta: Sinar Grafika, 2009), p. 179.

[29] Yahya Harahap, *Ruang Lingkup Permasalahan*……, p. 180-181.

of mortgage rights without the intervention of the court, and there is no need for a fiat determination on the execution of the Chair of the District Court. Therefore, overriding the provisions of article 224 HIR where the intervention of the District Court is required but in this case, it is required in article 1178 of the Civil Code without accepting the District Court.

Returning to the following article based on the bias discussed with the explanation from Mortgage Act in article 6 authorizes the seller to sell his rights to the mortgage holder if the breach of contract is breached. Received as a creditor right the mortgage can sell the collateral items directly (refill van eigenmachtige verkoop) by the agreement if the debtor fails to pay the credit installments. Indeed, according to the formula as if giving flexibility to creditors to sell goods guaranteed by ipso jure (by law) UUHT, but returning to the explanation of the previous article, it is not by ipso jure, but must be following the agreement. Article 6 of the Mortgage Law still needs to be considered concerning the need not to request the execution of objects in the form of land from the head of the district court. Article 6 of the UUHT also does not specifically explain the right not to require the determination of the court to execute the rights that are guaranteed by the debtor credit for bad credit.[30]

After the issuance of the Mortgage Law No.04/1996, in general, explanation number 9 one of the characteristics of the Mortgage is strong because of the ease and certainty in the execution of the execution, as carried out by the parate institution executed by article 224 HIR, article 256 R.Bg . Therefore, certificates on mortgages are appended with the words "For the sake of justice based on the Almighty God", as the basis of executive power, which is as strong as court decisions supported by BHT/Permanent Legal Strength. Execution becomes one of the advantages in the mortgage right when the debtor does not fulfill his achievements. Execution has been regulated in a formal civil code but needs to be specifically regulated in the Mortgage Act, regarding the institution "parate executie" in article

[30] Catur Budi Dianawati dan Amin Purnawan, " Kajian Hukum Jaminan Hak Tanggungan Yang Dilelang Tanpa Proses Permohonan Lelang Eksekusi Ke Ketua Pengadilan Negeri", *Jurnal Akta,* No. 2 (2017), p. 130-131. http://jurnal.unissula.ac.id/index.php/akta/article/viewFile/1755/1315, accessed 04 April 2020.

6 and article 20 paragraph 1 letter a in Mortgage Act No.4/1996. Thus, the execution of a guarantee of rights can be carried out by creditors in bad credit the debtor in which the execution is carried out has the same legal provisions at the hearing.

The mortgage right has an executorial power when carrying out an execution that reads "Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa". The sale of collateral objects through general sales is by the Auction Office Officer. The auction is conducted according to the provisions and procedures set out in the verdu reglement, both the State Auction Office or the Private Auction Office that has a permit. The stipulation and regulation of auctions are intended to provide wider opportunities for the public, especially in trade and economies that conduct auction sales.

Article 20 of the UUHT also provides flexibility to sell goods under the guarantee rights by the agreement in the contract. The collective agreement becomes the spearhead in the implementation of the sale of guaranteed Mortgage rights, related to the process of selling the guaranteed Mortgage right and to save the execution costs that must be agreed to the debtor. However, the agreement can occur because there is a default that is intended not to be approved and outlined in the deed of sale of the mortgage rights but must be done in advance of the breach of contract, then the sale may be approved underhand.

J. Satrio stated that to sell the object guaranteed by the credit itself regulates when debtor breaking the law. Debtors are an exercise of implementation rights that can be easily categorized because now the law applies itself to the first creditor holding the mortgage rights. In other words, the right to exercise does not need to go through litigation or court and does not need to use formal legal procedures because the mechanism depends only on the terms of default as the creditor itself needs to be done when the debtor breaks promises.[31]

Legal Consequences Fulfilling the Rights of Creditors Through Object Guarantees

[31] Lutfi Walidani dan Habib Adjie, "Perlindungan Hukum Kreditur Terhadap Pelaksanaan Eksekusi Hak Tanggungan (Analisis Putusan Mahkamah Agung Republik Indonesia Nomor 2859K/PDT/2011), *RES JUDICATA*, No. 1 (2018), p. 50.

Mortgage credit, particularly if the mortgage is for the borrower's ordinary residence, affects the fundamental rights to housing. When assessing the behavior of banks that market and administer mortgage loans, case law explicitly or implicitly considers the extent to which housing rights are affected. Mortgage lending is an important operation for bank stability, not only because of its importance to their balance sheet but also because it builds long-term relationships with consumers and allows banks to offer combined products such as payment services, insurance, and another hedging. This can make mortgage credit important to bank stability.[32]

The appearance of a response from a person or collection of people's interests can be resolved properly with the law. The existence of collateral is considered very important as fulfilling the creditor's trust in providing loan credit. In the digital era as it is now, material collateral is the most widely used and collateral type of loan collateral by bank creditors, taken from the collateral of economic value items that can be cashed out when the debtor has defaulted on bad loans. The author realizes that credit cannot be separated by society's activities to restore the economy better. However, as has been explained above, that loans secured by immovable objects such as land are called guarantees of mortgages, in practice many people apply for credit loans. The activity of providing credit through banks refers to article 1 point 5 PBI No.72 / PBI / 2005 concerning the assessment of commercial bank asset quality, and approval or agreement between creditors and debtors (banks and customers) is required to pay off their debts after a certain period with interest, including overdrafts. (negative balance in a customer's current account that cannot be paid in full at the end of the day, the takeover of claims for factoring activities, and take over or purchase of credit from other parties.

Contractual relations will carry rights and obligations between the parties. In its implementation, the agreement works well, fairly and

[32] Fernando Zunzunegui, Mortgage Credit Mis-selling of Financial Products, Policy Department for Economic, Scientific and Quality of Life Policies Author: Fernando ZUNZUNEGUI Directorate-General for Internal Policies PE 618.995 - June 2018
https://www.europarl.europa.eu/RegData/etudes/STUD/2018/618995/IPOL_STU(2018)618995_EN.pdf accessed on 18 February 2021

proportionally by the legal goal of achieving justice. Kelsen revealed that justice is an irrational idea.[33] Concerning justice, John Rawls expresses the fact of justice in the primacy of a social institution and is interpreted as the truth of the system of thought.[34] Justice contains the principle of honesty (fairness) which is generally associated with obligations.[35] A contractual relationship will give birth to positive and negative ones. Obligations that are positive (positive duties) are basic obligations to do something, while negative obligations are obligations to carry out prohibitions.[36] Thus, the credit agreement has a very important position as a principal agreement, especially if the credit that has been distributed by the bank to the public is not paid back to the bank by the debtor on time according to the credit agreement, both the principal and interest. But in the end, this can cause the credit that has been given does not to perform or has problems. The bank must execute or sell the credit guarantee item to get back the creditors' debt payment.

The principle contained in the contractual relationship is the guarantee of certainty in the implementation of the contract. When the contract is not carried out, the rule of law requires payment of a fine. Paying the penalty obligation to one of the parties must be proportional to the error. The emphasis on the performance of the contract measured is the principle of balancing the overall burden of liabilities contained in contractual relationships. Accordingly, a conflict of interest between the rights and obligations of the parties does not occur. However, if there is no balance in the implementation of rights and obligations in contractual relations, there will be a violation of the interests or rights of one of the parties, if this happens then a legal event will be called a default. According to the author, in implementing an agreement or contract, it is necessary to consider events that may occur, if they occur and bring loss, who is responsible for the risk of loss. Therefore, it is necessary to confirm the risks in the agreement, if something happens to the collateral.

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[33] Yahman, *Karakteristik Wanprestasi & Tindak Pidana Penipuan* (Jakarta: Kencana, 2014), p. 78.

[34] John Rawls, *A Theory of Justice* (Cambridge:The Belnap Press of Harvard University Pres, 1971), p. 3.

[35] John Rawls, *A Theory* ……..,p. 112-113.

[36] John Rawls, *A Theory* ……., p. 112-113.

The existence of Object Guarantee is very urgent to be considered as not fulfilling the creditor's trust of the bank in granting loan funds to debtors. Object collateral is reduced in the digital era as it is now by banking institutions in providing loan funds to debtors as bad credit assistance when debtors default. The following matters: (1) The necessity of a creditor to apply a security credit system so that the debtor can pay off his credit, (2) Creditors use credit assistance to focus on the use of credit based on the suitability of the community's interests and do not conflict with legal regulations, (3) Balance between parties both the debtor and the creditor are mutually beneficial in running their business.

The urgency of objects Securing mortgage rights as stipulated in the credit agreement, cannot be separated from the guarantee itself. Credit guarantees are always stated in an additional agreement, namely the Collateral agreement. The credit agreement itself is the principal agreement, while the Collateral Agreement is the assessor. Agreement Implemented and agreed. Therefore, the loan money submitted by the debtor to the bank's creditors will not be fulfilled without credit approval, because the credit agreement does not meet the credit fulfillment.[37] In fact, the land becomes collective collateral because of the existence of a credit agreement, whether it has the status of Property, Building Use Rights, Business Use Rights, and Use Rights. This is because the land has a high economic value and the price always goes up from year to year.[38]

Security rights are collateral rights over land for the settlement of certain debts, giving priority to certain creditors over other creditors. That is, if the debtor fails to promise, then the creditor holding the mortgage has the right to sell through a public auction of land which is used as collateral according to the provisions of laws and regulations

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[37] Hermansyah, *Hukum Perbankan Nasional Indonesia* (Jakarta: Kencana, 2009), p. 71.

[38] Habib Adjiel and Brian Polly Purbawisesa, *Legal Protection For The Creditor Related To The Deed Of Unregistered Mortgage Rights,* IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 23, Issue 2, Ver. 1 (February. 2018) PP 43-46 e-ISSN: 2279-0837, p-ISSN: 2279-0845. http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2023%20Issue2/Version-1/G2302014346.pdf www.iosrjournals.org, accessed on 18 February 2021

and has the primary right to sell other creditors. The material security right gives a creditor a better position because the creditor takes precedence and makes it easier to take repayment of the bill from the sale of the debtor's property, the debtor's property held by the creditor, can put psychological pressure on the debtor to pay off his debts due to the object used as a general guarantee. Human nature tries to maintain what is valuable and has been considered or recognized as belonging to him, which is the basis for the law of guarantee. The Mortgage Rights Law does not provide an official explanation of what is meant by preferred position in article 1 (1), however, considering the position of mortgage holders in the Civil Code as preferred creditors, it can be said that the position is the same as the preferred creditor.

A mortgage is an agreement of security so that borrowers have to pay the debt. In many cases, the borrower will give up collateral security if it fails to repay the loan as agreed. Mortgage can be used as a verb, meaning "to pledge". Mortgage and "home loans" are often used interchangeably. However, the mortgage is really the agreement that makes home loans work. The bank would not lend the borrower hundreds of thousands of dollars unless the bank knew that it would be possible to claim collateral security in the event of mortgage default. A loan to finance the purchase of real estate usually requires specified payment periods and interest rates. The borrower gives the lender (mortgagee) a lien on the property as collateral for the loan.[39]

Banks must protect the interests and trust of the public considering that most of the funds used by the Bank to carry out its business activities come from public savings entrusted to the Bank. As one of the main business activities carried out by the Bank, credit or financing contains a relatively high risk that can harm the Bank's finances and affect the health and sustainability of the Bank's business. To reduce potential risks faced, Banks are required to apply prudential principles and sound credit or financing principles in carrying out credit or financing business activities since the process of extending

[39]Rais Ahmad Itoo Et.al, Effect of Loan Value and Collateral on Value of Mortgage Default, Int. J Latest Trends Fin. Eco. Sc. Vol-3 No. 4 December, 2013 https://repositorio.iscte-iul.pt/bitstream/10071/11799/1/publisher_version_884_3085_1_PB.pdf accessed on 18 February 2021

Credit or Financing, monitoring after Credit or Financing is granted, as well as settlement procedures in the event of Credit. or financing problems. It also includes the organization and management of credit or financing as well as the management of documentation and administration in the framework of running a bank credit or financing business. For this reason, written bank credit or financing policy is required as the standard reference in the implementation of the provision Credit or Bank Financing so that is expected to be able to assist the Bank in dealing with various potential risks that exist and avoid losses that may be experienced.

Lending credit will not occur, if the prospective customer (the debtor) does not fulfill the credit elements, one of which is the ability to pay. This is also regulated in POJK No.42 / POJK.03 / 2017 concerning Obligations to Prepare and Implement Bank Credit or Financing Policies for Commercial Banks, article 10 that determines the credit quality assessment factors are determined by business prospects, debtor performance, and ability to pay creditors. As explained on the previous page, juridically, the provision of credit must fulfill important elements so that credit loans can occur, namely, creditors and debtors agreeing in credit agreements, debtors and creditors, lending money, and providing credit with credit payments having time difference. This has an impact on the debtor's ability to pay creditors. The ability to pay must also meet several elements stipulated in article 11 POJK No.42 / POJK.03 / 2017 that the debtor is required to pay on time according to the credit agreement, both principal and interest loans, financial information must be clear and accurate, complete credit documentation must comply credit agreements, adjusted use of funds and mandatory credit payments come from clear sources of income.

Object collateral has a very useful function for the benefit of bank credit when the debtor has fulfilled the requirements, so that bad credit and the bank receives the problem of not receiving installments on the credit that has been disbursed. Many bad loans that cause financial problems/bad credit (NPL) have an impact on the bank's liquidity. With non-performing loans, banks, of course, overcome business risks that do not work well bad loans arising from debtors who do not pay off payments related to interest impact on banking

health.[40] In practice, non-performing loans have never been lost in bank lending activities. This risk comes from internal banks as lenders in addition to external parties such as debtors and the community both nationally and internationally. Therefore, it is difficult to eliminate bad loans in the banking world, where there are a few bad loans as possible. Bank lenders who approve the bad credit policy by applying the principle of prudence and by complying with applicable banking regulations, by not giving credit beyond the limits stipulated by Bank Indonesia as banking supervisors and applying the 7P (personality, party, purpose, prospect, payment, profitability and protection)and 5C (character, capacity, capital, condition of the economy, collateral) as explained above.

According to Gerald G. Thain provides a resolution of collateral goods that have a sale value from the debtor agreed in the agreement, to guarantee that they can be paid. There will be no contract Without collateral, it will only occur on a contract for the costs and obligations to fulfill it.[41] Guaranteed goods approved by Thain can be fixed and moving objects, the most important thing is that these objects have economic value. Thain also provides conditions that must exist in the agreement. There is no guarantee, debtors, creditors, assets that are used as collateral, and agreements that guarantee creditors will supply interests.[42]

Thain also gives an agreement on a guarantee agreement/secure transaction: as an arrangement in which a party, whether an individual or business organization provides a loan, or gives credit, to another party in the hope that the loan will be repaid with the appropriate interest and that if the provisions-the terms of the loan transaction are not fulfilled, the party being secured, the party having the obligation

[40] Muhammad Abdulkadir dan Muniarti Rilda, *Lembaga Keuangan dan Pembiayaan* (Bandung : Citra Aditya Bakti, 2000), p. 97.

[41] Anton Suyatno, *Kepastian Hukum dalam Penyelesaian Kredit Macet Melalui Eksekusi Jaminan Hak Tanggungan Tanpa Proses Gugatan Pengadilan* (Jakarta: Kencana, 2016), p. 119.

[42] Ivida Dewi Amrih Suci dan Herowati Poesoko*, Hak Kreditur Separatis dalam Mengeksekusi Benda Jaminan Debitur Pailit* (Yogyakarta: LaksBang Pressindo, 2009), p. 20-21.

will be able to declare the rights in the collateral.[43] Another part of Thain also said that:"Guaranteed transactions are problems where there are loans where the creditor/guaranteed party is given the right in the collateral that secures the loan and those rights can be enforced if the loan is not repaid by the time. If the loan is repaid by the term, then the ability of the guaranteed party to claim an interest in the collateral will be extinguished".

Bad credit is one of the bank's underperformance, therefore there are several solutions, namely: taking legal action quickly, precisely, and accurately so that the financial condition of the financial institution is not disturbed, if settlement through restructuring can no longer be carried out, reassessment so that the problems that occur can be taken so that steps can be taken to secure assets and debtor capital, carry out immediate rescue and settlement, if the credit is problematic by means of credit restructuring by extending the credit period or by cutting the principal of the loan or it could be fee-based income (bank services) that have been implemented since the beginning so as to make it easier for creditors to pay off their loans or add working capital facilities in accordance with the repayment capacity of the debtor or with temporary capital conversion/participation, and take over of collateral objects by financial institutions because the collateral has been become the property of the creditor which is used to pay off the debtor's loan with conditions determined by the prevailing laws and regulations.

The execution of collateral objects is not as easy as the provisions governing it. Giving guarantees that are intended to give the bank the right and power to get a repayment with collateral, when the debtor is unable to pay his debt at the time specified in the agreement does not function as it should. The existence of this special guarantee institution is very necessary to provide certainty and legal protection for providers and /creditors (creditors) and loan recipients or debtors. The delay in executing this harms one of the banking functions as a collector and channel of funds for the public, one of which is to provide credit.

The creditor has the right to sell the collateral items approved by the debtor. If the debtor cannot fulfill the conditions in the credit

[43] Thain, Gerald Dan, *A Basic Outline of the Law of Secured Transaction*, Artikel dalam Seri Dasar Hukum Ekonomi 4 : Hukum Jaminan Indonesia (Jakarta: Proyek Elips, 1998), p. 153.

agreement, the creditor's rights will remain guaranteed, the right to be controlled and to take the proceeds from the sale of collateral as the fulfillment of the debtor's payment. With the approval of objects that give money, provide certainty and legal protection for creditors who have the right and authority to obtain repayments with collateral related to debtors in default, so that they do not repay, repay, debt as agreed. Then encourage the debtor to be successful which is financed by the bank's creditors, it is approved that the ownership rights made by the collateral will be lost, have the seriousness to fulfill the conditions added in the credit agreement. Article 6 of Law No. 4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land (Mortgage Rights Law), if the debtor is in default, the first Mortgage holder has the right to sell the object of the Mortgage on his power through a public auction and take the payment of the debt of the sales proceeds. However, it should be remembered that based on Article 13 paragraph (1) and paragraph (2) of the Mortgage Rights Law, the Mortgage must be registered at the Land Office no later than 7 (seven) working days after the signing of the Deed of Granting Mortgage Rights. The Official for Making Land Deeds is obliged to send the relevant APHT and other necessary documents to the Land Office. As evidence of Mortgage Rights, the Land Office issues Mortgage Certificate (Article 14 paragraph (1) of the Mortgage Law). This Mortgage Certificate has the same executorial power as a court decision that has obtained permanent legal force (Article 14 paragraph (3) of the Mortgage Law).

The bank is an important institution in every financial system in any country. The need for funds by people or institutions is one element of providing credit by providing excellent services and providing legal protection for the parties in the transaction so that no one is harmed in the transaction.[44] The state provides legal protection by stipulating legal regulation relating to credit so that banks as creditors have legal certainty in the process of executing credit collateral objects for optimal repayment. Mortgage Act states that creditors have full rights in executing debtor's collateral goods when bad loans do not have to go through litigation. The bank is an important institution in every financial system in any country. The

[44] Hermansyah, *Hukum Perbankan Nasional Indonesia*, (Jakarta:Kencana, 2009), p. 7.

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With the issuance of a mortgage right certificate, the creditor prefers the precedence right to pay off the results of the sale of the collateral. The creditor position is preferably to have a role in the execution of the Guarantee object by the agreement of the Guarantee agreement. Mortgage rights give special position, priority and prior rights for holders of mortgage rights in taking repayment. Applying to execution is the initial step that is a prerequisite for approval. Without the approval of the submission, the court does not have the consent to carry out the execution. Filing a lawsuit to the court, is an initiation of the parties to the litigation, while the judge is just waiting for the case to come to the court (iudex ne procedat ex officio).[46] However, the process of filing a lawsuit through litigation is the process of resolving a case which means, the process of filing a long time in its settlement. It will not be effective and efficient, also consumes expensive time and cost (a waste of time and very expensive). Thus, trying to go through litigation is not the right solution to resolve banking bad loans.[47]

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[45] Hermansyah, *Hukum Perbankan Nasional Indonesia*, (Jakarta:Kencana, 2009), p. 7.

[46] Bambang Sutiyoso dan Sri Hastusi Puspitasari, *Aspek – Aspek Perkembangan Kekuasaan Kehakiman di Indonesia* (Yogyakarta : UII Press, 2005), p. 67.

[47] M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata,* (Jakarta : Sinar Grafika, 2005), p. 233-238.

[48] Hermansyah, *Hukum Perbankan Nasional Indonesia*, (Jakarta:Kencana, 2009), p. 7.

by stipulating legal regulation relating to credit so that banks as creditors have legal certainty in the process of executing credit collateral objects for optimal repayment. Mortgage Act states that creditors have full rights in executing debtor's collateral goods when bad loans do not have to go through litigation.

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In banking practice, in principle, the value of the assets used as collateral must be greater than the amount of debt owed, which is known banking practice, in principle, the value of assets used as collateral must be greater than the amount of debt (Loan to Value Ratio). For Property Loans, this ratio is regulated in PBI No.18 / 16 /

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[49] Bambang Sutiyoso dan Sri Hastusi Puspitasari, *Aspek – Aspek Perkembangan Kekuasaan Kehakiman di Indonesia* (Yogyakarta : UII Press, 2005), p. 67.

[50] M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata,* (Jakarta : Sinar Grafika, 2005), p. 233-238.

PBI / 2016 concerning the Loan to Value Ratio for Property Loans, the Ratio of Financing to the Value of Property Financing, and Advances for Credit or Motor Vehicle Financing. Regarding guarantee loans in the form of Mortgage Rights, generally, the minimum value is 125% of the loan value. The value of this mortgage must be registered on the Certificate of Granting Mortgage. At the time of the auction, PMK No. 27 / PMK.06 / 2016 concerning the Auction Implementation Guidelines requires a Limit Value in every auction. The limit value is the minimum price of goods to be auctioned and set by the Seller. The determination of the Limit Value is the responsibility of the Seller which is determined based on an assessment by the Appraiser or an appraisal by the Appraiser. The appraiser is a party that makes an independent assessment based on its competence, while an appraiser is an internal party of the Seller agency who makes an assessment based on a method that can be held accountable by the Seller, including curators for art objects and antiques or ancient objects.

In Article 45 letter b PMK 27/2016 it is stipulated that only Article 6 of Law Number 4 the Year 1996 regarding Mortgage Rights and Objects related to Land ("Mortgage Law") (Execution Auction of mortgage debtor's default) with a Limit Value greater than Rp 1 billion which must be determined by an independent appraiser, while the auction limit value below this value can be determined by the bank's internal appraiser. The Loan to Value Ratio. For Property Loans, this ratio is regulated in Bank Indonesia Regulation Number 18/16/PBI/ 2016 concerning the Loan to Value Ratio for Property Loans, the Financing to Value Ratio for Property Financing, and Advances for Motor Vehicle Loans or Financing. For loans with guarantees in the form of Mortgage Rights in general, the minimum value of the Mortgage is 125% of the loan value. This Mortgage Value should be listed on the Certificate of Granting Mortgage Rights.

If the appraisal is carried out by an Appraiser, according to the Indonesian Appraisal Standard, the basis for the valuation used in the valuation for auction purposes is Market Value and Liquidation Value. The Seller can determine Market Value as the first priority (upper limit) and Liquidation Value as the last alternative (lower limit) to set the Limit Value. Market Value is defined as an estimate of the amount of money that can be obtained from the exchange of an asset or liability

at the valuation date, between an interested buyer and an interested seller, in a bond-free transaction, in which the marketing is appropriate, in which both parties act. on the basis of his understanding, prudence, and without coercion.

Lending made by banks as financial institutions must be able to provide legal protection for creditors and recipients to obtain legal certainty for all interested parties. Legal certainty and protection for creditors can be maintained when the creditor can carry out the process of executing the guarantee effectively and efficiently so that the creditor can receive optimal credit repayment and/or payment. This execution procedure is that if the debtor is in default, the creditor can directly go to the auction office to request an auction for the collateral object, and then take the payment of the debt from the auction income In this case, creditors do not need to ask for fiat execution from the KPN, let alone take the litigation path.[51]

Conclusion

A Credit agreement must be considered by the bank as creditor and by the customer as the debtor, considering that credit agreements have a very important function in granting, managing, and managing the credit itself. The existence of a guarantee in a bank credit agreement is very important, namely as a means of legal protection for bank security in overcoming risks, so that there is a certainty that the debtor customer will pay off his loan. This is based on the explanation of Article 8 of Law No.10/1998, which requires caution by banks as creditors for loans to debtors based on the belief in the debtor's ability to pay off his obligations as agreed in the agreement. The land is material security which is most in demand by banking institutions as security of mortgage rights. The use of land as a trusted and consumptive credit is based on the consideration of the safest land and has a relatively high sale value. The urgency of objects Securing mortgage rights as stipulated in the credit agreement, cannot be separated from the guarantee itself. Credit guarantees are always stated in an additional agreement, namely the Collateral agreement. The

[51] H.R.M. Anton Suyatno, *Kepastian Hukum dalam Penyelesaian Kredit Macet Melalui Eksekusi Jaminan Hak Tanggungan Tanpa Proses Gugatan Pengadilan,* (Jakarta, Kencana, 2016), p.225

credit agreement itself is the principal agreement, while the Collateral Agreement is the assessor. Agreement Implemented and agreed. The bank is an important institution in every financial system in any country. The need for funds by people or institutions is one element of providing credit by providing excellent services and providing legal protection for the parties in the transaction so that no one is harmed in the transaction. The state provides legal protection by stipulating legal regulation relating to credit so that banks as creditors have legal certainty in the process of executing credit collateral objects for optimal repayment. Mortgage Law states that creditors have full rights in executing debtor's collateral goods when bad loans do not have to go through litigation.

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