



## Objectives As Guarantee Of Liability In Problem Credit Agreements (Study At PT. Bank Sumut Utama Branch)

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### ARTICLE INFO

#### **Keywords:**

Guarantee, Mortgage, Credit

#### **Article history:**

Received Feb 01, 2021;

Revised Feb 29, 2021;

Accepted Mar 30, 2021;

Online Apr 30, 2021.

### ABSTRACT

A credit agreement is an agreement between a bank as a creditor and a customer as a debtor to lend a certain amount of funds to the debtor. However, it often happens that when the credit has been given to the debtor, it turns out that the debtor cannot return the amount of money, goods or services that were promised to be returned at a predetermined time and becomes a non-performing loan so that the bank cannot withdraw the funds that have been given. Here the bank makes a rule, if someone wants to borrow credit then there must be a guarantee in the form of Mortgage which is regulated in the Mortgage Law Number 4 of 1996. Dependents can be auctioned and executed. The problem that will be discussed in writing this thesis is how is the position of the object as collateral for Mortgage in granting credit at PT. Bank Sumut Main Branch, how is the management of non-performing loans with mortgage guarantees at PT. Bank Sumut Main Branch and whether the collateral can be executed directly in an effort to resolve non-performing loans at PT. Bank Sumut Main Branch. In writing this thesis, the method used is library research, namely: research is carried out by obtaining material from the library in the form of books, scholarly works of scholars, laws and regulations, magazines, and others that have related to the title of this thesis. The research was also carried out by means of field research (Field Research), namely: data collection, consultation with Mr. Muhsin Adlin, SH as Head of Credit Administration at PT. Bank Sumut Caban Utama, where this consultation aims to find out various matters relating to Materials as Guarantees for Mortgage in Problematic Credit Agreements at PT. Bank Sumut Main Branch.

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### 1. Introduction

In the context of realizing a just and prosperous society based on Pancasila and the 1945 Constitution in a sustainable manner and promoting development based on kinship, it is necessary to maintain its sustainability properly. In order to achieve this goal, the implementation of development in the economic sector must pay more attention to the harmony, harmony and balance of the elements of equitable development, economic growth, and national stability.

National development is also one of the efforts to realize just and prosperous people's welfare. In order to maintain the balance of development, the actors include the government and the community as individuals and legal entities. With the increase in development activities, the need for available funds also increases, most of which are obtained through credit activities. To advance the business world, the government has issued various credit policies and various

facilities in bank credit provided to the public. Banks in their development are intended as a type of financial institution that performs financial services that are quite diverse, such as lending, providing loans, circulating currency, controlling currency, acting as a repository for valuable objects, financing company businesses.

In the era of globalization, banks have also become part of the world's financial and payment systems. One of the pillars of Indonesia's economic development lies in the banking industry. In the Indonesian legal system, forms of banking practice must have fundamentals based on the principles contained in the ideology of the Indonesian state, namely Pancasila and the Goals of the Indonesian State in the 1945 Constitution.

A facility that has a strategic role in harmonizing and balancing each element of the development trilogy is the banking aspect. This strategic role is mainly due to the function of the bank as a vehicle that can collect and distribute public funds effectively and efficiently, which is based on economic democracy to support the implementation of national development in order to increase equitable distribution of development and its results, economic growth and national stability towards an increase in the standard of living. the lives of many people.

Providing credit is one type of bank business, namely by channeling funds collected from the community and channeling them back to the community. In developing countries, granting credit is a one of the most important activities of the bank. So that a healthy banking industry will be able to play a maximum role in its development. A healthy industry will be reflected in a healthy bank as its basic element. A healthy bank means a bank that grows and develops naturally, in the sense that it develops according to its capabilities so that it can meet the demands of the people who need banking services. By providing credit, it is hoped that the community will be able to meet their daily needs regarding productive needs, for example to improve and expand their business activities.

A credit agreement is an agreement between a bank as a creditor and a customer as a debtor to provide a loan of a certain amount of funds to the debtor. However, it often happens that when the credit has been given to the debtor, it turns out that the debtor cannot return the amount of money, goods or services that were promised to be returned at a predetermined time and becomes a non-performing loan so that the bank cannot withdraw the funds that have been given.

One of the means in seeking prevention or which is a preventive measure in a high-risk credit agreement is the existence of a guarantee or collateral, either a material guarantee or an individual guarantee given by the debtor to the creditor, which will become a guarantee for the creditor. the. One of the guarantees that are often used in banking practice today is mortgage rights which are regulated in the provisions of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land.

Mortgage in question is one of the guarantee institutions that are considered strong and can provide legal protection. Mortgage serves as one of the bank credit guarantees to avoid the occurrence of non-performing loans. The issuance of the Mortgage Law is a legal instrument that is expected to accommodate and at the same time secure credit activities in an effort to meet the need for available funds to support national activities.

## **2. Method**

To process the data obtained from literature searches, document studies, and field research, the results of this study use qualitative analysis. This qualitative analysis is basically an explanation of the theories put forward, so that from these theories several things can be drawn that can be concluded and discussed in this thesis.

The research method used in this research consists of:

a. Nature/Type of Research

The nature / type of research used in completing this thesis is descriptive in nature, the analysis leads to normative juridical research, namely a research conducted or aimed only at written regulations or other legal materials.

b. Data source

The source of this research data was taken based on secondary data. Secondary data obtained through: Primary legal materials, namely binding legal materials, such as the Civil Code, the Commercial Code, and Law Number 7 of 1992 Jo. Law - Law Number 10 of 1998 concerning banking, Secondary legal materials, which provide an explanation of primary legal materials, such as: document studies by collecting legal materials by studying files such as books, jurisprudence, scientific books, seminar materials, laws, magazines, internet, etc. or journals that review the implementation of Mortgage Rights and others related to this thesis as reference material in the discussion of this thesis. This study provides an equal portion of library research and field research. For this reason, the library research method is used, namely by conducting research on the data obtained from jurisprudence, scientific books, which have been mentioned previously.

### **3. Analysis And Results**

#### **3.1 Objectives As Guarantee Of Liability In Problem Credit Agreements In Pt. Sumut Bank Main Branch**

##### **a. Brief History of the Establishment of PT. Bank of North Sumatra**

PT. Bank Sumut was previously known as the Regional Development Bank of North Sumatra which was established on November 4, 1961 with Rusli's Notary Deed No.22 in the form of a Limited Liability Company. Based on Law No. 13 of 1962 concerning Basic Provisions for Regional Development Banks, the form of business entity was changed to Regional Owned Enterprises (BUMD) in accordance with North Sumatra Level I Regional Regulation number 5 of 1965, with an authorized capital of Rp. 100,000,000,- and the shares are owned by the Level I Regional Government of North Sumatra and the Level II Regional Government of North Sumatra.

On April 16, 1999, based on Regional Regulation Level I North Sumatra No. 2 of 1999, the form of the entity was changed back to a Limited Liability Company under the name Bank Sumut. This change is stated in the Deed of Establishment of Alina Hanum Nasution, SH and has been approved by the Minister of Justice of the Republic of Indonesia No.C-8224 HT.01.01 of 1999, and announced in the State Gazette of the Republic of Indonesia No.54 dated July 6, 1999. Authorized capital at the time of it is set at Rp. 400,000,000,000,000,-. And due to consideration of the need for bank growth projections, on December 15, 1999 through Deed No.31 the authorized capital was increased to Rp.500,000,000,-. 21 dated May 9, 2003 regarding the aims and objectives as well as business activities, approval from the competent institution regarding the appointment of the Board of Directors, duties and authorities of the Board of Directors, appointment of the President Commissioner, duties and authorities of the Commissioner, Sharia Supervisory Board, financial year as well as provisions for the implementation of the GMS for mergers, consolidations and bank takeovers. This deed received approval from the Minister of Justice and Human Rights of the Republic of Indonesia, Directorate General of General Legal Administration No.C-28802 HT.01.04 of 2003 dated December 10, 2003 and was announced in the State Gazette of the Republic of Indonesia No.40 dated May 18, 2004, supplementary No.4656. In accordance with the recapitalization agreement between the Indonesian government,

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**b. How is the Position of Mortgage as a Material Collateral in the Provision of Credit at PT. Bank Sumut Main Branch.**

Mortgage rights cannot stand alone without being supported by an agreement (credit agreement) between the debtor and creditor. In the agreement, the legal relationship between creditors and debtors is re-arranged, both regarding the amount of credit, as well as guarantees which will later be tied with Mortgage Rights. Because the Mortgage cannot be separated from the credit agreement, that is why the Mortgage is said to be an *accessoir* (following) the main agreement.

There are several characteristics and characteristics of Mortgage in accordance with the Mortgage Law no. 4 of 1996:

- 1) *Droit de prefer*, means giving priority or precedence to the holder (Article 1 point 1 and Article 20 paragraph 1). In this case, the holder of the Mortgage as a creditor has the right to take precedence over other creditors to obtain payment of his/her receivables from the sale (disbursement) of the object of the credit guarantee that is bound by the Mortgage. The position of creditors who have the right to take precedence over other creditors will be very beneficial to the parties concerned in obtaining credit repayment of money loans given to debtors who break their promises (Default).
- 2) *Droit de suite*, means always follow the guarantee of debt in the hands of whoever the object is (Article 7). In the *pasa*; 7 of the Mortgage Law, it is stated that the Mortgage will continue to follow the object in the hands of whoever the object is. This characteristic is one of the special guarantees for the interest of the mortgage holder. Even though the object of the Mortgage has changed hands and becomes the property of another party, the creditor can still exercise his rights through execution, if the debtor defaults.
- 3) Meets the principles of speciality and publicity so that it can bind third parties and provide legal certainty to interested parties. Based on this, the validity of the encumbrance of mortgages is required to clearly state which receivables and how much is guaranteed and which objects are used as collateral (specialty requirements), and must be registered at the Land Office so that they are open to the public (publicity requirements).
- 4) Easy and sure execution of the implementation. One of the characteristics of a strong Mortgage is that it is easy and certain in its execution if the debtor breaks his promise. Although in general the provisions regarding execution have been regulated in the applicable civil procedural law, it is deemed necessary to include specifically regarding the execution of Mortgage in this law, which regulates the *parate executive* institution.

Mortgage rights cannot be divided unless agreed in the Deed of Granting Mortgage Rights (APHT), as stipulated in Article 2 of the Mortgage Law. With its indivisible nature, the Mortgage will burden the whole object of the Mortgage. This means that if the debt (credit) which is guaranteed to be repaid with the Mortgage is only partially paid off, the Mortgage still burdens the entire object of the Mortgage.

Another characteristic of Mortgage is that Mortgage is an *accecoir* of the main agreement, meaning that the Mortgage agreement is not a stand-alone agreement, but its existence is due to another agreement called the main agreement. The main agreement for the mortgage agreement is the agreement that gives rise to the guaranteed debt.

Credit given by creditors contains risks, so in every loan provision, banks are not allowed to provide credit without a written agreement. That is why a credit guarantee is needed accompanied by confidence in the ability of the debtor to pay off his debt. This is in accordance with the provisions of Article 8 of the Banking Law No. 7 of 1992 which states that in providing credit, banks are required to have confidence in the ability and ability of the debtor to pay off their debts as agreed.

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**c. How is the Management of Non-performing Loans with Mortgage Rights at PT. Bank Sumut Main Branch**

- 1) Definition of Bad Credit. In the deregulation policy package in May 1993 (PAKMEI 1993), in Indonesia there were two categories of bank loans, namely current loans and non-performing loans. Where non-performing loans are classified into three, namely substandard credit, doubtful credit, and bad credit. Bad credit is what every bank is very worried about, because it will disrupt the bank's financial condition, and can even result in the cessation of bank business activities. Bad loans or Problem Loans are loans that have difficulty repaying due to intentional factors or elements or due to conditions beyond the ability of the debtor. A credit is classified as bad credit if:
- 2) Does not meet the criteria for current credit, substandard credit and doubtful credit. Can meet questionable credit criteria, but after a period of 21 months since the credit classification period is doubtful, no loan repayment has occurred, or credit rescue effort.
- 3) The completion of the repayment of the credit in question has been submitted to the state court or the State Receivables Agency (BUPN), or a request for compensation has been recommended to the credit insurance company.
- 4) Since the financial crisis that continued with the economic crisis that hit Indonesia since 1997, the settlement of bad loans for banks in Indonesia has been handled by the National Bank Restructuring Agency (IBRA).

The emergence of non-performing loans, including bad loans, basically does not happen suddenly, but through a process. The occurrence of bad credit can be caused by either the creditor (bank) or the debtor. The factors that cause the creditor's fault are:

Bank negligence in complying with the credit lending regulations that have been outlined

- 1) It's too easy to give credit, because there are no clear benchmarks on the eligibility standards of the credit request submitted
- 2) Concentration of credit funds in a group of debtors or high-risk business sectors
- 3) Insufficient number of experienced credit executives and staff
- 4) Weak leadership guidance and supervision to executives and credit staff.
- 5) Amount of lending that exceeds the bank's capacity
- 6) Weak ability of banks to detect the possibility of non-performing loans, including detecting the direction of cash flow development of old debtors.

**d. Can the collateral be executed directly in an effort to resolve non-performing loans at PT. Bank Sumut Main Branch.**

Based on article 20 paragraph 1 of the Mortgage Law, if the debtor defaults, it is based on: the right of the first Mortgage holder to sell the object of the Mortgage as referred to in Article 6 of the Mortgage Law; or the executorial title contained in the Mortgage Certificate which contains instructions "for the sake of justice BASED ON THE ALMIGHTY GOD", then the object of the Rights Dependents are sold through public auctions according to the procedures specified in the laws and regulations.

In bank practice, the execution of Mortgage Rights is carried out by the KPKNL (Office of the State Property and Auction Service) and is very effective in resolving non-performing loans on the basis of:

- 1) Collateral objects are published through mass media such as newspapers and magazines.
- 2) The limit price set is approximately the same as the market price.
- 3) There is legal certainty for the object purchased by the auction buyer (the minutes of the auction).

The risk of the emergence of a lawsuit is something that can happen in an auction, even though it has been previously regulated in a credit agreement, if the debtor cannot pay or return the loan amount to the creditor, the Mortgage will be executed. Here the debtor who is said to be

wrong for not returning the loan amount will continue to file a lawsuit against the creditor, although in the end it is still the debtor who is at fault in court.

#### **4. Conclusion**

Collateral objects with the right of position of objects as collateral for Mortgage in granting credit at PT. Bank Sumut Main Branch has a position that prioritizes certain creditors over other creditors. The point is that if the creditor defaults, the creditor holding the mortgage can sell the collateral through a public auction to pay off the debtor's debt. This priority position certainly does not affect the repayment of debtors' debts to other creditors. And for debtors who want to borrow a sum of money with Mortgage guarantees, the guarantee must be certified with new ownership rights can be directly implemented Mortgage between creditor and debtor.

Management of non-performing loans with mortgage guarantees at PT. Bank Sumut Main Branch in its implementation has its own way, both with non-performing loans and by imposing Mortgage Rights, which is carried out in two ways, namely Non Litigation: management is carried out more through a persuasive approach, carried out with warnings by sending letters to the debtor and family efforts. The second way is by litigation, namely: carried out by means of the legal realm, subpoenaing the debtor, executing collateral binding and conducting civil lawsuits. The management of non-performing loans is carried out by the Credit Rescue Division in the field of report administration located at the head office.

Dependents can be executed directly in an effort to resolve non-performing loans at PT. Bank Sumut Main Branch and carried out by the KPKNL (Office of State Assets and Auction Services) and is very effective in resolving non-performing loans on the basis: the object of collateral is published through mass media such as newspapers and magazines, the limit price is set approximately the same as the market price, and the existence of legal certainty of the object purchased by the auction buyer (the minutes of the auction).

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