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Auction of Banking Credit Guarantees for Debtors Who Default on Credit Agreements

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Abstract: This research discusses the problem of debtor default on credit agreements which results in an auction process for debtor credit guarantees by the bank to pay off (return) the money loan along with fines and other costs which should be the debtor's obligations based on the credit agreement. In this research, the object of research is the DKI Jakarta High Court Decision Number 454/PDT//2018/PT.DKI. In this decision, the debtor who entered into a credit agreement with the bank and based on the descriptions as outlined in the lawsuit letter has fulfilled the elements of default. The element of default that has been fulfilled is the debtor's inability to make credit payments to the bank as agreed in the credit agreement. In connection with this default, the bank has issued a summons (reprimand) 3 (three) times in a row. Because the debtor did not heed the summons (warning) letter, the bank finally took the initiative to hold an auction for part of the credit guarantee from the debtor. However, because the debtor felt injustice regarding the credit guarantee auction, the debtor filed a lawsuit against the law against the bank through the Central Jakarta District Court. This research aims to examine defaults made by debtors in credit agreements which result in banks auctioning debtor collateral. It is hoped that the results of this research will be useful for stakeholders in credit agreements to provide an overview of the legal consequences of credit guarantees if a default occurs.

Keywords: Auction, Guarantee, Banking, Default, Credit Agreement.

INTRODUCTION

In society, especially the business world, requires funds to carry out its business activities. Banks as businesses that carry out banking activities including credit or money loans provide credit services to the public, both individuals and legal entities. A banking credit agreement is an agreement made between a bank and a debtor (customer). A credit agreement is always followed by the provision of collateral to guarantee the credit or loan of a certain amount of money given by the bank to the debtor. The credit guarantee will be under the authority of the bank as the collateral holder for the duration of the credit agreement. If during the credit agreement the debtor is in default (negligent) in carrying out his obligations under the credit agreement, the bank can auction the credit guarantee to pay off the debtor's credit.

The aim of this research focuses on debtor default in banking credit agreements and the legal consequences for credit guarantees.

The object of research in the DKI Jakarta High Court Decision Number 454/PDT//2018/PT.DKI examines legal issues between creditors and debtors regarding credit agreements. In the credit agreement, there is a default by the debtor in carrying out the contents of the agreement. Every action must give rise to legal consequences. Likewise, if the debtor fails to carry out his obligations as agreed in the credit agreement. The creditor has the right to demand liability from the debtor, in this case, the credit guarantee which is under the creditor's control can be executed by holding a sale in public or what is usually called an auction to pay off the debtor's credit under the applicable procedures regarding auctions.

Supporting theories that support this research can be taken from contract theories, including:

a. Covenant Theory

According to Salim HS, an agreement or contract is conceptualized as:
"The legal relationship between one legal subject and another legal subject in the field of property, where one legal subject has the right to performance and the other legal subject is also obliged to carry out its performance per what has been agreed upon."
The listed elements of the latter definition are as follows:

b. The existence of a legal relationship

A legal relationship is a relationship that gives rise to legal consequences. Legal consequences are the emergence of rights and obligations.
c. There is a legal subject
Legal subject, namely supporting rights and obligations.
d. There are achievements
Achievement consists of doing something, doing something, and not doing something.
e. In the field of assets. (Salim HS, 2017).

c. Responsibility Theory

According to Peter Mahmud Marzuki, responsibility is a liability that refers to the position of a person or legal entity that is deemed to have to pay some form of compensation or compensation after a legal event or legal action occurs. For example, he must pay compensation to another person or legal entity because he has committed an unlawful act (onrechtmatige daad) that caused harm to the other person or legal entity. The term liability is within the scope of private law (Estomihi, 2020).

d. Default Theory

Default is not fulfilling or failing to carry out obligations as specified in the agreement made between the creditor and the debtor. A debtor is only said to be in default if he has been given a summons by a creditor or bailiff. This subpoena has been served at least three times by the creditor or bailiff. If the summons is not heeded, the creditor has the right to take the matter to court. And the court will decide whether the debtor is in default or not (Salim HS, 2013).

METHOD

Legal research methods are a way of conducting legal research regularly and systematically.Types and Types of Research

a. The research entitled auction of Banking Credit Guarantees for debtors who are in default of Credit Agreements uses a normative juridical research type, with a statutory approach, a conceptual approach, and a case approach.

b. Nature of Research The nature of the research in this journal is analytical descriptive, analytical descriptive research is research that describes, examines, explains and analyzes legal regulations. The materials that have been collected will be analyzed according to the problems collected in the research background of this journal, therefore this is done by reviewing the literature that has been collected.

c. Research Data Source The data sources used in this research are secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials, namely:

Primary Legal Materials

Sources of primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal material consists of laws and regulations which are ordered based on hierarchy, such as laws and regulations relating to banking in the Indonesian legal system.

Secondary Legal Materials

Sources of secondary legal materials are legal materials consisting of publications about law, textbooks written by legal experts, legal journals, expert opinions, court decisions.

Tertiary Legal Materials

Tertiary legal materials are legal materials that provide instructions or explanations for primary legal materials and secondary legal materials in the form of general dictionaries, language dictionaries, newspapers, articles, the internet.

RESULT AND DISCUSSION

Credit Agreement

According to Article 1313 of the Civil Code, an agreement is: "An act by which one or more people bind themselves to one or more people. According to civil law scholars, the formulation of the agreement in Article 1313 of the Civil Code has many weaknesses, namely: First, it only concerns one side, this can be seen from the formulation "one or more people bind themselves to one or more other people". The word "binding" is only one-sided, so it needs to be formulated "both parties bind themselves to each other" so that there is a consensus between the parties, so that it includes a reciprocal agreement. Second, the word action "includes" also without consensus. In the definition of "action" includes the act of carrying out tasks without authority or unlawful actions that do not contain consensus. The word "approval" should be used (Ratih Agustin Wulandari, 2021).

The conditions for the validity of a contract, in Article 1320 of the Civil Code determine the conditions for the validity of an agreement, namely:

a. They agreed to bind themselves.
b. Ability to make agreements.
c. A certain thing.
d. A permissible cause.

The first two conditions are called subjective conditions, because they concern the subject of the agreement, while the last two conditions are called objective conditions, because

they concern the object of the agreement. If the subjective conditions are not fulfilled, the agreement is threatened with invalidation, but if the objective conditions are not fulfilled then the agreement is threatened with being null and void (Yahman, 2016).

A credit agreement is an agreement that is similar to a money borrowing agreement according to Article 1754 of the Civil Code which reads: lending and borrowing is an agreement in which one party gives another party a certain amount of goods that are used up, on condition that the latter party will return the same amount of the same type and quality (Dianne Eka Rusmawati, 2012). Agreements can be made privately (commonly called private deeds) and can also be made by notarial deeds (commonly called authentic deeds). In private deeds where there is no interference from authorized public officials, but only limited to the parties, this is different from notarial deeds where there is involvement of a third party, namely authorized public officials. The principle in making an agreement or contract by both parties is to respect and respect each other's rights and obligations. This respect is the application of the principle of justice, in this case distributive justice as taught by Aristotle, in relation to contractual obligations, is that the distribution of the burden of obligations is based on the principle of fairness. (Yahman, 2016).

Based on the provisions of Article 8 paragraph (1) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, before approving the application submitted by a prospective debtor to obtain a credit facility, the bank will carry out a juridical and economic analysis of the prospective debtor to determine the ability and willingness of the prospective debtor to repay the credit facilities they will enjoy in accordance with what has been agreed.

Guarantees in Credit Agreements

Guarantee is a translation from Dutch, namely zekerbeid or cautie. Zekerbeid or cautie generally covers the ways in which creditors fully guarantee their claims, in addition to the debtor's general responsibility for their goods (Nunik Yuli Setyowati, 2016). Credit collateral is anything that has easy cashable value that is bound by a promise as collateral for payment of the debtor's debt based on the credit agreement made by the creditor and debtor. The credit provided is always secured with credit guarantees with the aim of avoiding the risk of debtors not paying their debts. If for some reason the debtor is unable to pay off the debt, the creditor can freely sell and cover the debt from the proceeds from the sale of the collateral in question. So the function of collateral is to give the creditor the right and power to obtain repayment from the proceeds from the sale of the collateral if the debtor does not pay off his debt at the specified time. The risk that generally occurs is the risk of failure or delays in repayment. This situation has a big impact on the health of the bank, because the money lent to debtors originates or is sourced from the public and is deposited with the bank, so this risk really affects the public's trust in the bank as well as the security of the public's funds (Ratih Agustin Wulandari, 2021). In principle, there is no credit that does not contain collateral, because in accordance with Article 1131 of the Civil Code that every object belonging to the debtor, whether movable or new, will in the future be borne by his debts (Nunik Yuli Setyowati, 2016).

Default

In credit agreements, the creditor is often in a disadvantaged position when the debtor defaults (Nunik Yuli Setyowati, 2016). Default comes from Dutch which means poor performance. According to the Law Dictionary, breach of contract means negligence, neglect, breach of promise, failure to fulfill one's obligations in an agreement. What is meant by default is a situation where, due to negligence or fault, the debtor is unable to fulfill the performance

as specified in the agreement and is not under coercive circumstances. In Article 1234 of the Civil Code, it is stated that, "Compensation for costs, losses and interest due to non-fulfillment of an obligation begins to be mandatory, if the debtor, even though he has been declared negligent, still fails to fulfill the obligation, or if something that must be given or done can only be given or done within a time beyond the specified time". Defaults are divided into two categories, namely total defaults and partial defaults. Total default if the debtor does not do what they are expected to do or if they do something that according to precedent is not allowed. On the other hand, partial default, if the debtor takes the requested action but not exactly as requested, or if the debtor takes the requested action but is delayed. When describing someone in default, it is said that they are there because they are in a state of liability, that is, they have to carry out tasks ordered by the borrower of funds. As stated in Article 1238 of the Civil Code, the securities or bills in question have a very strong connection with the implementation time factor (Nur Aziza Marlin Iwanti, 2022).

If a debtor has been expressly agreed to but still falls short of the required performance, then it can be said that the debtor is in default. For defaults that have been committed, sanctions can be seen as explained in Article 1243 of the Civil Code. The initial form of sanctions is compensation. Compensation contains three different elements, namely costs, losses and interest. Every expense or fee that has been given is the biggest cost for the company. Loss is a loss due to damage to goods due to the creditor's overdraft due to the debtor's overdraft. In contrast, interest is a loss caused by failure to receive predicted profits or being hit by creditors. Apart from compensation, default can prevent the agreement from continuing. According to Article 1266 of the Civil Code, the terms of cancellation are always stated in the agreement, so that when the sole authority holder fails to reduce the agreement, the agreement turns into a battle (Nur Aziza Marlin Iwanti, 2022).

Summons/Reprimand

A party who feels disadvantaged due to a breach of contract can demand fulfillment of the agreement, cancellation of the agreement or ask for compensation from the party who committed the breach of contract. If a default has occurred, the only option is to issue a summons/reprimand for the broken promise. This statement/reprimand is useful for communicating with organizations that have made commitments regarding obligations that must be fulfilled according to the actual schedule. In practice, summonses are usually given three times, namely: Summons I, Summons II, and Summons III. However, Summons I and Summons II can also be given (Last). Subpoena I generally takes the form of a warning which is still soft in nature, the credit method usually still maintains that the debtor will voluntarily carry out the contents of the subpoena. The creditor must issue at least three subpoenas. If this amount is not paid, the creditor is obliged to send the relevant correspondence to the payment process. And that will depend on whether the debtor is in default or not, according to the court. A summons is a promise made by one party (creditor) to another party (debtor) so that they can fulfill their obligations in accordance with the terms of the agreement. This sentence is written in Article 1238 of the Civil Code and Article 1243 of the Civil Code (Nur Aziza Marlin Iwanti, 2022). The purpose of giving a subpoena is to give the potential defendant an opportunity to do something or stop an action as demanded by the plaintiff. This method is effective for resolving disputes before the case is submitted to court. Subpoenas can be served individually or collectively, either by the attorney or the injured party (potential plaintiff) (Kosim Afendy, 2023).

Auction

According to M. Marwan and Jimmy P in the Dictionary of Law Complete Edition, auction, or in Dutch called veiling, is a form of selling goods led by an auction official and

carried out in front of many people based on higher bids as buyers of auctioned goods. , any sale of goods in public by means of verbal and/or written offers through efforts to gather interested or potential buyers (Merlin Kristin Renwarin et.al., 2023). An auction announcement is a notification to the public about an upcoming auction with the aim of gathering interested parties in the auction and notification to interested parties (Pandu Dwi Nugroho & Siti Malikhatun Badriyah, 2018).

Elements of Debtor Default in Credit Agreements Which Result in the Bank Conducting an Auction on the Debtor's Credit Guarantee

A judge, when examining and adjudicating a case submitted to him, tries to understand and comprehend various aspects relating to the case being handled, both the facts and the evidence. Next, the judge looks for and finds the governing legal rules which are used as the basis for examining and deciding. In the process of searching for and finding the law, the principle of Ius Curia Novit applies, which means that judges are deemed to know the law. Judges as enforcers of law and justice are obliged to explore, follow and understand the legal values that exist in society. There is no reason for a judge to refuse to hear a case on the grounds that the law is unclear (Yahman, 2016).

In the DKI Jakarta High Court Decision Number 454/PDT//2018/PT.DKI, the debtor (Donny Janwardi bin Lazwar (qq PT Tri Perkasa Agro Coco) and Mrs. Rohisah Lia) entered into a credit agreement with the creditor (PT. Bank DKI) based on the descriptions as outlined in the lawsuit letter, the elements of breach of contract have been fulfilled. The element of default that has been fulfilled is the debtor's inability to make credit payments to the bank as agreed in the credit agreement. As mentioned above, if a breach of contract has occurred, the only option is to issue a summons/reprimand for the broken promise. In connection with the debtor's default in the credit agreement, the creditor has issued summons/reprimand letters 3 (three) times in a row. Because the debtor had not fulfilled his achievements after being given the summons (reprimand), the creditor finally took the initiative to hold an auction for part of the credit collateral from the debtor in the form of land which had been encumbered with mortgage rights. In accordance with Article 6 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, it states: "If the debtor breaks his contract, the first mortgage right holder has the right to sell the object of mortgage rights under his own authority through a public auction and take repayment of its receivables from the proceeds of the sale. The auction of debtor collateral at Bank DKI has been carried out through applicable mechanisms and procedures, in this case through the Bogor State Property and Auction Service Office (KPKNL) in accordance with the location of the object of the mortgage right.

In connection with the implementation of the auction, the debtor objected to the implementation of the credit guarantee auction so that the debtor filed a lawsuit against the law against the bank through the Central Jakarta District Court. In connection with the implementation of the auction, the debtor who felt aggrieved initially filed a civil lawsuit for an unlawful act committed by the parties related to the object of the mortgage which was used as collateral for the credit at Bank DKI which was used as collateral for the credit agreement so that the lawsuit led to the cancellation of the auction and returning the status of the object of mortgage rights to its original condition. Basically, a lawsuit or resistance to the execution of a mortgage auction is a debtor's method which aims to slow down and cancel the auction. The lawsuit can be filed on 2 grounds, namely an unlawful act and breach of promise (Murni Haddina & Adlin Budhiawan, 2023). At the first level and appeal level decisions, the debtor's lawsuit was granted by the judge, and decided that Bank DKI and KPKNL Bogor had committed an unlawful act.

However, if we review the arguments in the lawsuit contained in the decision, the auction carried out by Bank DKI did not violate the law. The auction was held because the debtor had defaulted and Bank DKI had given summons (reprimands) 3 (three) times to the debtor. During the auction, a request for auction execution of mortgage rights has also been submitted from Bank DKI creditors to KPKNL Bogor, where the application has fulfilled formal legal procedures in terms of the subject and object of the auction. So if the debtor has objections or dissatisfaction with the implementation of the credit guarantee auction which is collateral in the credit agreement between the debtor and Bank DKI, then this has become a consequence of the debtor's default.

CONCLUSION

When signing a credit agreement, the parties, especially the debtor, must understand the entire substance of the agreement. Every clause in a credit agreement will definitely have legal consequences if it is not implemented as stipulated in the agreement. This understanding is important so that in the future it does not give rise to negligence on the part of one of the parties (default) which results in credit collateral under the control of the creditor being auctioned to cover obligations that should be fulfilled by the debtor. Therefore, the parties to a credit agreement must be transparent, so that if the possibility arises that the debtor cannot fulfill his obligations according to the agreement, the bank can take steps to resolve potentially problematic credit according to the procedures that run at the bank.

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