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LEGAL PROTECTION OF CREDITORS IN CREDIT AGREEMENTS WITH COLLATERALIZED MORTGAGE RIGHTS

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Abstract:
The stability of an advanced national economy is always supported by the development of a healthy business world, and a healthy business world must have finances that are able to maintain business stability. However, when the business world will develop and maintain its business, it is often faced with capital problems or does not have sufficient finance to support the development of its business. This research is a normative legal research. Credit agreements with land rights collateral must be made by making an encumbrance agreement accompanied by a promise to provide collateral. To obtain legal force for the provision of collateral, the provision of collateral must be registered at the Land Registry Office. If the encumbrance of a mortgage is not registered at the Land Registry Office, the mortgage does not create a property right, which has the nature of droit de suite (a right that follows the object).

Keywords:
Credit; legal; protection

1. Introduction
The stability of an advanced national economy is always supported by the development of a healthy business world, and a healthy business world must have finances that are able to maintain business stability.[1] However, when the business world will develop and maintain its business, it is often faced with capital problems or does not have sufficient finance to support the development of its business. The limited availability of capital forces business actors to take various ways, one of which is by seeking loans from third parties or loans from banks. To convince the creditor that the debt will be returned, the prospective debtor pledges a plot of land with a certificate of ownership to the prospective creditor.

The problem is that if a piece of land with a certificate is pledged by the debtor to two creditors and is not carried out in accordance with the provisions of the law.[2] In this case Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Law No. 4-1996), it will cause problems in the future, namely when the debtor defaults or does not fulfill his obligations to his creditors. In such a case, the creditors will attempt to exercise their right to obtain repayment of their debts by selling the land used as the object of the mortgage. If this happens, it will inevitably lead to disputes between creditors to fight over the land used as collateral. Dispute settlement between creditors and debtors can indeed be pursued in a family manner by deliberation to reach consensus, but if deliberation is not reached, then the settlement is carried out by taking legal channels by disputing in court.[3] If the dispute is in court, the parties must compete for evidence, and the party that can prove the truth of its rights, then theoretically, the court will win the party.

To strengthen this argument, an example of a dispute over a collateral object is presented as in the Sleman District Court Decision Number: 276.Pdt.G/2022/Pn.Smn, which in one of its decisions declared the validity and value of a

security seizure (Conservatior Besleg) on a Certificate of Ownership (SHM) on behalf of the defendant. However, the decision could not be executed, because when the winner of the lawsuit, which was accompanied by a request for bail confiscation, submitted a request to block the certificate of land rights used as collateral to the Local National Land Agency (BPN), the BPN refused on the grounds that the property rights used as collateral had been encumbered by mortgage rights based on a credit agreement and encumbrance agreement with the Bank.[4] Based on the background, the problem formulation is how the legal protection of creditors in a credit agreement accompanied by a mortgage agreement.

2. Research Method

This research is a normative legal research.[5]

3. Results Method and Discussion

Collateral for bank loans aims to avoid risks that may be experienced by banks as creditors.[6] The credit risk that must be borne by the Bank is the possibility that the debtor is unable to fulfill its matured obligations (liquidity risk). Therefore, in a credit agreement, it is necessary to strengthen the position of collateral as a guarantee of credit repayment. The credit strengthening is carried out with a collateral binding agreement which is hereinafter referred to as a mortgage. The collateral binding is expected to provide legal certainty to the creditor for the repayment of the debtor's debt, when the debtor does not fulfill his credit obligations, with the term default. In Article 1 point 1 of Law No. 4-1996, it is formulated that a mortgage is "a security right over land for the repayment of certain debts, which gives priority to certain creditors over other creditors". In the sense that if the debtor defaults, the creditor holding the Mortgage Right has the right to sell through a public auction the land used as collateral according to the provisions of the relevant laws and regulations, with the right to precede other creditors. This prioritized position certainly does not reduce the preference of the State's receivables according to the applicable legal provisions.[7]

Considering this formulation, it can be said that the function of collateral is as a guarantee of credit repayment if the debtor defaults. Therefore, the expectation of the ratio of collateral value to the amount of credit value must be calculated carefully and precisely. This accuracy is intended if the Debtor defaults, the value of the proceeds from the sale of collateral for credit repayment can fulfill the value of the Debtor's debt or credit without causing problems in the future. In this case, the Bank as the Creditor does not suffer losses as a result of credit risk. Every bank wants and tries hard so that the quality of risk assets is healthy in the sense of being productive and collectable, but credit given to debtors always has a risk in the form of credit that cannot be returned on time, which is called non-performing credit or no performing loan.

In a banking credit agreement, if the debtor defaults or does not fulfill his credit obligations with deliberate reasons for neglecting his obligations, the creditor should be able to execute the credit collateral provided by the debtor, but sometimes the debtor does not submit the collateral to be executed by the creditor or the collateral is encumbered by other parties' collateral rights. In such cases, the creditor can file a lawsuit of Court to demand the fulfillment of its rights to the collateral that has been used as collateral for the credit.[8] To prevent the transfer of collateral to a third party, the creditor may apply to the Court for a security seizure of the collateral object in its lawsuit.

An application for a lawsuit accompanied by an application for a security seizure to prevent the transfer of the security object to a third party is regulated in Article 261 of Buitengewisten Reglement (RBG), which specifies as follows: If there is a reasonable suspicion, that a debtor, before a verdict is rendered on him, or before the verdict that defeats him has not yet been executed, will make efforts to remove or carry his movable or immovable property, with the intention of keeping it away from debt collectors, then at request of an interested person the President of District Court may give an order that property be confiscated to safeguard the right to enter request, in addition to that the person requesting is also notified, that he will appear at the hearing of the District Court to be determined, as possible in first trial will come to mention and confirm the lawsuit.

In the event that the application for bail confiscation against land rights as collateral is granted by the judge, and declared valid and valuable, it will automatically become an executorial confiscation, in order to support the Court's decision. However, in practice, not all judges' decisions on bail confiscation can be implemented properly, namely forcibly by the Court. Only condemnatoir verdicts can be implemented or executed, while declaratoir verdicts do not have the means to force them to be executed. Related to the inability to execute immediately on the court's decision

on the confiscation of land rights as collateral, of course it is a separate legal problem for the collateral confiscation claim holder.

Juridically, a plot of land can indeed be pledged to two or more creditors, as long as it is agreed in advance. In addition, it is also in order to obtain a guarantee of legal protection when the debtor defaults or does not fulfill its obligations. Collateral encumbrance based on this law is expected to provide legal certainty to creditors for the repayment of their credit by the debtor, when the debtor customer does not perform his credit obligations.[9]

The obligation to make an encumbrance agreement is stated in Article 10 paragraph (1) of Law No. 4-1996, which stipulates: "The granting of a Mortgage Right is preceded by a promise to grant a Mortgage Right as security for the repayment of a certain debt, which is stated in and forms an inseparable part of the relevant debt agreement or other agreement giving rise to the debt". Meanwhile, paragraph (2) stipulates: "The granting of Mortgage Rights is carried out by making a Deed of Granting Mortgage Rights by a Land Deed Official in accordance with the applicable laws and regulations". So that if the encumbrance of a mortgage right is not carried out according to provisions of Law No. 4-1996, then legally creditor holding the mortgage right does not obtain legal protection, in other words, the position of creditor holding the mortgage right is very weak.

If a creditor who at the time of entering into an encumbrance agreement is not in accordance with the provisions of Law No. 4-1996, then files a lawsuit accompanied by a request for a security seizure, and is granted by the Court, then the position of the security seizure decision does not have any legal effect. Bail confiscation is a legal remedy filed by the plaintiff to the Court, which precedes the examination of the main case or precedes the Court's decision. Bail confiscation can be carried out before the court examines the subject matter of the case or during the ongoing case examination process, before the Panel of Judges (Court) makes a decision. However, the bail confiscation decision granted by the judge and declared valid and valuable, does not automatically become an executorial confiscation in order to support the Court's decision. Because the position of the plaintiff as the holder of the mortgage is legally very weak.

In the case presented in the background of the problem, the District Court Decision No. 276.Pdt.G/2022/Pn.Smn, which in one of its rulings declared the validity and value of the security seizure (Conservatior Besleg) against the Certificate of Ownership (SHM) on behalf of defendant, but the decision could not be executed, because the local BPN did not accept the application for recording the security seizure based on the Court's decision, so that court decision did not have legal force. From the perspective theory of justice, the BPN's rejection of the blocking is unfair and based on Court's decision it already has the legal force to be executed, but considering that guarantee was not made in accordance with Law No. 4-1996, the rejection by the BPN is legally justified.

Juridically, the holder of a mortgage right without submitting a security seizure can execute the object of the mortgage right, because the mortgage right holder has executorial power over the object of the mortgage right. However, it must be noted that in a credit agreement there is a stratum of creditor positions for the holder of a mortgage right. In a credit agreement, there is a creditor position that is distinguished based on the nature and type of credit, namely there are banking creditors who hold mortgage rights as collateral, which are called preferred creditors. In addition, concurrent creditors are also known. These creditors have different rights in obtaining repayment of their debts when the debtor defaults or is unable to settle his debts on time as agreed. In addition to preferred creditors and concurrent creditors, a credit agreement also recognizes the term sparatis creditor.

In its position as a holder of special rights, making preferred creditors prioritize the repayment of their debts compared to concurrent creditors. Meanwhile, concurrent creditors are second-tier creditors, which in the repayment of their credit receivables after deducting the receivables of preferred creditors and are creditors who must share with other creditors (if there is more than one creditor).[10] Execution of collateral objects is carried out in the event of bad credit, in which case the debtor does not fulfill his obligations to pay his debts to creditors, or the debtor is declared unable to repay debt. In practice, execution is usually carried out by auction through the State Wealth and Auction Service Office (KPKNL).

In addition to preferred creditors and concurrent creditors, there are also other creditors, namely separatist creditors. This type of creditor is a preferred creditor who controls the object of collateral according to the mechanism regulated in the legislation. Separatist creditors have a more privileged position than preferred creditors, because separatist creditors obtain receivables that take precedence over other creditors who do not hold security rights. If from the sale of the object of collateral there is an excess, the excess will be returned to the lender or debtor. The existence of a sparatis creditor in relation to when the debtor is declared bankrupt or in bankruptcy.

In the event of bankruptcy, sparatis creditors, who are also preferred creditors, have the legal right to file for bankruptcy against debtors who default.[11] The encumbrance and recording agreement then gives birth to a property right over the land that is the object of mortgage right, which has the nature of droit de suite, that the holder of the property right, in this case the mortgage right holder, has the right to the object of the mortgage right in any place and in any hands. The position of the holder of the mortgage right as a preferred creditor is stipulated in Article 7 of Law No. 4-1996 that the Mortgage Right still follows the object in whomever's hands the object is located. With the record that the mortgage right is registered at the land registration office (BPN), to obtain the status of property rights. The mandatory provision to register the mortgage right is regulated in Article 13 of Law No. 4-1996, which stipulates: "The granting of a mortgage right must be registered at the land registry office."
Conversely, if the creditor in conducting a credit agreement is not accompanied by an encumbrance agreement in accordance with the provisions in Law No. 4-1996, then the creditor's position is only as an individual creditor and his status is only as a concurrent creditor who has no privileges over the repayment of the debtor's debt. The collateral provided by the debtor only gives birth to individual rights, and legally if the debtor defaults, it does not give birth to the right to sue for the pledged land, but only gives birth to individual rights against the debtor for his debt.

4. Conclusion

Credit agreements with land rights collateral must be made by making an encumbrance agreement accompanied by a promise to provide collateral. To obtain legal force for the provision of collateral, the provision of collateral must be registered at the Land Registry Office. If the encumbrance of a mortgage is not registered at the Land Registry Office, the mortgage does not create a property right, which has the nature of droit de suite (a right that follows the object). If the mortgaged land is also encumbered with a mortgage right that is registered at the Land Registry Office, then the holder of the mortgage right has a property right. Legally, the holder of the last mortgage right is guaranteed legal protection, because the creditor is in a position as a preferred creditor. Meanwhile, creditors who hold collateral on land that is not made an agreement and is not registered at the Land Registry Office, do not receive legal protection. because his position is only as a concurrent creditor.

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