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The phenomenon of mortgage rights registration implementation electronically in credit agreement in Indonesia

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Abstract

Collateral is an important factor in bank credit. One of the guarantees that is often used is Mortgage Rights. Credit agreements in Indonesia have no specific rules in the Civil Code. The validity of credit agreements in Indonesia is due to the principle of freedom of contract. For both named and unnamed agreements, the Civil Code applies. This credit agreement is similar to an agreement to borrow money or goods that have run out due to use, so that it can be qualified in a loan agreement for borrowing money or goods that have run out as regulated in Articles 1754 to 1769 of the Civil Code. In this case, it is required that the debtor or debtor will return the same compensation of various kinds and the same conditions. Furthermore, it is also stated that the agreement can be accompanied by interest that has been agreed between the parties previously, so that the agreement can be included

in the loan-borrowing agreement by agreeing on interest. With the mortgage right in the credit agreement, if the debtor defaults, execution of the mortgage right object can be carried out. In the Mortgage Right there is a principle of publicity, namely that the mortgage right must be carried out at the land office. Thus this mortgage can be known by the general public. At this time mortgage right registration is done electronically. The electronic registration of mortgage rights is not regulated in the Mortgage Right Law. This study aims to determine and analyze the phenomenon of mortgage rights registration implementation of Electronic in Credit Agreements in Indonesia. The research method used is empirical juridical, by reviewing legal principles, legal norms, legal regulations as well as implementation in society regarding the registration of electronic mortgage rights.

Keywords: Current situation, high quality human resources, FDI enterprises, attracting and maintaining

Introduction

Credit is one of the bank's businesses that really helps the needs of the community in obtaining funds for various kinds of consumptive and productive needs. In various countries in the world, financing is very important in meeting the needs of the community. One of the biggest challenges businesses face is getting funding for their projects^[1]. One of these funding is through bank credit. In granting credit, of course there are risks for banks that extend credit. Credit risk is one of significant risks of banks by the nature of their activities^[2]. Therefore, financing risk management is an important factor for banks in lending. In order that the distribution of funds in the form of credit is truly safe and protected, banks must pay attention to Article 8 (1) of the Banking Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning banking which states that:

"In providing credit or financing based on Sharia Principles, Commercial Banks are required to have confidence based on an in-depth analysis of the intention and ability and ability of the debtor to repay the debt or return the financing in accordance with the agreement".

Financing through bank credit contains risks, so that in every lending or financing it must be based on sound principles and based on the principle of prudence. To reduce this risk, confidence in the ability and ability of the debtor to carry out its obligations as agreed is an important factor that must be considered by the bank. To obtain this confidence, before providing credit, banks generally make an assessment of the Character, Capacity, Capital, Collateral, condition of economic^[3]. Of the five things, the easiest and considered to be able to provide more legal protection for creditors as credit distributors is collateral. This is because the collateral can be directly used to obtain credit repayment in the event the debtor defaults. Collateral for creditors is very vital for the security of refunds that have been given by creditors to debtors^[4]. This guarantee is very important for companies to mitigate risks^[5]. In the context of achieving economic goals, credit must be provided with legal certainty guarantees for interested parties.

¹ Paolo Crosetto and Tobias Regner, "It's Never Too Late: Funding Dynamics and Self Pledges in Reward-Based Crowdfunding," *Research Policy* 47, no. 8 (2018):1463-77, <https://doi.org/10.1016/j.respol.2018.04.020>.

² Li and Zou, "The Impact of Credit Risk Management on Profitability of Commercial Banks: A Study of Europe," *Journal of Business and Economics* 4, no. 8 (2014): 1-93.

³ Johannes Ibrahim, 2004, *mengupas Tuntas Kredit Komersial dan Konsumtif dalam Perjanjian Kredit Bank (perspektif Hukum dan ekonomi)*, Mandar Maju, Bandung, hlm 16-17.

⁴ Denico Doly, "Aspek Hukum Hak Tanggungan Dalam Pelaksanaan Rona," *Negara Hukum, Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 2, no. 1 (2011): 103-28.

⁵ Sumit Agarwal et al., "Collateral Pledge, Sunk-Cost Fallacy and Mortgage Default," *Journal of Financial Intermediation* 24, no. 4 (2015):636-52, <https://doi.org/10.1016/j.jfi.2014.10.001>.

One way is to make a credit agreement that serves to limit the rights and obligations of these parties. The credit agreement is the main agreement followed by a guarantee agreement as an additional agreement. Both are made separately, but the position of the guarantee agreement is highly dependent on the main agreement. This needs to be done to provide protection to creditors, so that if the debtor defaults, the creditor still gets the right to his receivables.

In practice, every credit given by a bank is always accompanied by the submission of a guarantee by the debtor. The binding of the guarantee is done at the time of signing the credit agreement. One of the guarantees that is often used is Mortgage Rights^[6].

There are no special rules for credit agreements in Indonesia, therefore, as the basis for implementing credit agreements, there are provisions in the Civil Code. Articles 1754 to 1769 of the Civil Code form the basis of credit agreements, in which stipulates provisions concerning loan agreements for money or goods that are exhausted due to use and it is required that the debtor or debtor will return the loan to the creditor in the same amount of the same kind and condition. Furthermore, it is also stated that the agreement can be accompanied by interest that has been previously agreed between the parties, so that the credit agreement can be included in the loan-borrowing agreement by agreeing on interest.

In addition to the credit agreement as the main agreement, it is also necessary to have a guarantee agreement in the form of movable and immovable objects. For this reason, a strong guarantee rights institution is needed and is able to provide legal certainty for credit givers and recipients as well as other parties involved through this institution. In credit agreements, usually the parties have agreed firmly that if the debtor defaults, the creditor has the right to take part or all of the proceeds from the sale of the collateral property as repayment of the debtor's debt (verhaalsrecht)^[7]. One of them is Mortgage Rights.

This is given that the credit agreement always requires a fairly safe guarantee for the return of funds channeled through credit. The existence of this guarantee is very important in reducing the risk of loss for the bank (creditor). The ideal guarantee can be seen from: can help obtain credit for parties in need; does not weaken the potential (strength) of the credit recipient to continue his business; provide certainty to creditors in the sense that if necessary, it will be cashed to pay off debtors' debts.

Mortgage rights are regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. With the Mortgage owned by the creditor, if the debtor defaults, execution of the Mortgage object can be carried out. In the Mortgage there is a principle of publicity, namely that the Mortgage must be registered at the land office. Thus this mortgage rights can be known by the general public. At this time Mortgage rights registration is done electronically. The electronic registration of Mortgage Rights is not regulated in the Mortgage Law.

Research Problems

The problem of this research is how is the phenomenon of the

implementation of Electronic Mortgage registration in Indonesia?

Material and Methods

Material

Sudikno Mertokusumo^[8] stated that "agreement is a legal relationship between two or more parties based on an agreement to cause legal consequences." The agreement will create an agreement between the parties. Engagement is a legal relationship in the field of property law between two parties that gives rise to rights on one party and obligations on the other in an achievement^[9].

In order for the agreement to be valid, it must fulfill the conditions for the validity of the agreement as stated in Article 1320 of the Civil Code, namely:

1. Agree on those who bind themselves.
2. The ability to make an engagement.
3. A certain matter.
4. A lawful cause.

One of the agreements that are widely carried out in people's lives is a credit agreement. Article 1 number 11 of Law 7 of 1992 concerning Banking as amended by Law number 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking states that credit is the provision of money or claims that can be equated with it, based on a loan agreement between a bank and a third party. others that require the borrower to repay the debt after a certain period of time with interest.

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In this credit agreement there are payments within the specified timeframe, thus creating a risk for the creditor. Therefore, in general, bank credit agreements require a guarantee from the debtor. One of the guarantees that are widely used by banks is Mortgage Rights.

In Article 1 point 1 of Law Number 4 of 1996 concerning Mortgage, it is stated that Mortgage on land and objects related to land, hereinafter referred to as Mortgage Right, is a guarantee right imposed on land rights as referred to in Law No. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or not including other objects which are an integral part of the land, for the settlement of

⁶ Siti Malikhatus Badriyah et al., "Conflict of Legal Norms Regarding Regulation of Creditors of Encumbrance Rights Holders in the Debtor's Bankruptcy in Indonesia," in ICIDS 2019, September 10-12, Bandar Lampung, Indonesia Copyright © 2019 EAI DOI, 2019, 1-6, <https://doi.org/10.4108/eai.10-9-2019.2289383>.

⁷ Indrawati Soewarso, 2002Aspek Hukum Jaminan Kredit, Jakarta, Institut Bankir Indonesia, p. 8

⁸ Sudikno Mertokusumo, 1996, Mengenal Hukum, Yogyakarta, Liberty, p. 10

⁹ Siti Malikhatus Badriyah et al., "Leasing Agreement on Financing SMEs in Fisheries Industry," Journal of Legal, Ethical and Regulatory Issues 22, no. 3 (2019): 1-7.

certain debts, which give priority to certain creditors over other creditors.

From the above understanding, it can be seen that the characteristics of Mortgage are as follows:

- a) Giving priority or prior position to the holder
- b) Always follow the object that is guaranteed in the hands of whoever the object is
- c) Meets the principles of speciality and publicity, which is open to the public so that it can bind third parties and provide legal certainty to interested parties
- d) Easy and sure execution of the implementation.

Research Method

This study uses an empirical juridical approach by conducting library research and field research. In library research with document study techniques, namely examining laws and regulations, books and various scientific writings and documents for the imposition of Mortgage Rights electronically. In addition, field research was also conducted to understand and analyze the Implementation of Electronic Mortgage Registration in Indonesia.

Discussion

Phenomenon of Electronic Mortgage Rights Registration in Indonesia

The process of assigning Mortgage Rights is carried out through two stages of activities, namely:

The stage of granting Mortgage, with the making of the Deed of Granting Mortgage by the Land Deed Making Officer, hereinafter referred to as PPAT, which is preceded by a guaranteed debt and receivable agreement.

The registration stage is carried out by the Land Office, which is the birth of the encumbered Mortgage Rights.

The granting of Mortgage rights is preceded by a promise to provide Mortgage rights as collateral for the settlement of certain debts, which are set forth in and are an inseparable part of the relevant debt agreement or other agreement (principal agreement) that gave rise to the debt. While the granting of the Mortgage rights above is carried out with the Deed of Granting Mortgage rights which must be made before the PPAT (Article 10 Paragraph 2 UUHT).

Furthermore, the Mortgage Rights Law stipulates the contents that are mandatory for the validity of the Mortgage Granting Deed. By not fully including the things mentioned in the Deed of Granting Mortgage, it results in the deed in question being null and void by law. In Article 11 paragraph (1) of the Mortgage Rights Law, it is stated that things that must be included in the Deed of Granting Mortgage Rights are:

1. Name and identity of the holder and grantor of Mortgage
2. The domicile of the holders and providers of Mortgage
3. Clear designation of debts or debts whose repayment is guaranteed with Mortgage Rights and includes the name and identity of the debtor concerned
4. Dependent value
5. A clear description of the object of the Mortgage.

In addition, the Deed of Granting Mortgage Rights may include promises that are facultative in nature and have no effect on the validity of the Deed of Granting Mortgage Rights. The parties are free to decide whether or not to

mention the promises in the Deed of Granting Mortgage Rights. With the inclusion of the promises in the Deed of Granting Mortgage Rights which is then registered with the Land Office, the promises also have binding power to third parties. The promises that are not required to be contained are contained in Article 11 paragraph (2) of the Mortgage Rights Law. At this stage of imposition of mortgage rights, mortgage rights have not yet been born, because the birth of mortgage rights is when it is registered at the Land Office.

The granting of Mortgage Rights must be registered at the Land Office. Registration is carried out no later than 7 (seven) working days after the signing of the Deed of Granting Mortgage, PPAT is obliged to send the Deed of Granting of Mortgage concerned and other required documents to the Land Office. PPAT is obliged to provide written notification regarding the submission of the APHT and other files to the parties concerned.

The registration of Mortgage Rights is carried out by the Land Office by making a Mortgage Land Book and recording it in the Land Book of land rights that are the object of the Mortgage Rights and copying the notes on the certificate of the land rights concerned.

After fulfilling all the conditions and times as mentioned above, the Land Office issues proof of the existence of a Mortgage Rights by issuing a Mortgage Rights certificate. The Mortgage Rights Certificate contains the words "For Justice Based on the One Supreme Godhead" (Article 14 UUHT).

In the Mortgage Law, the registration of Mortgage Rights is done manually by submitting a registration application to the Land Office. This is different from the regulation in the Regulation of the Minister of State for the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 9 of 2019 concerning Electronic Integrated Mortgage Services. In the Ministerial Regulation, the registration of Mortgage Rights is carried out electronically. Furthermore, the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2019 was revoked and replaced with the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 concerning Electronic Integrated Mortgage Services.

Electronically Integrated Mortgage Rights Service ("HT-el System") is a series of mortgage rights service processes in the context of maintaining land registration data which is carried out through an integrated electronic system. On the one hand, this is very beneficial for the community, especially the business world because it is easier and faster. On the other hand, there are various formulations that are not in synchrony between the Mortgage Rights Law and the Regulation of the State Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020, among others regarding Mortgage Providers, Mortgage Registration, Elimination of Mortgage Rights and Deletion (Roya) Mortgage right."The process of encumbering Mortgage is carried out through two stages of activity, namely the Stage of granting Mortgage and the Stage of Registration of Mortgage."¹⁰

Article 10 Paragraph (2) states that "The granting of Mortgage Rights is carried out by making a Deed of Granting

¹⁰ Purwahid Patrik and Kashadi, *Hukum Jaminan* (Semarang: Badan Penerbit Universitas Diponegoro, 2009).

Mortgage Rights by PPAT in accordance with the applicable laws and regulations." Article 13 of the Mortgage Rights Law states that the granting of Mortgage Rights must be registered at the Land Office. Not later than 7 (seven) working days after the signing of the Deed of Granting Mortgage, the PPAT is obliged to send the Deed of Granting of Mortgage concerned and other necessary documents to the Land Office. The registration of the Mortgage Rights is carried out by the Land Office by making the Mortgage Land Book and recording it in the Land Rights Book which is the object of the Mortgage Rights and copying the notes on the certificate of the Land Rights in question. The date of the Mortgage Land Book is the seventh day after the complete receipt of the documents required for its registration and if the seventh day falls on a holiday, the relevant land book is given a date of the next working day. Mortgage Rights are born on the day of the Mortgage Land book-date.

Article 14 of the Mortgage Rights Law states that as a sign of the existence of a Mortgage Right, the Land Office issues a Mortgage certificate in accordance with the applicable laws and regulations. The Mortgage Certificate contains certificates with the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD". The Mortgage Rights Certificate has the same executorial power as a court decision which has permanent legal force and is valid as a substitute for the grosse acte Hypotheek as long as it concerns land rights.

In the electronic mortgage rights registration system, all steps in the registration of mortgage rights are carried out with an integrated electronic system. Electronic System is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate electronic information (Article 1 point 6 of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 year 2020). Documents sent by the Land Deed Making Officer through an electronic system in the form of electronic documents. Electronic Document is any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms, which can be seen, displayed, and/or heard through a computer or Electronic System, including but not limited to in writing, sound, pictures, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them (Article 1 point 11 of the Regulation of the Minister of Agrarian Affairs and Governance Room/Head of the National Land Agency Number 5 of 2020).

After registration of Mortgage with an integrated electronic system, an Electronic Mortgage Certificate is issued. This is regulated in Article 15 Paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 which states that "The results of HT-el services are in the form of Electronic Documents issued by the HT-el System, including: a. HT-el certificate; b. Mortgage records in the land book of land rights or Ownership Rights on Flat Units; and c. Mortgage records on the Certificate of Land Rights or Ownership Rights on Flat Units."

Conclusion

The phenomenon of the electronic registration of Integrated Mortgage Rights in the credit agreement has resulted in a significant change in the process of granting mortgage rights.

Initially, it was done manually through two stages, namely the stage of granting Mortgage Rights by the Land Deed Maker Official, and the stage of registration of Mortgage at the Land Office. In the Electronic Mortgage Rights Registration System, the Mortgage registration process is carried out with an integrated Electronic system.

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