



Execution of the Deed of Recognition of Mortgage Rights in the Mataram District Court

I Gusti Ngurah Bagus Suputra¹; Zainal Asikin²; Eduardus Bayo Sili²

¹ Student of Magister Law Study Program, Postgraduate Program, Mataram University, Indonesia

² Lecture of Law Faculty, Mataram University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i5.1603>

Abstract

This study aims to find out and analyze the interpretation of the law on the clause of their own power as referred to in Article 6 of the Mortgage Law. To find out and analyze the interpretation of the law regarding substitution prohibition clauses in the Power of Attorney Imposing Mortgage Rights as referred to in Article 15 paragraph (1) letter (b) of the Mortgage Rights Act. The method used is the normative method with a statutory approach and a case approach. Article 6 The Underwriting Right Act is also a binding force that if the debtor fails to promise, the first Underwriting Right holder has the right to sell the Underwriting Right object on his own power through a public auction, or in other words, both the power of the first Underwriting Right holder is included or not included in the Deed of Granting the Underwriting Right in question, still if the debtor has been proven to be in violation of the promise or default on the credit agreement, the first Mortgage Holder has the power or authority to sell the object of the Underwriting Right through a public auction mechanism through the District Court. This was reinforced by the Supreme Court Decision No. 3021 Date January 30, 1986. Who considers that the Execution Parate must go through Court Assistance according to the principles of procedural law.

Keywords: *Execution; Mortgage; Mataram District Court*

Introduction

National development aims to realize a just and prosperous society based on the Pancasila and the 1945 Constitution. To achieve this goal development must be carried out in all aspects of life, especially economic development. Economic development actors such as the government, individuals and in the form of legal entities must have a large availability of funds in carrying out development, therefore the implementation of economic development that is increasing and complex will certainly require greater capital as well.

Many ways that can be used to obtain capital safely without having to involve personal assets or the company's own assets, namely obtaining funds through credit activities¹ from financial institutions such as banks.²

Sources of funds owned by the Bank are obtained from the community and then channeled back to the community in the form of credit. Therefore, the Bank is often considered as an intermediary between groups of people who temporarily have excess funds (surplus spending groups) and groups of people who temporarily need funds (deficit spending group).³

The credit agreement will contain the maximum credit amount, the term of the loan, the purpose of the loan, the interest rate, how to withdraw credit, the repayment schedule and other important provisions such as the collateral for credit⁴ also known as collateral.⁵

Credit activities carried out by the Bank have a very big role in the implementation of development because it aims to improve the welfare of people's lives. The large role is proportional to the risks faced by the Bank, so the Bank needs to get protection through a strong guarantee institution and can provide legal certainty to guarantee the provision of debts given to credit recipients or debtors.⁶

In banking practice, the issue of collateral becomes important because collateral is a protection for creditors such as Banks, besides the surrender of guarantees is also related to the seriousness of the debtor to fulfill his obligations in paying off loans, anticipating risks that may arise in the grace period between loan disbursement and repayment provided by the Bank, so it can be underlined that the guarantee institution has the duty to launch and secure the provision of credit.⁷

In relation to credit security, the provision of collateral by the debtor is as stipulated in Article 1131 of the Civil Code (hereinafter referred to as the Civil Code) which clearly and expressly states that "all creditable objects, both movable and immovable, both existing and immovable which will later become the responsibility of all individual engagements."

So far, the Civil Code provides protection for creditors against credit activities, where the debtor's existing and existing movable assets are the repayment of creditors' receivables.

The collateral submitted must have a nominal value in excess of the amount of credit given by the creditor to the debtor or at least have enough value to repay the debtor's debt to the creditor. The process of execution of collateral by the Bank is a last resort undertaken by the Bank meaning that the execution of the collateral will only be carried out when the debtor is no longer able to pay and settle his credit payment obligations and other obligations as agreed upon and contained in the credit agreement. Being a last resort because the implementation of the guarantee execution does not only require a fairly long process in its implementation but also costs that are not small in its handling.

¹ Republic of Indonesia Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking ("Banking Law") Article 1 number (1).

² *Ibid.*, Article 1 angka (2). Bank is a Business Entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the lives of many people. Article 1 number (2) of the Banking Law.

³ Adrian Sutedi, *Implikasi Hak Tanggungan Terhadap Pemberian Kredit oleh Bank dan Penyelesaian Kredit Bermasalah*, (Jakarta: BP Cipta Jaya, 2006), p. 11.

⁴ M. Bahsan, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, (Jakarta: PT RajaGrafindo Persada, 2007), p. 73.

⁵ Banking Law, Article 1 number 23.

⁶ Adrian Sutedi, *Implikasi Hak Tanggungan Terhadap...*, p. 1.

⁷ R. Subekti, *Jaminan-Jaminan Untuk Pemberian Kredit Menurut Hukum Indonesia*, (Bandung: Alumni, 1978), p. 29.

The Mortgage Law aims to provide a basis for the establishment of strong Mortgage Rights. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as the Basic Agrarian Law) is the first regulation governing institutions for guaranteeing land rights which are named Mortgage Rights, which provisions can be seen in Article 51 of the Law - Basic Agrarian Law that reads that the Mortgage Rights that can be imposed on Ownership Rights, Business Use Rights, Building Use Rights is referred to in Article 25, Article 35 and Article 39 shall be regulated by Law.⁸

In connection with the alternative payment of creditors' credit, based on the provisions of the Mortgage Rights Act, several alternative payments of credit is through the following methods:

1. The first Mortgage Holder has the right to sell the object of the Mortgage on his own power through a public auction and to repay his receivables from the proceeds of the sale.⁹ known as the Execution Parate;
2. By using an executorial title through the fiat head of the district court using the provisions of Article 224 HIR / 258 Rbg concerning the execution of the gross deed;¹⁰
3. By selling under the hand based on the agreement of both parties to get a higher sales price.¹¹

Based on the background of the problem, the author is interested in further researching the actual understanding of Article 6 and Article 15 paragraph 1 letter (b) of the Underwriting Rights Act in relation to conducting the execution of the Mortgage Rights Execution Parate auction and explain the procedures for conducting the Execution Parate Execution at the KPKNL institution in accordance with the Mortgage Rights Act. This writing is expected to provide clarity on the doubts, so that legal uncertainty is expected not to occur either among the officials who carry out the Parate Execution auction, legal practitioners, creditors, debtors and broadly certainly among the public.

Result and Discussion

Based on the provisions of Article 20 of the Underwriting Right Act, the execution of the Underwriting Right can be done in 3 (three) ways, but the author will only discuss more in execution as referred to in Article 6 of the Underwriting Right Act, where the first Mortgage Holder sells the Rights Dependents on their own power through public auctions. As has been included in the main issues.

1. Execution

1.1 Definition of Execution

According to Subekti¹², the meaning of execution is the "implementation" of the decision.

Yahya Harahap¹³ in his book states that the implementation of the decision as a pronoun execution is deemed appropriate. Because if it starts from the provisions of the tenth chapter of the fifth part of the HIR or the fourth title of the fourth part of the RBG, the definition of execution is the same as the act of "carrying out the verdict" (*ten uitvoer legging van vonnissen*). Carrying out the court's decision, namely carrying out the contents of the court's decision, namely enforcing the court's decision, with the

⁸ A.P. Parlindungan, *Komentar Undang-undang Hak Tanggungan dan Sejarah Berlakunya*, (Bandung: Mandar Maju, 1996), p. 31.

⁹ Republic of Indonesia, Law Number 4 of 1996 concerning Mortgage Rights and Objects Related to Land, Article 20 jo Article.

¹⁰ *Ibid.*, Article 20 paragraph 1 (b).

¹¹ *Ibid.*, Article 20 paragraph (2).

¹² Subekti R., *Hukum Acara Perdata* (Jakarta: BPHN, 1997), p. 128.

¹³ M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata* (Jakarta: Sinar Grafika, 2006), p. 6.

help of a public power if the losing party (executed or defendant) does not want to carry it out voluntarily (*vrijwilig, voluntary*).

While according to Salim HS in his book execution is the implementation of a court decision that has obtained permanent legal force, which can be executed is a copy of the decision and grossed deed (the first copy of the authentic deed). Grosse deed can be executed because it contains an executorial title, so the grossed deed is likened to a court decision which has obtained permanent legal force containing an executorial title and thus can also be executed. Execution can be divided into 4 (four) types, namely: to the same results as if carried out voluntarily by the parties concerned. Real execution is not regulated in HIR but is regulated in Article 1033 Rv which is the implementation of a decision in the form of emptying permanent objects. HIR only concerns the real execution of auction sales (Article 200 paragraph (1) HIR); and

1.2 Parate Execution

Parate execution is an implementation of an agreement without a lawsuit or without a trial. This Parake Executie occurs when a creditor sells certain items belonging to the debtor without having an executorial title (Article 1155, Article 1175 paragraph (2) of the Civil Code. Execution is a forced act carried out by the court with the help of public power, in order to carry out the court's decision which has obtained permanent legal force. As long as the decision has not obtained permanent legal force, the effort and action of the execution have not functioned. The new execution functions as a legal and compelling legal action starting from the date the decision obtained permanent legal force and the defendant does not want to wait and fulfill the decision voluntarily.¹⁴

2. Legal Basis of Execution

Execution as a legal action committed against a losing party in a case, the procedure is regulated in civil procedural law, namely Article 195 HIR-Article 208HIR or Article 206 RBg-Article 240 RBg and Article 258 RBg. Whereas Article 225 HIR / Article 225 HIR / Article 259 RBg regulates decisions that punish the losing party for committing certain acts. Article 195 of the HIR states that in carrying out a judge's decision by the court in a case that was first examined by a district court, it was carried out by order and by the head of the District Court Chief who initially examined it in the manner stipulated in the manner of Article 195 HIR paragraph (1), 2-7.

Execution is also regulated in Article 1033RV and Article 54 paragraph (2) and paragraph (3) of Law Number 48 of 2009 concerning Judicial Power which states that: Article 54 paragraph (2) "The implementation of court decisions in civil cases is carried out by Registrar and Bailiff lead by the Chair of the Court ". Article 54 Paragraph (3) "The court's decision is carried out with due regard to humanity and justice."

3. Principles of Execution

- a. Decisions of judges to be executed must be decisions of judges that have an executive legal force. Not all court decisions have permanent legal force, so that not all court decisions can be executed. Although in certain cases the law allows the execution of decisions that have not had permanent legal force. In this context, the execution is carried out not as an act of carrying out a court decision but

¹⁴ M. Yahya Harahap, ...Ruang Lingkup Permasalahan..., p. 8.

carrying out the execution of a form of law which is equated with the law as a decision that has obtained permanent legal force. Some exceptions to the execution that are justified by the law include the implementation of the first decision, the implementation of the decision on the provision, the peace certificate and the execution of the gross certificate.

b. Decisions of judges to be executed must be condemnatory. Execution can be carried out only for decisions that are condemnatory, i.e. decisions that are *amar* or *dictum* contain elements of punishment. The characteristics that can be used as indicators to determine a decision is condemnatory, in the ruling or *dictum* of the decision there is an order that punishes the losing party, which is formulated in the sentence as follows:

- 1) Punish or order to “hand over” an item;
- 2) Punish or order the “evacuation” of land and houses;
- 3) Punish or order “to do” a certain act;
- 4) Punish or order the “cessation” of an act or circumstance;
- 5) Punish or order “payment” a sum of money.

c. The verdict is not carried out voluntarily

Implementation of the contents of the decision can be done in two ways, namely by voluntary and by way of execution. In principle, execution as a forced act of carrying out a court decision that has permanent legal force, is only a legal choice if the losing party (defendant) does not want to carry out or fulfill the contents of the decision voluntarily. If the defendant is willing to fulfill and comply with the decision voluntarily, the act of execution does not need to be done.

The form of carrying out the decision voluntarily, the losing party fulfills itself perfectly with the contents of the court’s decision. Defendants without coercion from any party carry out the fulfillment of the decision voluntarily. The defendant’s reluctance to fulfill the decision voluntarily will lead to legal consequences in the form of forced actions called “execution”.

d. Execution by order and under the leadership of the Chief Justice carried out by the court clerk and clerk of the court concerned.

The authority to execute executions against absolute court decisions is only given to the first instance justice institutions. This is in accordance with the provisions of Article 195 paragraph (1) HIR or Article 206 paragraph (1) RBg.

According to the provisions of Article 195 paragraph (1) HIR stated: “the matter of carrying out the judge’s decision by the court in a case that was initially examined by the District Court, carried out by order and with the leadership of the Head of the District Court who first examined the case.”

The authority of the Chair of the District Court ordering and leading the execution is *ex officio* formal authority. The *ex officio* authority of the Chair covers from the confiscation of the execution and execution of the auction, from the first process up to the emptying and selling of goods auctioned to the buyer or to the delivery and possession of the goods to the plaintiffs / petitioners for execution on the real execution.

Ex officio authority can be read in Article 197 HIR or Article 209 RBg. An overview of the legal construction of the authority to execute the execution briefly is as follows:

- 1) The Chairperson of the District Court orders and leads the execution;
 - 2) The authority to order and leads the execution of the Chair of the District Court is *ex officio*;
 - 3) Eksekusi the execution order was issued by the head of the District Court in the form of a letter of determination;
 - 4) Who was ordered to carry out the execution was the clerk or clerk of the District Court.
- e. Execution must be in accordance with the verdict

Execution must not deviate from the verdict, because if there is a deviation from the verdict, then there is an executable right to refuse its implementation. Successful execution, among others, is determined by the perfection and completeness of the perfection and completeness of a good / perfect verdict, which can be seen from strong legal considerations and the results of a complete and thorough examination of the evidence, witnesses and parties based on a good lawsuit.

Conclusion

From the discussion in the chapters above, it can be concluded as follows:

- a. In principle Article 6 of the Underwriting Right Act is a promise for the Underwriting Right Holder to be able to sell the Underwriting Right object on his own authority without any limitation on whether the implementation of the sale process of mortgage rights through a public auction is carried out solely by the creditor or by the creditor's power of attorney. Article 6 The Underwriting Right Act is also a binding force that if the debtor fails to promise, the first Underwriting Right holder has the right to sell the Underwriting Right object on his own power through a public auction, or in other words, both the power of the first Underwriting Right holder is included or not included in the Deed of Granting the Underwriting Right in question, still if the debtor has been proven to be in violation of the promise or default on the credit agreement, the first Mortgage Holder has the power or authority to sell the object of the Underwriting Right through a public auction mechanism through the District Court. This was reinforced by the Supreme Court Decision No. 3021 Date January 30, 1986. Who considers that the Execution Parate must go through Court Assistance according to the principles of procedural law.
- b. Whereas regarding the Power of Attorney Imposing Mortgage Rights (Article 15 paragraph (1) letter (b)) on the principle, it is only used if absolutely necessary, because actually the imposition of the Underwriting Right must be carried out by the grantor of the Underwriting Right himself. The use of a Power of Attorney Imposing Underwriting Rights is done if the Underwriting Right Provider cannot appear before the PPAT. Regarding the contents as stipulated in Article 15 paragraph (1) letter (b) which does not allow the power of substitution, in the explanation of Article 15 paragraph 1 letter (b), substitution prohibited under the Underwriting Rights Act is a replacement for receiving power through transfer, not constituting substitution, if the power of attorney gives authority to another party in the context of the assignment to act on his behalf, for example the Bank's directors assign the implementation of the power he has received to the head of his branch or other party. Therefore, if it is associated with granting power of attorney from the creditor to the debtor to conduct an auction for Execution Parate to the Head of KPKNL, it is not included in Article 15 paragraph (1) letter (b) of the Mortgage Rights Act. So as to be unable to be re-authorized (power of substitution) in the process of encumbering the mortgage under the Power of Attorney Imposing the Mortgage is the same as granting power of attorney in the bidding process for the execution of the Mortgage Right, as stated by the Auction Director, Director of Auction, Director of the Directorate General of State Assets, Ministry of Finance of the Republic of Indonesia, is a legal analogy that is wrong because these two things have significant differences both in terms of substance and juridical consequences so that if both are considered to be the same it will cause vagueness and legal uncertainty.

- c. Execution of the guaranteed object of the mortgage must also be aligned with the Minister of Finance of the Republic of Indonesia with the Regulations made regarding the auction, then Minister of Finance Regulation No. 40 / PMK.07 / 2006 concerning Bidding Implementation Guidelines. Furthermore, the delivery must follow the procedures regulated by Minister of Finance Regulation No. 93 / PMK.06 / 2010 regarding Guidelines for Bidding Implementation, KPKNL is a government agency under the Directorate General of State Assets at the Ministry of Finance in charge of conducting auctions. Based on the provisions of Article 22 paragraph (1) and (2) PMK No. 93 / PMK.06 / 2010 regarding Bidding Implementation Guidelines, the implementation of auctions on land or land and buildings must be equipped with a Land Certificate (SKT) from the Land Office and PMK provisions No. 93 / PMK.06 / 2010 concerning Bidding Implementation Guidelines, Announcement of auctions shall be made 2 (two) times 15 (fifteen) days later, for the first announcement to be imposed through a patch that is easily read by the public or through a daily newspaper and the second announcement must be conducted through a daily newspaper and conducted within 14 (fourteen) days before the auction. After the seller makes an auction announcement, the seller is obliged to notify the debtor defaulting and the parties related to the goods to be auctioned, that the debtor's objects will be auctioned. Auction notice is also made to building occupants and property owners. If the above has been done by the seller, the auction can be carried out according to the specified schedule. On the day of the execution auction as stipulated the execution of the auction is carried out by the auction official appointed by the Head of the KPKNL. The auction winner must deposit the settlement in accordance with the price formed at the auction after deducting the auction guarantee value he has previously deposited. After receiving a deposit from the auction winner, the treasurer of the KPKNL will submit the auction proceeds to the Bank after deducting the Auction Seller Tax by 5% (five percent) and the Seller Auction Fee by 1% (one percent) each calculated from the auction value sold. Furthermore, the Bank will calculate the proceeds from the auction sale of the debtor's collateral object for repayment of all debtor obligations to the Bank, which consists of loan principal, interest, penalties and fees. For this payment, if there is still excess from the proceeds of the sale, the Bank must return the excess proceeds from the sale to the debtor.

Recommendations

- a. Carry out activities that aim to provide an in-depth understanding of all the provisions that form the legal basis for conducting the Mortgage Execution Parate auction, including articles in the Mortgage Rights Act in the form of discussions, seminars, symposiums internally and among officials related and the general public.
- b. Make changes or additions to the provisions in the Underwriting Law, for example by adding an explanation to each of the Articles in the Underwriting Law or the INVITATION of the Underwriting Rights Act with a detailed technical guide or implementing regulation.
- c. Conducting socialization to the public about the process of executing the mortgage rights auction and publishing information about the process of executing the mortgage rights auction in a simple media but can provide information to the general public about the process of executing the Mortgage Rights at the KPKNL institution.

References

- Adjie, Habib. (2000). *Hak Tanggungan Sebagai Lembaga Jaminan Hak Atas Tanah*. Bandung: Mandar Maju.
- Aman, Eddy Putra Tje. (1985). *Kredit Perbankan Suatu Tinjauan Yuridis*. Yogyakarta, Liberty.

- Badruzaman, Mariam Darus. (1989). *Perjanjian Kredit Bank*. Bandung: Alumni.
- _____. (1991). *Beberapa Masalah Hukum Perjanjian Kredit Bank Dengan Jaminan Hypoteek Serta Hambatan-Hambatannya*. Bandung PT Citra Aditya Bakti.
- _____. (1991). *Bab-bab Tentang Hypotheek*. Bandung: PT Citra Aditya Bakti.
- Bahsan, M. (2007). *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*. Jakarta: PT RajaGrafindo Persada.
- Djumhana, Muhammad. (2000). *Hukum Perbankan Indonesia*. Bandung: PT Citra Aditya Bakti.
- Firdaus, M. Rahman. (1985). *Teori Analisa Kredit*, Bandung: Purna Sari Lingga Utama.
- Gautama, Sudargo. (1996). *Komentar Atas Undang-Undang Hak Tanggungan Baru Tahun 1996*. Bandung: PT Citra Aditya Bakti.
- Harahap, M. Yahya. (2006). *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*. Jakarta: Sinar Grafika.
- Harsono, Boedi. (1994). *Hukum Agraria di Indonesia Sejarah Pembentukan Undang-undang Pokok Agraria Isi dan Pelaksanaannya*. Jakarta: Djambatan.
- Harsono, Boedi dan Sudriantor Wiriordarsono, *Konsepsi Pemikiran Tentang UUHT, National Seminar Paper, Bandung, May 27, 1996*.
- Hasan, Djuhaendah. (1998). *Lembaga Jaminan (Kumpulan Tulisan Hukum Jaminan Indonesia)*. Jakarta: Elips.
- HS, H. Salim. (2004). *Perkembangan Jaminan di Indonesia*. Jakarta: RajaGrafindo Persada.
- Mertokusumo, Sudikno. (1998). *Hukum Acara Perdata di Indonesia*. Yogyakarta: Liberty.
- Muljadi, Kartini and Gunawan Widjaja. *Hak Tanggungan*, Jakarta: Prenada Media Group, 2006.
- Naja, H.R. Daeng. (2005). *Hukum Kredit dan Bank Garansi*. Bandung: PT Citra Aditya Bakti.
- Ngadijarno, FX and Laksito, *Lelang, Teori dan Praktik, Text Book Lelang BPPK*, Jakarta, (no year) accessed from the IRB.
- Parlindungan, A.P. (1996). *Komentar UUHT dan Sejarah Berlakunya*. Bandung: Mandar Maju.

- Patrik, Purwahid. (1989). *Hukum Jaminan Edisi Revisi Dengan UUHT*, Semarang, Diponegoro University School of Law.
- Poesoko, Herowati. (2008). *Parate Executie Obyek Hak Tanggungan, Inkonsistensi Konflik Norma dan Kesesatan Peraturan dalam UUHT*, Yogyakarta, LaksBang PRESSindo.
- Rahman, Hasanuddin. (1998). *Aspek-aspek Hukum Pemberian Kredit Perbankan Indonesia*. Bandung: PT Citra Aditya Bakti.
- Satrio, J. Parate. (1993). *Eksekusi Sebagai Sarana Mengatasi Kredit Macet*. Bandung: PT Citra Aditya Bakti.
- Sjahdeni, S.T. Remy. (1999). *Hak Tanggungan, Asas-Asas, Ketentuan-Ketentuan Pokok dan Masalah yang Dihadapi Oleh Perbankan (Suatu Kajian Mengenai Undang-Undang Hak Tanggungan)*. Bandung: Alumni.
- Sinungan, Muchdarsyah. (1987). *Dasar-dasar dan Teknik Management Kredit*. Jakarta: PT Bina Aksara.
- Soekanto, Soerjono. (1986). *Pengantar Penelitian Hukum, Cet. 3*, Jakarta: UI-Press.
- _____ dan Sri Mamudji. (1995). *Penelitian Hukum Normatif Suatu Tinjauan Singkat. Matter 4*. Jakarta: RajaGrafindo Persada.
- Soemitro, Rachmat. (1987). *Peraturan dan Instruksi Lelang*. Bandung: PT Enresco.
- Sofwan, Sri Soedewi Masjchoen. (2003). *Hukum Jaminan di Indonesia Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan*. Yogyakarta: Liberty Offset.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).