



Creditor Rights on Rejection of Execution Request for Guarantee Rights by State and Auction Private Services Office (KPKNL) in Surakarta

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Abstract

Creditors' Rights Against Rejection of Requests for Guarantee Execution of Underwriting Rights by the Office of State Assets and Auction Services (KPKNL) in Surakarta. Faculty of Law, Sebelas Maret University, Surakarta. Credit agreement with Underwriting Rights guarantee, the creditor of the Underwriting Right has the right to precede other creditor (*droit de preference*) to take repayment from the sale of the object. The purpose of writing is to find out the cause of the State Property and Auction Service Office (KPKNL) to reject the application for guarantee execution for Underwriting Rights and the solution to the obstacles faced by creditors in the guarantee execution process for Underwriting Rights that are rejected by the State Property and Auction Service Office (KPKNL). Research Methods using empirical legal approaches. Results of the study (1). The cause of the State Property and Auction Service Office (KPKNL) rejects the request for execution of collateral for Underwriting Rights The execution of guarantees, especially Underwriting Rights in this case cannot proceed smoothly. One of them is the rejected request for execution of Mortgage Rights by the Office of State Assets and Auction Services (KPKNL). Head of KPKNL or Class II Auction Officer in the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016. The solution so that the creditor can obtain his rights for the guarantee execution of Underwriting Right in Article 20. (2) the Dependents Rights Act with the agreement of the giver and the Underwriting Right holder, the sale of the Underwriting Right object can be carried out under the hand if it can thus be obtained the price highest that benefits all parties.

Keywords: Creditors' Right; Application for Execution; Guarantee for Underwriting Rights

Introduction

Increased increase in national development with emphasis on the economic field. One of the institutions that can provide the funds needed by the community is the bank. Definition of banks according to Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning banking is a business entity that collects public funds in the form of deposits and distributes to the public in order to improve the standard of living of the people (Wiwoho., 2014: 27). In this sense the deposits channeled by banks to the public in the form of credit to the lives of people who already know money as a means of payment, it can be seen that almost all communities have made lending and borrowing activities as

indispensable to support their economic development and to improve their standard of living. Thus, lending and lending activities have become part of people's lives (Bahsan., 2007: 1).

Therefore, lending facilities in the form of credit is a natural thing to be able to meet the needs and develop business for economic actors. One financial institution that has credit facilities is banking. Based on the Banking Law Article 1 number 23, collateral is an additional guarantee that is submitted by a debtor customer to a bank in the context of providing credit or financing facilities based on sharia principles. A guarantee is an absolute right to a certain object, in the form of a portion of the assets of the debtor or guarantor, so as to give a preference to the creditor rather than other creditors for the object.

One form of guarantee institutions that will be discussed is Underwriting Rights, which are regulated in Law Number 4 of 1996 concerning Underwriting Rights to Land and Objects Related to Land (hereinafter referred to as the Underwriting Act / UUHT).

In principle, the Underwriting Right object is land rights that fulfill two requirements, namely that it must be registered (to fulfill the publicity requirements) and transferable to facilitate the payment of debt guaranteed by repayment (Sutedi., 2012: 52).

In providing Underwriting Rights, the Underwriting Right Provider must be present before PPAT. If because of something because it cannot attend alone, he must appoint another party as his proxy, with the Power of Attorney for the Underwriting Right, abbreviated as SKMHT, in the form of an authentic deed. The making of SKMHT in addition to the Notary, is also assigned to PPAT whose existence reaches the sub-district area, in order to facilitate the provision of services to parties who need. (Interview with Ms. Anna Kamilasari, 2018; Explanation of Law of the Republic of Indonesia Number 4 of 1996).

According to Article 6 (1) Regulation of the Minister of Finance of the Republic of Indonesia Number 69 / PMK.06 / 2014 concerning Determination of the Quality of Receivables and Establishment of Allowance for Uncollectible Receivables in State Ministries/ Institutions and State Treasurers (Fuadi., 2013: 8).

Determination of bad debt quality if:

1. within a period of 1 (one) month from the date of the Third Billing Letter no repayment is made; or
2. Receivables have been handed over to the State Debt Affairs Committee/ Directorate General of State Assets

This causes the government to form an institution that is expected to help creditors' difficulties in obtaining fulfillment of their rights when the debtor defaults by optimizing material guarantees. The institution is the Office of State Riches and Auction Services (KPKNL). According to Minister of Finance Regulation (PMK) No. 27 / PMK.06 / 2016 in Article 11 states that the auction application begins with submitting an auction application accompanied by a bidding requirement document to the State Riches and Auction Services Office (KPKNL) to request an auction schedule.

The legal issue contained in this study is the discrepancy between the rules (*das sollen*) and the facts on the field (*das sein*), that the creditor has not obtained his right to guarantee the Underwriting Right when the default is made by the debtor because of the request for execution by the Office of State Assets and Auction (KPKNL). This needs to be resolved, given the role and function of the State Assistance and Auction Service Office (KPKNL) which is expected to assist creditors in obtaining their rights to repay debtor debts.

Based on the thoughts that have been described in the background, the author is then interested in further examining the problem in writing a legal thesis entitled: "Creditors' Rights Against Rejection of Requests for Guarantee Execution of Underwriting Rights by the Office of State Assets and Auction Services (KPKNL) in Surakarta.

Methodology

The research in this article is a problem that has been formulated above will be answered or solved by using an empirical legal approach method (Goldsmith & Vermeule., 2002). Empirical approach (law is seen as the norm or *das sollen*), because in discussing the problem this study uses legal materials (both written law and unwritten law or both primary legal material and secondary legal material) (George., 2006; Ulen., 2002). Empirical approach (law as social, cultural reality or *das sein*), because in this study primary data was obtained from the field (Soekanto., 2012; Webley., 2010).

So, the empirical legal approach in this study means that in analyzing the problem is done by combining legal materials (which are secondary data) with primary data obtained in the field by observing some of Soetandyo's opinions, the writing of this thesis is a type of empirical legal research.

Therefore, this thesis research uses a legal concept that sees law as a of institutionalized social behavior, existing as an empirical social variable (Lawless et al., 2010). This study seeks to identify the law, in this case the laws and regulations governing Legal Protection against creditors, namely in this case is Legal Protection for Creditors against the refusal of the Bid for Underwriting Rights by the Office of the Office of State Assets and Auction (KPKNL).

Results

Speaking of Legal Protection for Creditors against the refusal of a Bid for Underwriting Rights by the Office of the Office of State Assets and Auction (KPKNL). Regarding the results of the research above from Article 11 of the UUHT it is clearly stated that there must be a clear description of the object of Underwriting Rights. A clear description here contains the identity of the Underwriting Right object, which is all information contained in the Land Rights Certificate, including Land Rights Certificate, Location of Land Rights Certificate, Area of Land Rights Certificate, Identification Number of Land Rights Certificate, Number and the date of the measurement letter of the Land Rights Certificate and the name of the owner of the Land Rights Certificate.

A credit agreement is a bond between a bank and a debtor whose contents determine and regulate the rights and obligations of the two parties in connection with the granting or loan of credit (loan of money). One of the functions of a credit agreement is as a principal agreement, meaning that a credit agreement is something that determines whether or not another agreement is canceled following the procedure in conducting the auction.

The procedure for carrying out the auction consists of three (3) stages namely; pre-auction, auction and post-auction stages. At the pre-auction stage or auction preparation, auction officials (Interview with Ms. Anna Kamilasari., 2018):

- a. Requesting and receiving auction requirements documents relating to the object of the auction;
- b. To examine the completeness and formal truth of the tender requirements document;

- c. Providing auction information to auction service users, among others, procedures for bidding, collateral, repayment of auction proceeds, auction fees and other levies in accordance with laws and regulations, auction objects and or auction announcements
- d. Making the head of the auction minutes;
- e. Prepare the body parts and feet of the auction minutes

According to Article 11 UUHT it is known that in the Deed of Granting of Underwriting Rights (APHT) must include:

- a. Name and Identity of the Underwriting Right Holder and Provider;
- b. The domicile of the parties as referred to in letter a, and if any of them are domiciled outside Indonesia, they must also include a chosen domicile in Indonesia, and in the event that the domicile of choice is not included, the PPAT office where the Underwriting Deed is deemed as the place of domicile chosen;
- c. Clearly designate guaranteed debts referred to in Article 3 and 10 paragraph (1);
- d. Value of Underwriting Rights; 5). A clear description of the Right object Tanggungan.

Discussion

- a. The cause of the State Property and Auction Service Office (KPKNL) rejects the request for guarantee execution for Underwriting Rights In principle, the bank has just decided to give credit, if the bank has gained confidence about its customers. This conviction is based on the results of in-depth analysis of the customer's goodwill and ability and ability to pay its debts to the bank. The auction of the execution of Underwriting Rights is the application of Article 6 of Act Number 4 of 1996, if the debtor fails to promise, the creditor has the right to sell the Underwriting Right object on his own power through a public auction. If the auction proceeds after deducting all costs and repayment of debts to the creditors, there is still a remainder, then the remainder must be submitted to the Underwriting Right Provider. In general, auctions based on Article 6 of the UUHT were announced through print media. In this case, the creditor acts as the auction seller, whose implementation is carried out through the State Property and Auction Service Office (KPKNL).

The execution of guarantees, especially the Underwriting Right in this case cannot run smoothly. One of them is the rejected request for execution of Mortgage Rights by the Office of State Assets and Auction Services (KPKNL). The Head of the KPKNL or Class II Auction Officer in the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 stated expressly that it cannot refuse an auction application submitted to him as long as the bidding requirements document is complete and has fulfilled the Formal Legality of the Subject and Auction Object. But the obstacle in the case of rejection of the application for execution of the Underwriting Right occurs in the Office of State Assets and Auction Services (KPKNL) in Surakarta.

This refusal occurred because the identity of the Underwriting Right that was used had changed. In the beginning, the Credit Agreement stated that the Land Rights guarantee object was a certificate before the certificate resolution process was carried out, while the Underwriting Right (APHT) guarantee object was the result of the resolution of the Land Rights Certificate. This results in differences in collateral object identity written in the Credit Agreement with the Underwriting Right Deed. Because this

is the basis for the Office of State and Auction Riches Services (KPKNL) in Surakarta rejecting the proposed execution. The State Wealth and Auction Service Office (KPKNL) in Surakarta argues that objects that are used as collateral for debt with the object to be auctioned are not the same. Because the auction object used is deemed incomplete, the KPKNL has the right to refuse, so that no collateral can be auctioned for the Underwriting Right.

Even so, the protection of creditors' rights must remain. For this reason, the protection of the group of companies or the guarantee of the company (holding), or the personal guarantee of the owner of the company is very concerned. Collateral principles must be considered. Collateral is in the form of goods delivered by the debtor to the bank as a creditor as collateral for repayment of the credit received.

The first Underwriting Rights Holder has the right to sell Underwriting Rights objects as referred to in Article 6 of the Underwriting Rights Act. "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 and take the repayment of his debt from the sale proceeds".

When the Auction Center/ KPKNL acts as the Facilitator for the implementation of the Auction, the basis of the legal rules used is Article 14 of Act Number 4 of 1996 concerning Underwriting Rights which implies that the Underwriting Rights Auction has the same executive power as the court's legal decision that has permanent legal force (*inkracht van gewijsde*).

Implementation of the Auction by the KPKNL as an auction organizer facilitated by the Judiciary. Courts based on the provisions of Article 14 of Law Number. 4 of 1996 concerning Underwriting Rights has the authority to carry out the evacuation execution of the object of the auction. The implementation of Auction through the Court is the right way to seek legal certainty regarding the process of auctioning Underwriting Rights between creditors and debtors.

b. Solutions so that creditors can obtain their rights on collateral rights

Legal certainty as one of the objectives of law can be said to be part of efforts to achieve justice. The real form of legal certainty is the implementation or law enforcement of actions regardless of who is doing them. With legal certainty, everyone can predict what will be experienced if certain legal actions are taken.

Based on the provisions of Article 20 of the Underwriting Right Act, the Underwriting Right Execution can be carried out in 3 (three) ways, namely:

- 1) The first Underwriting Right Holder to sell Underwriting Rights on his own power through a public auction as referred to in Article 6 of the Underwriting Rights Act.
- 2) Execution of the executorial title contained in the Underwriting Right Certificate, as referred to in Article 14 paragraph (2) The decree (head of decision) stated in the Underwriting Right certificate contains words for justice based on the almighty deity intended to affirm the existence of an executive force in the Underwriting Right Certificate, so that if the debtor fails to promise, is ready to be executed as well as a court decision that has obtained permanent legal force, through procedures and by using the Parate Executive institution in accordance with the Civil Procedure Law, or
- 3) Execution under hand, namely the sale of the Underwriting Right object carried out by the Underwriting Right Provider, based on an agreement with the Underwriting Right holder, if this method is to obtain the highest price.

The implementation of Article 20 paragraph (3) can only be done:

- 1) If agreed by the giver and the Underwriting Right holder;
- 2) After 1 (one) month after being notified in writing by the giver and/ or the Underwriting Right holder to the parties concerned;
- 3) Announced at least in 2 (two) newspapers circulating in the area concerned and/ or local mass media whose scope covers the location of the object of the Underwriting Right concerned; and
- 4) No party has expressed an objection.

Based on Article 20 Paragraph (1) letter b, the Underwriting Rights Act is explained that the executorial title in the Underwriting Right certificate as regulated in Article 14 of the Underwriting Rights Act can be used as the basis for selling Underwriting Rights objects through public auctions according to the procedures specified in the legislation invitation

Based on the above research, it can be concluded that debtors and creditors in applying for credit loans make credit agreements. Besides making a credit agreement, a guarantee is also needed. Collateral in the form of immovable property (land rights) is regulated in Law Number 4 of 1996 concerning Underwriting Rights on Land and Objects related to Land. Loans granted with collateral in the form of rights to land are set forth in the Power of Attorney to Charge Underwriting Rights (SKMHT), then forwarded the Underwriting Right Deed (APHT) made before the Land Deed Making Officer (PPAT). APHT is registered at the local Land Office so that the Underwriting Right certificate is issued as proof of ownership of the original rights. There are times when debtors default and cause bad credit. Underwriting Rights Holders can sell Underwriting Rights objects through public auctions based on their executive title. However, the request for guarantee execution for the Underwriting Right submitted is rejected by the State Property and Auction Service Office (KPKNL). Therefore, the study of the writing of the thesis is about the cause of the rejected application for execution by the Office of the Office of State Assets and Auction Services (KPKNL) and what rights are received by the creditor for the Underwriting Right

Conclusion

1. The cause of the State Property and Auction Service Office (KPKNL) rejects the request for guarantee execution for the Underwriting Right

The execution of guarantees, especially the Underwriting Right in this case cannot run smoothly. One of them is the rejected request for execution of Mortgage Rights by the Office of State Assets and Auction Services (KPKNL). The Head of the KPKNL or Class II Auction Officer in the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 stated expressly that it cannot refuse an auction application submitted to him as long as the bidding requirements document is complete and has fulfilled the Formal Legality of the Subject and Auction Object. Because the auction object used is deemed incomplete, the KPKNL has the right to refuse, so that no execution auction can be conducted.

This refusal occurs because the guarantee identity of the Underwriting Right used has changed, the beginning in the Credit Agreement, the Underwriting Right object is an intact certificate before the settlement process is carried out, while the Underwriting Right of the Underwriting Right is one of the fractions. There is no link between the collateral object in the Credit Agreement and what is stated in the

Underwriting Right Deed. Because the auction object used is deemed incomplete, the KPKNL has the right to refuse, so that no execution auction can be conducted.

2. Solution so that creditors can obtain their rights for the execution of guarantees for Underwriting Rights Based on Article 20 paragraph

Pursuant to Article 20 paragraph (1) of the Law on Underwriting Rights for the rejected application for execution of Underwriting Rights by the Office of State Assets and Auction Services (KPKNL), the execution of Underwriting Rights objects can also be based on executorial titles as stated in the Underwriting Right certificate. The execution of the Underwriting Right object is based on the executorial title as stated in the Underwriting Right Certificate. The Underwriting Right Certificate can be the basis for the execution of the Underwriting Right.

The Underwriting Right Certificate can be the basis for the execution of the Underwriting Right. By showing evidence that the debtor has broken a promise to fulfill his obligations, an application for execution by the creditor (Underwriting Rights holder) is submitted to the Chairperson of the local District Court through a public tender.

It can also refer to Article 20 (2) of the Tangungan Rights Act with the agreement of the giver and the Underwriting Right holder, the sale of the Underwriting Right object can be carried out under the hand if it will thus obtain the highest price that benefits all parties.

Suggestion

1. To cope with the rejection of the request for execution by the State and Auction Service Office (KPKNL) due to the change in the object identity of the collateral, the creditor must be more careful in anticipating, for example by making an addendum on the Credit Agreement which is about an additional clause or Article that is physically separated from the principal agreement but legally attached to the principal agreement which explains the object of land rights guarantee that has already been. If at the time the contract is in progress there are things that have not been adequately regulated in the contract, consultation can be held for an agreement on things that have not been regulated.
2. To realize the guarantee of legal protection and legal certainty for creditors, it is necessary to apply the precautionary principle that must be carried out by creditors, such as a detailed description of the object to be guaranteed, whether the object that is pledged is intact or only part of the total land.
3. The refusal of an application for the execution of land rights guarantees by KPKNL does not mean that the creditor cannot do anything to obtain his rights. The creditor should immediately register an auction request to the local District Court, by submitting all evidence of the debtor's default for the execution of the Underwriting Right object.

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