

Legal Protection for Internal Creditors Credit Agreement with Liability Guarantee

Daniel¹, Megawati Barthos²
{apin_204@yahoo.com}

Student Program Doctor of Law Universitas Borobudur, Jl. Pemuda, RT.1/RW.3, Rawamangun, Kec. Pulo Gadung, DKI Jakarta 13220, Indonesia¹²

Abstract. Banks, as creditors, provide security and legal certainty in the form of guarantees that the debtor must provide to ensure the repayment of his obligation, mainly if the debtor does not raise his debt or default after the stipulated period. The research method chosen was library research. Secondary data was used, including documentation, data collection methodologies, and a writing survey. The information examination strategy utilized was subjective, and the outcomes were evaluated subjectively normatively. The consequences of this study show that legitimate assurance for leasers in acknowledge arrangements for contract ensures as indicated by the arrangements o Land, among others: focusing on position or contribution to the Mortgage holder first; Implementation of Mortgage Rights; Execution or on the other hand Auction through the Court of Mortgage Certificate, and; underhand courses of action); Promises Included in the Deed of Granting Mortgage; and the Droit de Suite Principle; Mortgage honors by and large follow the article guaranteed in the ownership of whoever the thing is. The leaser acquires legitimate insurance on the off chance that the indebted person defaults in an acknowledge arrangement for ensured contract freedoms: a private deed or a genuine deed.

Keywords: Legal Protection for Creditors, Credit Agreements, Mortgage Rights

1 Introduction

Public improvement is a work to acknowledge just and prosperous individuals' government assistance, one of which is financial advancement in view of Pancasila and.[1] Expanding public improvement that spotlights on the monetary area requires impressive assets. It additionally expands the requirement for the accessibility of assets, the greater part of which are acquired through credit.

Credit facilitates a business activity, especially for monetary exercises in Indonesia, and assumes a fundamental part in its situation, both for creation organizations and private organizations, to further develop the local area's way of life.[2] The activity of borrowing money or better known as credit, in the practice of daily life is not something foreign anymore. The term credit is known to urban communities and people in rural areas.

Credit is the provision of loan facilities (not based on sharia principles) to customers, either in cash loan facilities or non-cash loans. Cash loans are credit facilities provided by banks to

their customers that do not require special conditions for withdrawal. One of the facilities with a strategic role in procuring funds is banking institutions.[3]

Banks are intermediary financial institutions that basically gather assets from general society in stores, which then channel these assets to general society as credits. Regulation concerning Banking states that a bank is a business component that assembles resources from general society as reserve funds and circulates them to general society as credit or potentially different structures to increase the level of community life.

The business world's development encourages economic growth and reduces unemployment and poverty in a country. Article 3 of concerning Banking, "The principal capacity of Indonesian banking is to gather and convey public assets." Banks, as financial institutions, are very influential in the economic growth of a country for the better. In carrying out its role in providing credit to prospective debtors, banks must pay attention to various things before giving credit.

The arrangement of credit offices contained in a credit understanding by the bank to the account holder isn't without risk, the gamble can happen particularly in light of the fact that the indebted person isn't obliged to pay his obligation in entire or in real money, however the debt holder is shared by regulation in the acknowledge understanding for pay later in stages or portions. The dangers that for the most part happen are clog in reimbursing credit (credit risk), the risk arising from market movements (market risk), the risk because the bank is unable to meet its maturing obligations (liquidity risk), and the risk of weakness in the juridical aspect caused by lawsuits, the shortfall of supporting regulation (legitimate gamble).

The banks need to consider the risks that generally harm creditors. In granting credit, it is necessary to trust the capacity and capacity of the indebted person to pay its obligations and focus on the standards of appropriate bank credit. Thus, when the bank expands acknowledge, it would so with this in care, it is important to trust the capacity and capacity of the borrower to pay; for this reason, in providing credit facilities, the bank must first evaluate the customer using the 5C principle based on the precautionary principle, namely; character (character), capacity (ability), capital (capital), conditions of economic (economic condition), and collateral (guarantee).[4]

Credit facilities for prospective debtors can be obtained by meeting the requirements of the bank, one of which is the existence of credit guarantees. The function of providing guarantees is to enable the bank to get a reimbursement with the security things in the event that the account holder breaks his guarantee or doesn't pay his obligations at the time indicated in the arrangement. A credit award depends on an acknowledge understanding regarding the reason for a loan-borrowing agreement.

The credit agreement is a contract between the bank and the customer that binds them together. An actual primary agreement is a credit agreement. There are two types of credit agreements in bank practice: private deed and notarial deed. Borrowing and borrowing money often requires the delivery of debt guarantees from the creditor to the debtor. Debt guarantees are also known as credit guarantees or collateral. Credit guarantees function to secure credit repayment when the debtor defaults or is called a default. Credit guarantee banking practices are generally unique guarantees, namely material guarantees in the type of land. The assurance understanding should meet the lawful prerequisites of the arrangement as expressed in Article 1320 of the Civil Code (in the future alluded to as the Civil Code).[5]

The arrangements of Article 1131 of the Civil Code, where the arrangements in this Article are in many cases included as one of the conditions in the financial credit understanding, peruses: "All objects of the indebted person, both mobile and steady, both existing and new, will exist from here on out, become wards for every single individual commitment," as well as

the arrangements in Article 1132 of the Civil Code which peruses: "The item is a shared assurance for all individuals who owe it; The pay from the offer of the items is separated by the equilibrium, that is to say, as per the size of the receivables of each, except if there are legitimate purposes behind the account holders to outweigh everything else.

Mortgage Rights on Land and Objects Related to Land (in the future referred to as UUHT) is a form of legal certainty in binding collateral for objects related to land.⁷ Article 1 number (1) UUHT states that: "Security rights to land and objects related to land, in the future, referred to as mortgage rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Regulations, as follows: or not, along with other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors."

An assurance restricting cycle should be completed with a condition for conceding contract freedoms by carrying out a Thing of Granting Mortgage by the Land Deed Making Officer, which contains vows to safeguard leasers, and afterward the most common way of stacking contract privileges through two phases, in particular enrollment of home loan freedoms and protection of home loan freedoms. It is normal for the loan boss to be hurt when the indebted person defaults while giving credit. Therefore, a legitimate rule is expected to execute the inconvenience of home loan freedoms contained in a credit understanding, which intends to give lawful conviction and security to related parties, especially leaser parties, on the off chance that the borrower defaults or neglects to satisfy his commitments.

With the sanctioning of the UUHT, what is requested in Article 51 of the LoGA is satisfied, so it is at this point not important to involve the Mortgage and acknowledge Verband as expressed in Article 57 of the LoGA? Thusly, it is accentuated in Article 29 of the UUHT that with the section into power of this regulation, the arrangements seeing acknowledge Verband as alluded to in staatsblad 1908-542 as corrected by staatsblad 1937-190 and arrangements viewing contracts as alluded to in Book II of the Code of Law The Indonesian Civil Code as long as it concerns the burden of home loan privileges ashore freedoms and items connected with land is pronounced as of now not substantial.

The Mortgage is the only institution to guarantee rights over land; thus, the provisions regarding creditverband and hypotheek in the second book of the Civil Code concerning the inconvenience of Mortgage and items connected with land are pronounced presently not substantial. This has been controlled plainly in Article 29 of the Mortgage Law. A home loan gives accommodation to the two leaders and account holders.

Something expected by a bank as a loan boss in giving credit is the presence of insurance as an assurance that the debt holder should provide for ensure the reimbursement of his obligation for security and lawful conviction, fundamentally if, after the concurred period, the debt holder doesn't grow his borrower is in default. This encourages the author to research how the provisions in the law provide legal protection to creditors, especially if the debtor defaults on the credit agreement by using Mortgage guarantees.

2 Research Methods

The sort of examination utilized is library research, which utilizes optional information. The information source is gotten through following records connected with lawful security for lenders in acknowledge arrangements for contract ensures. The writer likewise analyzes optional lawful materials as archives and books that are pertinent to the issue. This exploration utilizes regulating legitimate examination, specifically lawful examination directed by inspecting library materials or auxiliary information, comprising of essential legitimate

materials, optional lawful materials, and tertiary lawful materials. The lawful materials are ordered efficiently, considered, and afterward finished up with the problem under study.[6]

This research was conducted with an emphasis on research on legal systems. The research approach utilized by the creator in this study is regularizing legitimate exploration, specifically looking into lawful issues normatively connected with legitimate assurance for lenders in acknowledge arrangements for contract guarantees.[7] This research applies the law to legal conflicts resolved through the courts. This research was directed to dissect records as choices with respect to the main information, upheld by optional information comprising of essential lawful materials and auxiliary legitimate materials.[8]

The type of data used in this research is secondary data. These data are not obtained directly from the field or the community. Still, they are obtained from literature studies that include various books, official documents, laws, regulations, and results of scientific research in the form of reports and library materials related to the problems studied. The data variety strategy used in this investigation is library assessment or report study, a data assortment instrument brought out through composed information utilizing content investigation. The writer concentrates on archives or library materials by visiting the library, perusing, surveying, and studying books, literature, laws and regulations, research journals, papers, the internet, and collecting and supporting research.[9]

The legal material obtained will be analyzed qualitatively by discussing and describing the legal material obtained based on legal norms or rules relevant to the subject matter. Data analysis is a crucial and decisive stage in any research. In this stage, the author must sort the data that has been obtained. Data analysis is essentially an activity to systematize written legal materials to facilitate analysis and construction work.

The author conducts formative research on legal systematics. The data analysis used by the author is data analysis by analyzing the articles whose contents are legal rules, in this case, an analysis of the articles contained in concerning. After the analysis, data construction is carried out by entering specific articles into categories based on fundamental understandings of the legal system.

3 Results and Discussion

3.1 Legal Protection for Creditors in Credit Agreements with Mortgage Guarantees

The credit agreement is a basic agreement that is consensual (package *contrahendo obligatoir*). It is accompanied by an agreement or agreement between the creditor as the lender and the debtor as the borrower. Usually, the bank acts as the provider of credit facilities. According to the public in credit or loans.

The bank carries out granting credit as a creditor to the debtor. The possibility of risks such as failure or congestion in paying off debt by the debtor is substantial. The bank requires so required material guarantees from the debtor to guarantee the repayment of the credit.[10] Land rights are the most widely used collateral because the value or price increases. Guarantee institutions that are considered effective and safe by banking institutions are mortgages, and this is because it is easy to identify the object of a Mortgage as well as straightforward and easy to carry out its execution, and must be paid in advance of other bills with money from the auction of the mortgage object, and a certificate of title. Dependents have executive power.

Legal protection is given to creditors through, which came into force on April 9, 1996. The provisions of the Articles in the Mortgage Law that provide legal protection to creditors are. It is giving priority or priority to the holder of the Mortgage Rights. prioritizes the holder of

Mortgage Rights (Droit de preference). This is stated in Article 1 point (1) as follows Mortgage ashore and objects connected with land, from this point forward alluded to as Mortgage Rights are land privileges as alluded to in Law Number 5 of 1960 concerning Basic Regulations Agrarian issues, including or excluding different articles which are a necessary piece of the land, for the repayment of specific obligations, which give need to specific lenders over different leasers.

The provisions in the Article intend that assuming the borrower is in default, the loan boss, as the holder of the Mortgage, has the option to sell the object of the Mortgage, which is the assurance for the settlement of the receivables through a public closeout as indicated by the arrangements of the pertinent regulation, with earlier freedoms over different banks, where the position the need doesn't lessen the inclination for state receivables as per the relevant lawful arrangements.

Priority creditor rights (preference) are claims rights that by law are classified as privileges, and the claims are referred to as priority claims or preference claims. In contrast, the creditors are called preference creditors. This right of preference or privilege is also regulated in Book II of Title XIX concerning "Receivables with Privileges," starting from Article 1131 to Article 1149 of the Civil Code. The chapter consists of three parts containing a. privileged receivables; b. Privileges regarding particular objects; c. Privileges/all movable and immovable property.

One of the reasons, namely Article 1131 of the Civil Code, mentions the rights of external creditors, namely: a. A creditor may repay any piece of the indebted person's resources; b. Each piece of the borrower's abundance can be offered to settle the loan boss' bill; c. The loan boss' case freedoms are ensured by the borrower's property, rather than by the "debtor person."

Juridically, privilege is formulated in Article 1134 paragraph (1) of the Civil Code, namely, "a privilege is a right given by law to a debtor, so that the level is higher than other debtors, solely based on receivables." The Civil Code distinguishes two types of privilege rights based on Article 1138 of the Civil Code, which reads, "There are special rights concerning certain objects, and there are those concerning all objects, both movable and immovable. The former takes precedence over the latter."

The execution of home loan freedoms is directed in, Article 6, Article 14 passages (1), (2), and (3), as well as Article 20 section (2) and (3). One of the qualities of home loan freedoms is that as an essential land ensure organization, its execution is simple and sure. In light of the General Elucidation, albeit as a general rule, the arrangements in regards to execution have been directed in the material Civil Procedure Code, it is considered significant to incorporate exactly the arrangements in regards to the execution of specifically manages the para te execution establishment as alluded to in Article 224 HIR and Article 256 Rbg.albeit as a general rule, the arrangements with respect to execution have been directed in the relevant Civil Procedure Code, it is considered significant to incorporate exactly the arrangements in regards to the execution of Mortgage Rights in are divided into 3, namely: a. Article 6 of Law Number 4 of 1996: Parate Executive or Auction without going through a Court; b. Article 14 paragraphs (1), (2), and (3) of Law Number 4 of 1996: Execution or Auction through the Court of Mortgage Certificates;

The sale of a public auction conducted based on an execution ordered by the Head of the District Court or by the State Receivable Affairs Committee or the State Property Sales and Auction Office (KPKNL) if it is not sufficient to pay off the debtor's debt, the remaining debt can be billed by the creditor by filing a lawsuit against the debtor through the District Court at the same time requesting that the debtor's assets be confiscated with collateral confiscation and that the confiscation is requested to be declared valid and valuable. It can also be included in the petitum so that the decision is declared enforceable first, even though the debtor makes a

verzet, appeal, or cassation. If the debtor turns out to be poor after the land burdened with the Mortgage Rights is auctioned, the remaining debt can still be collected within 30 years.

In light of General Elucidation Number 9 and the Elucidation of Article 14 passage (3) Number 4 Of 1996, The Contract Certificate Applies And Capacities As A Substitute For The Grosse Acte Hypotheek or Grosse deed of affirmation of obligation as alluded to in Article 224 HIR or Article 258 Rbg. A mortgage Certificate is a copy of the Mortgage Land Book and the Mortgage Granting Deed, sewn into one document, then submitted to the Mortgage Holder. Whereas the banking sector no longer requires a gross deed of recognition of debt as the basis for execution if the debtor is in breach of contract. But it is enough to use a Mortgage Certificate that has executorial power to execute the Mortgage.

The promises contained in the deed of granting mortgage rights are regulated in Law No 4 of 1996 concerning Mortgage on Land and Objects Related to Land, Article 11 paragraph (2). All promises in this Article are not absolute in providing legal protection to creditors, but only some promises that protect creditors if the debtor defaults.

3.2 Forms Of Legal Protection Obtained By Creditors When The Debtor Defaults In A Credit Agreement With Mortgage Guaranteed

provisions in Article 11 paragraph (2) contain promises contained in a deed of granting mortgage (APHT), where these promises are a form of legal protection for Mortgage holders (creditors), especially when the debtor defaults or breaks his promise. The lawful security is as a guarantee that restricts the power of the Mortgage Giver (the indebted person) not to make moves that hurt the Mortgage Holder (the bank) or a guarantee that should be made assuming the borrower defaults, as well as a guarantee that gives the Mortgage holder the position to do specific things.

Forms of Legal Protection Obtained by Creditors When the Debtor Defaults in a Credit Agreement with Mortgage Guaranteed makes sense of the importance of Credit; Credit is the arrangement of cash or cases that can be compared with it, in view of an understanding or advance arrangement between a bank and an outsider. Others require the borrower to reimburse the obligation after a specific period with interest. In the arrangements of the Article, what is implied by an understanding or credit understanding is a form of credit agreement in which an agreement must be made in written form.

The arrangement in the Banking Credit Agreement should be made in composed. This arrangement is contained in the Elucidation of Article 8 of Law Number 10 of 1998 concerning Amendments to Law No 7 of 1992 concerning Banking, requiring banks as credit suppliers to settle on a composed understanding. The necessity for a financial consent to be in composed structure has been specified in the focal financial arrangements by Bank Indonesia as alluded to in Article 8 section (2) of the Banking Law.

In view of the Elucidation of Article 10 of Law Number 4 of 1996, it is made sense of that an understanding that makes an obligation receivable relationship whose reimbursement is ensured can be made in 2 (two) structures, to be specific as an underhand deed or a bona fide deed, contingent upon the legitimate arrangements overseeing the topic of the arrangement. The type of legitimate insurance given to banks as indicated by the arrangements of this Mortgage Law is as the credit understanding itself.

This credit agreement serves as evidence and provides limitations regarding the rights and obligations of each party. For the credit agreement to guarantee the repayment of the creditor's debt, a guarantee binding process must be carried out with a clause for granting Mortgage Rights if the object guaranteed is a fixed object, namely land rights. Land rights are widely used as collateral because they generally have a value or price that tends to increase every year.

After the process of binding the guarantee with the clause of granting Mortgage by doing a Deed of Granting Mortgage by the Land Deed Making Officer, which contains promises that protect creditors, so that the credit agreement can guarantee the repayment of creditors' receivables, it is necessary to carry out the process of imposing Mortgage Rights in the form of a Deed of Rights carried out through 2 the stage is through the registration process and issuance of Mortgage Rights in the form of Mortgage Certificates. As proof of Mortgage Rights, the Land Office issues Mortgage Certificates that have executorial powers as the basis or basis for carrying out executions if the debtor defaults in the future.

The type of legitimate security given to lenders when the debt holder defaults as per the Elucidation of is as the credit agreement itself, which is contained in written form, which is either a private deed or an authentic deed. According to the author, the credit agreement with an authentic deed guarantees the creditor's right to recover his receivables when the debtor defaults. This authentic deed has the advantage that a Grosse Deed of Debt Recognition can be requested, which has executive power and becomes the basis for execution if the debtor defaults. However, based on General Elucidation Number 9 and Elucidation of Article 14 paragraph (2) of the Mortgage Rights Act, a Land Rights Certificate has been issued as a substitute for the Grosse Debt Recognition Deed has the same function.

The parties do this authentic deed in the presence of an authorized official, namely a notary, by binding a credit agreement with a guarantee of giving Mortgage Rights first. The Land Deed Making Officer makes a Deed of Granting Mortgage, which contains promises to guarantee creditor rights in obtaining repayment. The receivables and limiting the authority of the debtor, and the next stage is the process of imposing Mortgage through the registration stage of Mortgage at the Land Office and as evidence of the existence of Mortgage, the issuance of a Mortgage Certificate which has a certificate of "BY JUSTICE BASED ON THE ALMIGHTY GOD," where the certificate This becomes the basis or basis for carrying out executions if the debtor refuses to pay off his debt at a later date.

4 Conclusion

Genuine affirmation for advance bosses in perceive strategies for contract ensures as shown by the blueprints of, among others: giving need or need to the holder of Mortgage Rights (Article 1 digit (1)); (1), (2) and (3): Execution or Auction through Court of Certificate, and Article 20 entry (2) and (3): Sales under the hand); Promises Included in the Deed of Granting Mortgage (Article 11 district (2)); and the Droit de Suite Principle (Article 7: for the most part follows what is guaranteed in the obligation regarding the thing is)

The type of legitimate assurance got by the loan boss when the borrower defaults in the acknowledge understanding for guarantee privileges, to be specific the commitment for the financial consent to be in composed structure, has been specified in the focal financial arrangements by Bank Indonesia as suggested in Article 8 segment (2) of the Banking Law. Considering the Elucidation of Article 10 of Number 4 of 1996, it is sorted out that a comprehension that makes a commitment receivable relationship whose repayment is guaranteed can be made in 2 (two) structures, specifically as an underhand deed or a true deed, contingent upon the legitimate arrangements administering the topic of the arrangement. That. The type of legitimate security given to loan bosses as per the arrangements of this Mortgage Law is as the credit understanding itself, to be specific the Credit Agreement or Deed under the Hand and Credit Agreement or Authentic Deed.

The conditions contained in Article 6, namely that if the debtor is in breach of contract, then the right to sell the object of the Mortgage on his power is only the holder of the First Mortgage,

which means that the holder of the second, third and so on does not have the right to sell the object of the Mortgage. The Mortgage is through a public auction if the receivables are transferred to the holder of the second Mortgage or other creditors, so it is necessary to make improvements in this Article to ensure legal protection to the creditor, namely if the receivables are transferred to a third party, namely the holder of the second, third and so on, then the third party even this also on its power if the debtor is in default or default.

They were granting Mortgage Rights (APHT), in one of its guarantees, specifically the need to contain or incorporate a guarantee with the words "in the event that the indebted person is in break of agreement," the holder of the main Mortgage has the privilege to sell on his power the object of the Mortgage assuming the borrower defaults. In this way, in the event that the deed does exclude a guarantee with these words, then assuming the borrower defaults or is in break of agreement, the bank, as the holder of the Mortgage, doesn't reserve the privilege to sell the object of the Mortgage on his power.

References

- [1] E. E. Supriyanto, "Revitalization of Pancasila as a Solution to The Problems Faced by The Indonesian Nation," *J. Pendidik. Nusant.*, vol. 1, no. 2, pp. 52–61, 2021.
- [2] F. Dalimartha and F. Santiago, "Banking Legislation Renewal as a Preventive Effort of Banking Corruption Crime," in *ICLSSEE 2021*, 2021, no. 1, doi: 10.4108/eai.6-3-2021.2306201.
- [3] F. Santiago, "Credit Relaxation Policy During Covid-19 Reviewed from the Force Majeure Aspect," 2021, doi: 10.4108/eai.6-3-2021.2306389.
- [4] N. Kurniawan and R. Arhamullah, "Kajian Yuridis Komparatif Penyedia Pinjaman Non-Bank Bagi Usaha Mikro di Indonesia," *Syntax Lit. J. Ilm. Indones.*, vol. 6, no. 8, p. 6, 2021.
- [5] A. B. Berkelaar, J. Coche, and K. Nyholm, *Interest Rate Models, Asset Allocation and Quantitative Techniques for Central Banks and Sovereign Wealth Funds*. 2010.
- [6] F. M. Dobrick, J. Fischer, and L. M. Hagen, *Research ethics in the digital age: Ethics for the social sciences and humanities in times of mediatization and digitization*. 2017.
- [7] I. Nurdin and S. Hartati, *Metodologi Penelitian Sosial*. 2019.
- [8] M. B. Miles, A. M. Huberman, and J. Saldana, *Qualitative Data Analysis: A Methods Sourcebook*. Sage Publications, 2014.
- [9] D. Lee, "Research consultations: Enhancing library research skills," *Ref. Libr.*, vol. 41, no. 85, pp. 169–180, 2008, doi: 10.1300/J120v41n85_13.
- [10] J. Sengupta, "Digital Banking in Asia Winning approaches in a new generation of financial services," *Asia Financ. Institutions*, pp. 1–89, 2014.