

International Journal of Judicial Law

The phenomenon of registering mortgage rights electronically in a credit agreement

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Article Info

ISSN (online): xxxx-xxxx

Volume: 01

Issue: 03

May-June 2022

Received: 01-05-2022;

Accepted: 17-06-2022

Page No: 20-23

Abstract

Collateral is an important factor in a bank loan. One of the frequently used guarantees is mortgage rights. Credit contracts in Indonesia have no specific rules in the Civil Code. The validity of credit contracts in Indonesia is determined by the principle of freedom of contract. The Civil Code applies to both named and unnamed contracts. This loan agreement is similar to an agreement on the loan of money or goods that have run out of use, so in the loan agreement it can be qualified as a loan of money or goods that have run out, as regulated in Articles 1754 to 1769 of the Civil Code. Code. In this case, the borrower or debtor is required to return the same compensation of a different kind and under the same conditions. Furthermore, it is also stated that interest may be attached to the contract which has been agreed upon between the parties in advance, so that the agreement may be included in the loan contract by stipulating the interest. With a lien in the loan agreement, the subject of the lien can be executed in the event of default by the debtor. In Lien Law, the principle of publicity applies, namely that the lien must be executed at the land office. This mortgage can be known to the general public. Currently, the registration of the mortgage right is carried out electronically. Electronic registration of liens is not regulated in the Law on Liens. This study aims to identify and analyze the phenomenon of registration of mortgage rights through electronic loan contracts in Indonesia. The research method used is empirical-legal, a review of legal principles, legal norms, legal regulations and implementation in society regarding the registration of electronic mortgage rights.

Keywords: Current situation, quality human resources, FDI enterprises, attraction and retention

1. Introduction

Credit is one of the activities of the bank that really helps the needs of the community in raising funds for various types of consumption and productive needs. In various countries around the world, financing is very important to meet the needs of the community. One of the biggest challenges businesses face is raising funds for their projects [1]. One of them is financing through a bank loan. Of course, there are risks for the banks that provide the loan. Credit risk is one of the significant risks of banks due to the nature of their activity [2]. Therefore, the management of financing risks is an important factor for banks when granting loans. In order for the distribution of funds in the form of credit to be truly safe and protected, banks must pay attention to Article 8 (1) of the Banking Law No. 10 of 1998 amending the Banking Law No. 7 of 1992, which states that: "When granting loans or Shariah-based financing is required for commercial banks to have a trust based on an in-depth analysis of the borrower's intention and ability and capacity to repay the debt or repay the financing in accordance with the agreement".

Financing through a bank loan involves risks, so any lending or financing must be based on sound principles and the principle of prudence. To reduce this risk, an important factor for the bank to consider is the confidence in the ability and capability of the borrower to meet their obligations as agreed. In order to gain this trust, banks generally assess the character, capacity, capital, collateral, economic conditions before granting a loan [3]. Of the five, collateral is the easiest, and considered capable of providing greater legal protection to lenders as credit distributors. This is because the collateral can be directly used to obtain repayment of the loan if the borrower defaults. Security for creditors is very important to secure the compensations that creditors have given to debtors [4]. This guarantee is very important for companies to mitigate risks [5]. In connection with the achievement of economic goals, the loan must be provided with a guarantee of legal certainty for the parties involved.

One way is to conclude a credit agreement, which serves to limit the rights and obligations of these parties. The loan agreement is the main agreement, followed by the guarantee agreement as another agreement. Both are done independently, but the position of the warranty contract is largely dependent on the main contract. This needs to be done to provide protection to creditors so that in the event of a debtor's default, the creditor still has a right to their claims.

In practice, every loan provided by the bank is always accompanied by the presentation of a guarantee by the borrower. The binding of the guarantee is carried out at the moment of signing the credit agreement. One of the frequently used guarantees are mortgage rights [6].

There are no special rules for credit agreements in Indonesia, therefore there are provisions in the Civil Code as the basis for the execution of credit agreements. The basis of credit contracts are Articles 1754 to 1769 of the Civil Code, in which the provisions relating to contracts for the loan of money or things that are exhausted by use are regulated and the debtor or borrower is required to return the loan to the creditor in the same amount of the same kind and condition. Furthermore, it is also stated that interest may be attached to the contract, which has been pre-negotiated between the parties, so that the credit contract may be included in the loan contract by stipulating the interest.

In addition to the loan agreement as the main agreement, it is also necessary to have a warranty agreement in the form of movable and immovable property. For this reason, a strong guarantee rights institution is needed, which is able to provide legal certainty to credit providers and beneficiaries, as well as to other parties involved through this institution. In credit contracts, the parties have usually firmly agreed that, in the event of default by the borrower, the lender is entitled to part or all of the proceeds from the sale of the secured property as repayment of the borrower's debt (*verhaalsrecht*) [7]. One of them is mortgage rights.

This is due to the fact that the loan agreement always requires a relatively safe guarantee of the return of the funds channeled through the loan. The existence of this guarantee is very important to reduce the risk of loss for the bank (creditor). An ideal guarantee can be seen from: it can help obtain a loan for parties in need; does not weaken the potential (power) of the credit recipient to continue his business; to provide security to creditors in the sense that it will be collected to pay off debtors' debts if necessary.

Mortgage rights are governed by Act No. 4 of 1996 on mortgage rights over land and things related to land. In the case of a Mortgage owned by the creditor, in the event of default by the borrower, the Subject of the Mortgage can be executed. The principle of publicity applies to the Mortgage, namely that the Mortgage must be registered at the land office. These liens can thus be known to the general public. Currently, mortgage rights are registered electronically. Electronic registration of mortgage rights is not regulated in the Mortgage Act.

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 "an agreement is a legal relationship between two or more parties based on an

agreement causing legal consequences". The contract creates an agreement between the parties. An engagement is a legal relationship in the field of property law between two parties, which establishes the rights of one party and the obligations of the other in performance [9].

In order for the contract to be valid, it must meet the conditions for the validity of the contract listed in § 1320 of the Civil Code, namely:

1. Agree on those who commit.
2. Ability to engage.
3. Certain matter.
4. Legal reason.

One of the contracts that are widely implemented in people's lives is the loan contract. Article 1 number 11 of Act No. 7 of 1992 on Banking as amended by Act No. 10 of 1998 on Amendments to Act No. 7 of 1992 on Banking states that a loan is the provision of money or receivables that can be compared to it, on based on a credit agreement between the 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 loan agreement, the payments are within a set time frame, creating a risk for the lender. In general, therefore, bank loan agreements require the guaranty of the borrower. One of the guarantees that banks use extensively are mortgage rights.

Section 1 point 1 of Act No. 4 of 1996 on mortgages states that a lien on land and things related to land, hereinafter referred to as a lien, is a security right imposed on land rights, as stated in Act No. Number 5 of 1960 on Basic Regulations on Agrarian Principles, including or not including other objects which are an integral part of the land, for the settlement of certain debts which give preference to certain creditors over other creditors.

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

- a. To give preference or a preferred position to the holder
- b. Always follow an object that is guaranteed to be in the hands of the person who is the object
- c. Meets the principles of specialty and publicity that is open to the public so that it can bind third parties and provide legal certainty to interested parties
- d. Easy and sure implementation.

Research method

This study uses an empirical legal approach through library research and field research. In library research, document

study techniques, namely, the examination of 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

The phenomenon of electronic registration of mortgage rights in Indonesia

The process of assigning mortgage rights takes place in two phases of activities, namely:

The stage of providing a mortgage with the drawing up of a deed on the provision of a mortgage by the land registry officer, hereinafter referred to as PPAT, which is preceded by an agreement on guaranteed debt and receivables.

The registration stage is carried out by the land office, which is the origin of encumbered liens.

The granting of a lien is preceded by a promise to provide a lien as a pledge for the payment of certain debts, which are stipulated and are an integral part of the relevant debt agreement or other agreement (basic agreement) from which the debt arose. While the granting of the mortgage rights mentioned above is carried out by a contract for the provision of mortgage rights, which must be concluded before the PPAT (Article 10 paragraph 2 of the UUHT).

Furthermore, the Act on Mortgage Rights stipulates the content that is binding for the validity of the contract for the provision of a mortgage. Incomplete inclusion of the items listed in the contract for the provision of a mortgage has the effect that the contract in question is legally invalid. In Article 11 par of the Act on Mortgage Rights states that the items that must be included in the document granting mortgage rights are:

1. Name and identity of the holder and provider of the Mortgage
2. Seat of holders and providers of the Mortgage
3. Clear identification of debts or debts secured by mortgage rights, including the name and identity of the debtor in question
4. Dependent value
5. Clear description of the subject of the Mortgage.

In addition, the mortgage deed may contain covenants that are optional in nature and have no effect on the validity of the mortgage deed. The parties are free to decide whether or not to mention the promises in the mortgage deed. By incorporating the promises into the mortgage deed, which is subsequently registered with the land office, the promises are also binding on third parties. Promises which need not be contained are contained in Article 11(2) of the Mortgage Law. At this stage of the imposition of the lien, the lien has not yet been born, because the birth of the lien is when it is registered at the land office.

The granting of the Lien must be registered at the Land Office. Registration is carried out no later than 7 (seven) working days from the signing of the Mortgage Agreement, PPAT is obliged to send the concerned mortgage agreement and other required documents to the Land Office. The PPAT is required to provide written notice of the submission of the APHT and other files to the affected parties.

The registration of the lien is carried out by the Land Office by obtaining the Land Lien Book and entering it in the Land Book of the land rights that are the subject of the lien and

copying the notes to confirm the relevant land rights.

After meeting all the above-mentioned conditions and deadlines, the land office will issue proof of the existence of a lien by issuing a lien certificate. The certificate of mortgage rights contains the words "For justice based on the one Supreme Deity" (Article 14 UUHT).

In the Mortgage Act, the registration of mortgage rights is done manually by submitting a registration application to the Land Office. This is different from the amendment in the State Minister's Regulation to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the NU Number 9 of 2019 on 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 Territorial Planning/Head of the National Land Office No. 9 of 2019 was canceled and replaced by the Regulation of the Minister of Agrarian and Territorial Planning/Head of the National Land Office of the Republic of Indonesia. Number 5 of 2020 on electronic integrated mortgage services.

The Electronically Integrated Service of Mortgage Rights ("HT-el System") is a series of processes of the Service of Mortgage Rights in connection with the retention of land registration data, which is carried out through an integrated electronic system. On the one hand, it is very beneficial for the community, especially for the business world, because it is easier and faster. On the other hand, there are various formulations that are not in sync between the Law on Mortgage Rights and the Decree of the Minister of State for Agrarian Affairs and Spatial Planning / Head of the National Land Office No.

5 of 2020, among other things regarding mortgage providers, mortgage registration, elimination of mortgage rights and erasure (Roya) of mortgage right." The mortgage encumbrance process takes place in two phases of activity, namely the mortgage granting phase and the mortgage registration phase." 10

In Article 10, paragraph 2, it is stated that "The granting of a lien is carried out by concluding a contract on the provision of a lien.

Mortgage rights by PPAT in accordance with applicable laws and regulations." Article 13 of the Law on Mortgage Rights states that the granting of mortgage rights must be registered at the Land Office. No later than 7 (seven) working days from the signing of the contract Deed of mortgage, PPAT is obliged to send the subject deed on the provision of a pledge and other necessary documents to the land office The registration of the lien is carried out by the land office by drawing up the Pledged Land Book and entering it in the book of land rights, which is the subject of the lien, and a copy of the notes on the certificate of the subject land rights Date of issue of the book of liens is the seventh day after full receipt of the documents required for its registration, and if the seventh day falls on a holiday, the relevant land register is entered as the date of the following business day.

Article 14 of the Act on Mortgage Rights states that as a sign of the existence of a lien, the Land Office shall issue a mortgage deed in accordance with applicable laws and regulations. The mortgage certificate contains certificates with the inscription "FOR JUSTICE BASED ON GOD ALMIGHTY". A certificate of mortgage rights has the same enforceable power as a court decision, which has permanent legal force and is valid as a substitute for a Grosse acte Hypotheek, as far as land rights are concerned.

In the electronic lien registration system, all steps in the registration of lien rights are carried out by an integrated electronic system. An electronic system is a series of electronic devices and procedures that serve to prepare, collect, process, analyze, store, display, notify, transmit and/or disseminate electronic information (Article 1 point 6 of the Regulation of the Minister of Agrarian Affairs and Space). Planning/Head of National Land Agency Number 5 (2020). Documents sent by the land clerk through the electronic system in the form of electronic documents. An electronic document is any electronic information that is created, transmitted, sent, received or stored in an analog, digital, electromagnetic, optical or similar form that can be seen, displayed and/or heard by a computer or electronic system, including but not limited to writing, sound, images, maps, designs, photographs and the like, letters, characters, numbers, access codes, symbols or perforations that have meaning or significance or can be understood by people who are capable of understanding them (Article 1 point 11 Regulation of the Minister of Agrarian Affairs and Administrative Room / Head of the National Land Agency No. 5 of 2020).

After registration of the Mortgage by the integrated electronic system, an Electronic Mortgage Certificate is issued. This is regulated in Article 15 paragraph 1 of the Decree of the Minister of Agrarian and Territorial Planning/Head of the NÚ number 5 of 2020, where it is stated that "The results of HT-el services are in the form of Electrons. Documents issued by the HT-el system, including: a. HT-el certificate; b. Record of pledge in the land book of land rights or ownership rights to housing units; and c. Mortgage records on Certificates of Title to Land or Title to Housing Units."

Conclusion

The phenomenon of electronic registration of Integrated lien rights in the loan agreement brought about a significant change in the process of granting lien rights.

Initially, this was done manually in two stages, namely the stage of granting the lien by the Land Registry Officer and the stage of registering the mortgage at the Land Office. In the Electronic System of Registration of Mortgage Rights, the mortgage registration process is carried out using an integrated electronic system.

References

1. Agarwal Sumit, Richard K Green, Eric Rosenblatt, Vincent Yao. Foreclosure, sunk cost fallacy and mortgage default. *Journal of Financial Intermediation*. 2015; 24(4):636-52.
2. <https://doi.org/10.1016/j.jfi.2014.10.001>.
3. Badriyah Siti Malikhatun, Siti Mahmudah, Amiek Soemarmi, Tan Kamello. Leasing agreement for the financing of small and medium-sized enterprises in the fishing sector. *Journal of Legal, Ethical and Regulatory Issues*. 2019; 22(3):1-7.
4. Badriyah Siti Malikhatun, R Suharto, Siti Mahmudah, Bambang Eco Tourism. Conflict of Laws Regarding Regulation of Creditors of Encumbrance Holders in Debtor's Bankruptcy in Indonesia. In *ICIDS 2019*, 10-12 September, Bandar Lampung, Indonesia Copyright © 2019 EAI DOI, 1-6 2019. <https://doi.org/10.4108/eai.10-9-2019.2289383>.
5. Crosetto Paolo, Tobias Regner. It's Never Too Late: Funding Dynamics and Own Commitments in Rewards-

- Based Crowdfunding. *Research Policy* 47, no. 8 (2018): 1463–77. <https://doi.org/10.1016/j.respol.2018.04.020>.
6. Denico Mines. *Aspek Hukum Hak Tanggungan Dalam Perakanasi Roya. Negara Hukum, Membangun Hukum Untuk Keadilan Dan Kesejahteraan*. 2011; 2(1):103-28.
7. Li, Zou. The Impact of Credit Risk Management on the Profitability of Commercial Banks: A Study of Europe. *Business and Economics Journal*. 2014; 4(8):1-93.
8. Patrick, Purwahid and Kashadi. *Hukum Jaminan*. Semarang: Badan Penerbit Universitas Diponegoro, 2009.
9. Simangunsong, Adrian Fernando. "Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik," n.d. <https://www.hukumproperti.com/hak-tanggungan/pelayanan-hak-tanggungan-terintegrasi-secara-elektronik/>.
10. Wafi. Muhammad Shafiyuddin, Siti Malikhatun Badriyah, Marjo and Aminah. Partial script of registration (Roya) in the implementation of easement rights as an effort to develop micro, small and medium enterprises. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*. 2019; 24(12):76-81. <https://doi.org/10.9790/0837-2412027681>.