

Enforcing Mortgage Law to Protect Creditors' Legal Rights

Rachmatu Artemn

Faculty of Law
Universitas Narotama: UN
Indonesia

ABSTRACT

The result of this research concludes that the result of the research shows that the legal result of not registering the Deed of Mortgage Rights (APHT) to the credit agreement made by the parties before the Notary / Land Titles Registrar (PPAT) is the creditor having no priority position. Where the form of legal protection that can be given to Creditors as a form of anticipation is not registered APHT is by the signing of the deed of power sell at the time of the credit agreement. The creditor's right to the guaranteed item in the case of APHT is not registered i.e. not giving the right to each other over the other creditor. The purpose of the imposition of Mortgage right is in order to provide protection and legal certainty to all parties (especially Creditor) as well as to fulfill the principle of publicity. The grant of this right is intended to provide the preferred position to the creditor concerned (preferred creditors) other than the creditors. As collateral for repayment of Debtor's debt to the Creditor in connection with the loan/credit agreement concerned. Deposit Rights will not be born without the registration of APHT. But in practice, there is still some unscrupulous PPAT register APHT to the Land Office for various reasons off course, this will harm the creditors as a lender.

Keywords: Legal Protection, Land Deed Officer, mortgage right, APHT, UUPA.

Introduction

Credit given by the bank as Creditor to Debtor begins with a credit agreement which is essentially a process of granting "collateral" or mortgage from the Debtor as a funds borrower. Warranty is something given to the Creditor to raise the belief that the Borrower will fulfill the obligations arising regard to the engagement. The obligation can be assessed with money. As matter of fact, land had become the common collateral due to the credit agreement, both with the status of Property, Building Use Rights, Business Use Rights or Use Rights. This is because the land has a high economic value and the price is always increasing from year to year. the provision of Article 51 of Law No. 5 Year 1960 on the Basic Agrarian law (hereinafter referred to as the UUPA) State Gazette of 1960 No. 104, enclose to the State Gazette No. 2044. furthermore, a strong guarantee rights institution had been provided and may be imposed on the right to land, namely the Deposit Rights in lieu of Hypothek and Creditverband institutions. The imposition of

mortgages law (UUHT) in order to provide protection and legal certainty to all parties (especially Creditor) and also to fulfill the principle of publicity. Registration of mortgages is provided in Article 13 through Article 14 UUHT. article 13 paragraph (1) UUHT reads “The granting of dependents must be registered with the Land Office”. Then the paragraph (2) states “No later than 7 (seven) working days after the signing of the Deed of Assignment as referred to in Article 10 paragraph (2), Land Titles Registrar(hereinafter referred to as PPAT) shall be obliged to send the Deed of Assignment of the relevant Mortgage and other necessary letters to the Land Office ”. The birth of a mortgage is of paramount importance with respect to the appearance of the creditor's collateral right regard to examining the level or position of the Creditor to the creditor in the event of a confiscation (Consevoirbeslag) of the collateral (satrio, 1998: 38).

In other words, the earliest Creditors of *Deed of Mortgage Rights* (APHT) are listed in the Land Rights books by the Land Affairs Office, would be preferable from the other Creditor. Hence, Land Date for mortgages has a very important role, because it plays a decisive influence on the position of the creditor holding the mortgage rights to other creditors to the same Debtor as regulated by the provisions of Article 1132 and Article 1133 on the Civil Code. Dealing with the Article 13 paragraph (2) PPAT is obliged to submit the relevant mortgage Rights and other necessary letters to the Land Office not later than 7 working days since the Mortgage deed had been signed. It can be explained that by submitting APHT as well as other letters to the local Land Office the registration of granting rights has not been made yet. However, there are still some PPAT who do not meet the provisions of Article 13 paragraph (2), meaning that it exceeds the deadline no later than seven days determined to register APHT, but not subject to administrative sanctions. Inconsistencies in the implementation of UUHT provisions will have a negative impact on the performance and responsibilities of PPAT and will affect the performance of other PPAT. Thus, the actual administrative sanction as determined by Article 23 paragraph (1) UUHT is in the framework to cultivate a sense of responsibility of PPAT in his position as a general officer who is bound by the ethics and responsibilities positions that are regulated in the code of ethics and legislation invitation. Land Office which remains the recipient of the APHT registration process in violation of the registration deadline due to the late registration time is only related to the administrative registration procedure, and not related to the APHT to be registered and within the framework of providing legal protection to the beneficiary. However, for PPAT who has committed an administrative violation over the deadline of registration has caused its own legal problems over the inconsistency of application of the UUHT provisions.

Research Design

A. Formulation of the problem

1. What is the legal Consequence of not registered APHT for its Creditors?
2. What is the legal protection form for creditors of APHT not registered with the land officer?

B. Research Method

This research conducted by Normative Legal Research, that is research done by reviewing the Law regulation applied or applied to a certain problem.

Discussion

A. The Legal Consequences of Not Registered APHT its Creditors

The credit agreement includes an interbank loan-lend agreement are based on mutually agreed agreements followed by interest (Supramono, 2009: 173). It was dealing with Sutedi (2010: 21) who said that the credit formulation based on Article 8 of the Banking Act can be concluded that the credit is a money loan-lend agreement between the bank as the creditor and the customer as the Debtor. In the credit agreement, the bank believes the customer will pay off in the agreed timeframe. Meanwhile, with regard to collateral (credit guarantee) in the banking institution, Badruzaman stated: "an obligation granted by a Debtor and/or a third party to the Creditor to grant his obligations in an engagement" (Badruzaman, 2005: 12). In addition, Suyatno declared the collateral is the delivery of wealth or a statement of one's ability to bear the repayment of a debt. Furthermore, Satrio believes that the collateral law is the rule in which regulates the collateral of a creditor's receivable against a Debtor (Suyatno, 1989: 70). Through the above understanding, it can be concluded that the collateral is a statement of one's ability to bear Debtor debt as listed in the staple of the principal. In banking practice, collateral is termed as individual guarantee/person, that is an agreement between Creditor and underwriter, where a person binds as an insurer to fulfill Debtor's debts either by Creditor (without the knowledge or approval of the Borrower) or proposed by the Borrower on the orders of the Creditor. Indonesian banking collateral law contains some applicable credit guarantees in the banking legal system in Indonesia, namely Fiduciary Guarantee and Power of Attorney Charging Deposit (SKMHT), Deed of Mortgage Rights (APHT).

Furthermore, In relation to a material agreement, it comprises the principal agreement and the accessory agreement. The principal agreement is an agreement to obtain a credit facility from a banking institution or a non-bank financial institution. The principal agreement is an agreement that must have an underlying basis for its existence. An example of a principal agreement is a bank credit agreement. While the accessory agreement is an additional agreement and is associated with the principal agreement. An example of an accessory agreement is a security charging agreement, such as a mortgage agreement, mortgage and fiduciary rights. The use of collateral as a credit safeguard provided by a bank may also be related to the provisions of Article 1131 of the Civil Code which reads "All material possessions of the debtors, whether existing or existing immovable, either existing or new, shall be borne in advance of any personal engagement ". The guarantee function as a security of new loan repayment will appear at the time the credit is stalled. With the credit guarantee that is controlled and bound by the bank in accordance with the applicable law, the implementation of the function will be executed when the Debtor breaks the promises (Bahsan, 2007: 103).

At the time of making of APHT and SKMHT there must be a belief in the Notary / PPAT concerned that the grantor of the dependent has the authority to carry out legal action against the object of the mortgage that is charged, although the certainty of having such authority is only required when the granting of the mortgage is registered with the registration of APHT, the general explanation of UUHT number 7 states that in order to obtain legal certainty regarding the priority position for the Creditor of the mortgage holder along with other letters required registration, shall be sent by PPAT to the Land Office no later than 7 working days after the signing. For the interest of the Creditor, it is issued to him the evidence of a dependent right, namely a Certificate of Liability which consists of a copy of the Land of Mortgage Book and a copy of APHT. Based on the above description it can be concluded that APHT is a deed containing the certificate number, the date of issuance of the certificate, the land area, the location of land and objects existing on the land and the amount of debt burden accounted for on the land and APHT must be registered in the Local Land Office. However, in practice the registration of the mortgage is negligent or unregistered by the creditor, resulting in legal consequences. The legal consequences of the non-registration of APHT on the credit agreement made by the Creditor before the Notary / PPAT is that the credit agreement remains valid as long as it meets the provisions of Article 1320 Civil Code. The credit agreement made under such agreements shall be categorized as the principal agreement binding on the parties Whereas the consequences for not registered APHT it cannot meet the principle of publicity and the principle of preference, in accordance with Article 13 UUHT. Legal protection for the Creditor in case APHT is not registered can be done by signing the power of attorney to sell the collateral from the Debtor to the Creditor to the Notary / PPAT.

B. Legal Protection Forms for Creditors of Not Registered

The main function of the warrant agency is to minimize the risk of disbursing credit. On the other side of the guarantee as a means of protection for the security of the creditor is the certainty of debt repayment on the performance of an achievement by the creditor or Debtor guarantor, if the Debtor is unable to fulfill its obligations as agreed with the creditor, in such case the Debtor is said to have breached the promise, thus the collateral object appears to be useful (Poesoko, 2007: 185). Article 8 Paragraph (2) of UUHT stated that the authority to conduct legal action against the object of Mortgage Rights does not have to be in the Giver of the Depositary rights when granting the Mortgage Right (the signing of Mortgage Rights), but the authority should be present to the Depositary at the registration of the Deposit Rights. In other words, the Land agency can only register the mortgage rights if the object has been registered in the name of the Depositary. Because of the birth of the mortgage rights is at the time of registration that while signing those mortgage rights. There are so many kinds of mortgage rights registration committed by PPAT to the Land agency, ie there are 3 days or 5 days after signing APHT and completeness of required documents, 8 days after signing APHT.

In general, the PPAT believes that the mortgage rights should be immediately registered to the land office if all documents were completed. PPAT play important roles regard to the registration process of mortgage rights since they should carefully examine all the documents that become the source of juridical data as required by the authority to make APHT, PPAT should reveal all APHT's document that has been made with its files required by the land office, so that it could be registered. Hence, the role of the national land agency in the process of mortgage rights is also very important. The most important thing with the birth of the mortgage rights is the enforcement of the creditor's privilege against a third party. The existence of *executorial title* arose an executive provision, a force of power (Setiawan, 1991: 69). The executorial title on the mortgage rights certificate contains the word "For Justice by the One Godhead", as referred to in Article 14 paragraph (2) of the UUHT, has the same executive power as the decision of the court which has obtained a permanent legal force and acts as a substitute for *grosse acte hypotheek*, insofar as to the right to land. The execution procedure based on the executorial title contained in the certificate of mortgage rights as intended in Article 224 H.I.R./258 R.Bg., is very different from the execution process under Article 6 UUHT (Parate Eceutie). According to article 6 of the UUHT, it is stated that "if the Debtor breaches the pledge, the first depositary holder has the right to sell the Resource Rights object to his / her own power through a public tender and to take his receivable from the proceeds of the sale."

The execution procedure as intended in article 6 UUHT, the lender of the first Depositary shall simply submit an application for the exercise of the tender to the State auction office. The first creditor's liability shall simply apply for the execution of the auction to the State Auction Office. The first creditor's right to sell the object of the Deposit Rights to his or her own power in public has already been granted by his own law to the creditor of the first depositary. The authority is not obtained from the Depositary but has by itself provided him on the basis of the law himself granting him (Satrio, 1998: 220). In addition to the ease of execution, for the benefit of the creditor, the mortgage holder is provided with additional protection as stated in Article 21. If the mortgagee is declared to be bankrupt, the holder of the mortgage still has the authority to do everything he obtains under UUHT. This provision further confirms the preferred position of the holders of the mortgages by excluding the entry into force of the bankruptcy of the mortgagor on the mortgage object. Holders of mortgages are entitled to sell the auction of mortgage objects in advance for the settlement of the receivables, and the remainder included in the "mortgage bail" of the mortgagee.

Conclusion

The legal consequence for APHT which is not registered by the notary to the land office is not to be born the certificate of compulsory rights means that the dependent's rights will not be registered in the land of mortgage rights book in the land office. This is affirmed in Article 13 of Law Number 4 Year 1996 regard to the deposit rights. The late registration of APHT by the land titles registrarto the Land agency is juridically

incompatible with the conditions set forth in Article 13 of the Mortality Rights Act. With the non-fulfillment of such requirements by the land titles registrar, the APHT cannot be registered in the book of the land of mortgage and the legal consequences will not be born of the certificate of compulsory rights so that it cannot provide legal certainty to the beneficiary of the mortgage such as preferent right from beneficiary (Creditor). Whereas, The protection forms granted through mortgage rights to the creditors are: administrative clarity, mortgage principles, and legal certainty regard to the case of the sale of the mortgage object by the auction sale as well as sale under the hands.

References

- Badruzaman, M. D., (2005). *Aneka Hukum Bisnis*, Cet. II (Bandung: Alumni Bandung, 2005).
- Bahsan, M., (2007). *Hukum Jaminan Dan Jaminan Kredit Perbankan Indonesia* (Jakarta: Rajawali Press, 2007).
- Poesoko, H., (2009). *Parate Executie Obyek Hak Tanggungan* (Inkonsistensi, Konflik Norma dan Kesesatan Penalarandalam UUHT), Catatan I (Yogyakarta: Laks Bang PRESS Indo, 2007).
- Satrio, J., (1998). *Hukum Jaminan, Hak Jaminan, Hak Tanggungan*, Buku 2 (Bandung: Citra Aditya Bakti, 1998).
- Supramono, Gatot, (2009). *Perbankan dan Masalah Kredit : Suatu tinjauan Yuridis* (Jakarta: Rineka Cipta, 2009).
- Sutedi, A., (2010). *Hukum Hak Tanggungan* (Jakarta: Sinar Grafika, 2010).
- Suyatno, T., (199). *Dasar-Dasar Perkreditan* (Jakarta: Gramedia, 1989).