

The Implementation of Grosse Debt Acknowledgment in Mortgage Credit Guaranty of the Home Ownership in Pt.Bank Btn Banda Aceh

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Abstract: The aims of this study are: To analyze and describe the field-implementation of the binding of mortgage loans used in the home ownership with deed of debt recognition Grosse. To analyze and describe various issues and obstacles faced by creditors in executing debtor collateral items which used the gross certificate and to draw and explain others alternative solutions by related parties to overcome faced issues in executing debtor collateral items that use the gross certificate. The research method is conducted in Empirical juridical by using secondary data source obtained from primary, secondary and tertiary legal material. As the result, the author found that the implementation of binding mortgage guarantees of housing using with Grosse deed is widely used as a follow-up agreement which approved based on the principal agreement in spite of and stand-alone. The appearing obstacle in execute the collateral items with the debt recognition certificate is not quite easy because it is quite possible for the Court to refuse to grant the execution of the debt recognition certificate due to various problems related to the form of the deed or the application procedure at the court. The most possible alternative to be drew better solution is by giving the perception equality through the debt recognition certificate as it suggested by the article 224 HIR. This article allowed the implementation of the certificate to be walked with the existing regulations.

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I. INTRODUCTION

In every part of the nation, a state has the same common responsible in protecting the entire nation through the housing and residential system areas for its citizen in order to provide healthy, safe, harmonious proper and affordable house in all parts of Indonesia.¹ In this case, the Government improves the better service continually to improve them in providing the healthy and comfortable environmental facilities for the communities. One of any possible efforts taken by the government is having work closely with creditors through credit facilities

The credit itself has another purpose besides giving the big amount of benefit for the creditor but also has different purpose for the government in maintaining stable economic growth. However, the benefits which could be obtained for creditor generally appears in the form of interest which received by the creditor as a remuneration and credit administration costs given to the debtor helps debtor business both in investment fund and works fund. Furthermore, this system allows the debtor to develop its own business and support the government by increasing more extended which triggers several aspects in the developing various economic sectors.

However, there are several stages which have to be assessed before providing the credit facilities to the debtor. The creditor has to conduct the tight assessment through the prospective debtor by assess the capital, capacity, condition, character, and collateral or often well known by the 5C (capital, capacity, condition, character, collateral). The collateral or sometimes well known by security is the collateral elements of credit recipients which bound by mortgage rights as collateral for repaying the debts. The collateral and other necessary elements are the basis valuation which used to convince that the debtor has capacity to pay their debts. The collateral is a basic requirement which must be filled as it written in Article 8 Number 10 of 1998 pertaining to Credit (hereinafter abbreviated to UUP). Thus, it is clear that in taking the credit receipt the debtor

¹Article No Number 1 of 2011 pertaining to Housing and Settlement Areas

must provide and has the agreement to debt recognition with the creditor and has the obligation to pay off the taking debt based on each party agreement.

There are 5 classifications of credit quality measured based on the debtor capacity to pay off the taken credit, those are; current credit, mandated credit, non-current credit, query and bad debt.

1. Current Credit

In generally, a loan/credit could be stated or classified as a current only if there is no appearing backlog either from principal or credit interest. A credit also classified as current credit if there is backlog but have not exceeded the next installment period yet. Credit is also classified as current credit if there is no overdraft due to excessive withdrawals and if right after one year since the interest payment with no interest backlog

2. Mandated Credit

A credit classified as mandated if the debtor fails to carry out his obligations in payment of installments on the principal and interest of the loan within the period of 1 (One) to 90 (Ninety) work days.

3. Non-Current Credit

The non-current credit is indicated by principal installment backlog which have exceeded in one (first) installment period but have not exceeded two (second) installments period. A credit is also classified as non-current if interest payments have been in arrears for up to 2 months but have not exceeded 3 (three) months. The overdraft due to withdrawal but not exceeding 3 months is also classified as non-current.

4. Query

The next category is the query. A query credit occurs if the loan can still be saved but there is a guaranty with has value in at least 75% of the debt values. Credit is also classified as query if the credit is no longer could be saved (the debtor is unable to pay the principal or interest installments) but there is a guaranty which is at least 100% equal or in similar price to the debtor's debt.

5. Bad credit

A credit could be classified in bad credit if right after 18 months since the credit is classified as query but there is no attempt from the debtor to pay the credit off.

Ones of any efforts in saving the credit and their assets, the creditors always provide the debt recognition certificate in the form of a legal authentic deed which could be used as the evidence for the court stage where this authentic deed has perfect proof of strength as it referred to Article 1870 of the Civil Code. The authentic deed is a deed which determined by the law and made/provided by or in the presence of public officials with specific obligation made in the place where the deed was supposed to be made. Based on Article 1868 of the Civil Code, the authentic deed is made by public official where a notary is the only person (public officials) who has the authority to provide the authentic deeds for the needed clients.²

Basically, the common issues faced by creditors in executing the debt recognition certificate is sometimes the debtor resist and objected to the debt recognition certificate which submitted by the creditor to the district court. Thus, due to this resistance there will be any counter fight from the debtor which generally appears in the form of filling a lawsuit to the district court to protect the collateral where the granted execution by the district court is against the law in the view of debtor. This issue appears because the request for execution is carried out before the due date of debt repayment, so that the debtor sometimes feels a huge loss for the credit she/he has been paid long ago. This problem also triggers the rejections from the Court for various reasons, those are;

- a. The content does not constitute the one-sided debt acknowledgment,
- b. the amount is commonly uncertain due to the debt recognition certificate which determined by interest and/or penalty.

II. MATERIALS AND METHODS

Based on the previous brief description and explanation above, there is a law issues which will be examined in this study. Therefore it is fascinating to study both in *das sollen* and in *das sein* (law in book and law in action) which are about:

1. How does the implementation of collateral binding housing loan with the debt recognition certificate *grosse*?

² Muhammad Luthfan Hadi Darus, *Hukum Notariat dan Tanggung Jawab Notaris*, Yogyakarta: UII Press, 2016, page. 4.

2. What problems or issues are commonly faced by creditors in executing debtor collateral items which using the grosse deed?
3. What alternatives solutions are made by related parties to overcome the appearing problems in executing debtor collateral object which using grosse deed?

These problems obtained above are deeply discussed by using the Empirical (juridical Empirical) law research, where this type of research is widely used to analyze the applied laws or regulation seen as community behavior in solving the economic problem. The method used is refer to the written regulations or other law materials in the form of secondary in order to analyze and see how the application / implementation is conducted by interviewing several parties involved in investigation, those is the Execution of Grosse Deed Acknowledgment of Debt Recognition in mortgage Credit Guaranty.

III. DISCUSSION

A. The implementation of Loan Binding Collateral with Debt Recognition Deed

In granting credit, the authentic deed has very important role because the deed is actually has power of proof to a third party, where this deed is not owned by on the hand of a private made deed. Meanwhile, the private mad deed has a serious weakness where the involved parties contained in the deed may deny their hand written signature in the credit agreement.

Regarding to the strength of an authentic deed, Retnowulan Sutantio and Iskandar Oeripkartawinata stated that the authentic deed has 3 types of powers, those are³;

- a) The strength of formal proof, the deed proves between the parties as they have explained what is written in the deed.
- b) The strength of material evidence, proves between the parties that actual event mentioned in the deed has been really occurred.
- c) The binding strength, proves the involved parties and third party towards the mentioned date in the deed concerned has meet with the public employee and has been explained what is written in the deed.

The needed requirements in applying for a Home Ownership Credit are as follows.

- Indonesian citizen and lives in Indonesia WNI
- Must have reach the age of 21 years old or married
- Have a job to work and has steady income as a permanent employee / entrepreneur / professional with a minimum of 1 year work
- own a personal NPWP

Besides the requirement of KPR BTN, the prospective debtors must also prepare several documents which has to be attached by the submission time, those documents consists of credit application forms, the photocopies of ID cards, family cards, marriage / divorce certificates, recent applicant and spouse photographs, original last salary slip or income statement, photocopy of certificate of appointment as a permanent employees, a photocopy of savings or current account with a bank or other bank for at least the last 3 (three) months, a copy of income tax as it regulated in article 21 number 7 of 1983 for loans from 50 (fifty) million to 100 (one hundred) million rupiahs, a photocopy of NPWP for credit applications above 100 (one hundred) million rupiahs, a photocopy of business licenses, and a photocopy of shm / shgb / and building construction license.

In every credit process, the creditors will always bind the debtors with various forms of principal or additional credit agreements. This has purpoto give the power of guaranty for the bank as a creditor in credit payments.

1. The existence of guaranty agreement depends on the principal agreement.
2. The abolition of guaranty agreement substantially depends on the arrangement.
3. The guaranty agreement will be canceled only if the principal agreement is void.
4. In the terms if the agreement substantially transferred, then the guaranty agreement may to switch.
5. In the term if the switch for their cessie debt, subrogation, etc. hence the guaranty agreement also switch.

B. The Common problems faced by Creditors in Execute the Debtor Collateral Items With Grosse Deed.

A deed is a legal product made and provided by a notary. Based on the Article 1868 of the Civil Code, the people whose have the authority to provide authentic deeds are authorized officials, where one of the official is a notary. As a general official, a notary has its own authorization to provide an authentic deed and has other authority as it regulated in Article Number 2 of 2014 pertaining to the Amendment of Law Number 30 of 2004 concerning a notary position (hereinafter abbreviated as UUJN).

Based on the provisions taken from article 1868 of the Civil Code, the authentic deed is "A deed made in a form which determined by law by authorized public official for the place where the deed was made". The provisions

³RetnowulanSutantio, andIskandarOeripkartawinata, "*HukumAcaraPerdataDalamTeoridanPraktek*, Bandung :First Edition Mandar Maju,page. 14

of article 1 paragraph 11 UUJN which regulates the deed of debt acknowledgement determined that "Grosse deed is one deed for debt instruments completed with the head of the deed" By Justice Based on the almighty God "who has and owns the executorial power".

According to R. Subekti, he stated that the credit agreement is an agreement which based on the loan taken from KUHPerdata.254 Article1754, credit agreement is an agreement that is consensual subject capable of inflicting the feedback law correlation between the debtor and its creditors. Thus, based on this theory, it could be stated that the credit agreement is the most important document in granting credit by creditors to its debtors. These are several problems faced by creditors in execute the collateral by using the grosse deed of recognition of a single debt referred to the legal banks, those problems are as follows;

1. The problem which relates to the amount of debt stated in the notarial debt recognition certificate which apparently has not yet been clearly estimated by the bank with interest that could be collected later. In the terms of banking, interest debt which does not included in the notarial debt recognition certificate cannot be immediately executed, but this interest debt but must be collected through the ordinary lawsuits. 264
2. Sometimes, there will be appearing condition where the amount of the principal debt listed in the notarial debt recognition certificate has been changed due the debtor has made installments, this may cause the amount of debt to be reduced in half part. This issues may cause the field execution for gross notarial debt recognition certificate could be rejected by the district court due to the material requirements related to the debt values in real terms does not match to the amount of debt listed in notarial.
3. The further problem to execution of gross notarial debt recognition will also occur if there are no major collateral which could be confiscated and auctioned.

Generally, the creditors are preferred to execute the collateral by using an auction mechanism through the KPKNL system because the KPKNL process is considered as quite faster and more efficient. According to Article 1 of the Minister of Finance Regulation No.40 / PMK.07 / 2006, the auction is the process of selling the goods by open sales for the public with a written and / or oral bid by increasing or decreasing to reach the highest price preceded by the auction announcement. Moreover, the auction is a legal institution where it has a function of creating value from an item or liquefying item into an amount of money with specific objective values. The auction will be always found in the legal system to provide the community needs. The implementation of an auction is conducted by the official Auction Hall where they have the similar procedure which clearly regulated by the Minister of Finance Number 150 / PMK.07 / 2006 pertaining to the Bidding Implementation Guidelines.

An auction could be implemented by the creditor only if the collateral has charged under the mortgage according to article 6 Number 4 of 1996 where the first-level mortgage right holder has the rights to sell the objects of the mortgage by his own power through a public auction and take the proceeds repayment based on the values of the sold items. Generally, in this type of auction, the limit price is widely open for the potential buyers (does not confidential) and the price must be included in the auction announcement.

Here are the advantages of auctions sale for both parties:

1. The legal aspects of goods are guaranteed. Among neither party nor the transactions is conducted out because in terms of the legality of each auctioned asset must have passed the checking process to the relevant agencies which has a purpose to provide certainty.
 2. The sold goods sold are legal and protected by guaranty where the guaranty is highly important to avoid the occurring problems which may appear on the future days.
 3. The auctions could be conducted in very quick and economically. By using an auction system, the sale for assets in large quantities could be sold in short time. This method is considered as more effective and efficient because it will reduce the maintenance storage and marketing cost.
 4. The auction is objective and widely open for the public.
 5. Bidders may get the optimal price through the auction. This because of the auction itself is public open and objective as well as the certainty of legality of the goods guaranty the will attract potential bidders.
- C. The Alternative Solutions Provided by the Related Parties To Deal With Occurring Issues in Executing The Debtor's Guaranteed Object With Grosse Deed

The execution of the debt recognition certificate is an execution which conducted by using an executorial power attached to the grosses certificate. It is when the debtor is declared by as defaulted or in the situation when the debtor does not fulfill the achievement by the specified time written in certificate, the creditor could request the execution directly through the head of the district court. The direct execution is the execution which conducted by without going through the stages of a civil suit in as it referred to the provisions of Article 224 HIR. The requirements, forms and contents are absolutely must be fulfilled by the debt recognition

certificate regulated by Supreme Court where if the requirements do not meet the standard, the execution may be postponed or declined.⁴

As the result of the impurity laws and the simultaneous application of the two forms of the grosse certificate mentioned in Article 224 HIR, the certificate may contain the juridical defects and also both certificate forms are stated as invalid due there are no provided legal certainty and considered violate the formal and material conditions either based on Article 224 HIR nor jurisprudence. The disappearing of the legal certainty of which gross certificate is bounded in the credit agreement; grosse deed lacks the *kracht* executorial which make it more becomes non-executable. Thus, in order to fulfill the payment has to go through the ordinary law sue to the court.⁵

The classification of credit quality as problems for the creditors occurs when debtors with the collectability status of 5 (five) or well-known by bad credit. Moreover, in credit agreement, a fraud which appears in the form of agreement violations is also called by non-performance of contract. The default or non-performance of contract Default is derived from the original term taken from the Dutch language of default which has the meaning that it does not fulfill the obligations set forth in the engagement, either the engagement that arises due to agreement or the engagement that arises due to law.⁶

IV. RESULT

According to the results, the author found that each of House Ownership Credit engagement taken by the debtor is using the debt recognition certificate as an additional agreement instrument (*asesoir*) of the main agreement. Moreover, the author also found that the creditor also used another additional agreement which in this case is the Mortgage Rights. The mortgage right is a guaranty of debt repayment which charged to the land rights whether or not the following objects are follow on it and integrally merged to part of the land for certain debt repayment which gives the priority to certain creditors over other creditors. The big number of problems are related to the debt recognition certificate grosse requires the creditors to prevent and anticipate the may occurring problems in the future by utilize a single debt recognition certificate grosse. This single debt recognition certificate grosses allows other additional agreements known as mortgage rights charged to creditor's owned lands.

V. CONCLUSION

A credit is the money or bills loan which can be equated by the goods with equal values of the amount of the loan which conducted based on the loan agreement between the bank and another party which requires the loan taker to carry out the amount of interest in return. By this principal reason, in every loan system, the creditor will always bind to the debtor with various forms of principal or additional credit agreements where the goal is to keep the bank's position as creditor is guaranteed by legal certainty in credit the process of payments.

REFERENCES

- [1]. Undang-Undang Nomor 1 Tahun 2011 tentang Perumahan dan Kawasan Pemukiman
- [2]. Muhammad Luthfan Hadi Darus, *Hukum Notariat dan Tanggung Jawab Notaris*, UII Press, Yogyakarta 2016, hlm. 4
- [3]. Retnowulan Sutantio, dan Iskandar Oeripkartawinata, "Hukum Acara Perdata Dalam Teori dan Praktek, Edisi Revisi Mandar Maju, Bandung, hlm. 14.
- [4]. Dewi, Karina Komala. *Pelaksanaan Pembuatan Grosse Akta Pengakuan Hutang oleh Notaris di Kota Semarang*", Tesis, Fakultas Hukum Universitas Diponegoro, 2009, hlm. 38
- [5]. Harahap, Hapendi. "Grosse Akta (Suatu Masalah Hukum dari Kongres Ikatan Notaris Indonesia ke XVII)", *Varia Peradilan* No. 179 Tahun XV, Agustus 2000. hlm. 58
- [6]. Abdulkadir Muhammad, *Hukum Perikatan Cetakan ke Dua*, Citra Aditya Bakti, Bandung, 2001, hlm. 20.

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⁴Dewi, Karina Komala. *Pelaksanaan Pembuatan Grosse Akta Pengakuan Hutang oleh Notaris di Kota Semarang*", Thesis, Fakultas Hukum Universitas Diponegoro, 2009, page 38.

⁵Harahap, Hapendi. "Grosse Akta (Suatu Masalah Hukum dari Kongres Ikatan Notaris Indonesia ke XVII)", *Varia Peradilan* No. 179 Tahun XV, Agustus 2000, page 58

⁶Abdulkadir Muhammad, *Hukum Perikatan* Second Edition, Bandung: Citra Aditya Bakti, 2001, p. 20.