



Legal Validity of Use of Financing Guarantee on Land That Have Not Been Certified

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Abstract

This article discusses the validity of credit agreements with land collateral objects that have not been certified, using a normative juridical research method, in terms of the validity of the agreement, the validity of the guarantee and the legal impacts that occur, the purpose of uncertified land includes the old conversion rights, including, Customary Land, Land Letter C, Petok D, and Girik. As for the answer, it is a credit agreement between the Creditor and the Debtor which was drawn up based on an agreement by both parties that is legally valid even though the object of the guarantee is land that has not been certified, or known as the old Conversion of Rights such as Letter C, Petok D and girik, but in order to have perfect legal force if the debtor is in default, the object of collateral in the form of land that has not been certified must be registered simultaneously with the National Land Agency (BPN), followed by the issuance of SKMHT and APHT, if this is the case. not done, the legal consequences for SKMHT is invalid and null and void.

Keywords: *Credit Agreement; Uncertified Land; Validity; Legal Consequences*

Introduction

The law has a goal to be achieved, namely to produce orderly social rules, produce discipline, balance and justice. Mochtar Kusumaatmadja said "By achieving order in society, it is hoped that human interests will be protected". (Aulia, 2019) According to Sudikno Mertokusumo in the rule of law in addition to protecting human interests against the dangers that threaten it also regulates relations between humans. By regulating relations between humans, apart from creating order or stability, it is hoped that conflicts or disturbances of interests can be prevented or overcome. (Satjipto Rahardjo, 1991) . According

to Satjipto Rahardjo, the presence of law serves to integrate and coordinate interests that may conflict with one another. (Muhammad D Jumhana, 2000) .

Currently, the government is actively carrying out development in all fields, for the sake of and for the realization of a strong foundation for realizing a just, prosperous and peaceful society, most of the implementation of which is focused on the economic sector. As a way to increase economic growth, the government implements regulations and policies in the banking sector. The enactment of Law Number 10 of 1998 on the amendment of Law Number 7 of 1992 concerning Banking in the context of improving the health of the national banking system and its functions has given wide opportunities to develop its network.

Land is an immovable property and can be used as collateral for financing in a bank or other credit institution. Aspects of credit or financing in general, the most important thing is to see the risk of default or default, or even the existence of a formal defect from the agreement or deed made by the authorities. Regarding collateral whose object is in the form of land, it has been regulated separately by laws and regulations, especially regarding mortgage rights. There are advantages when compared to other collateral objects, land has a value that is increasingly expensive and easy to sell, has proof, is difficult to embezzle and can be burdened with mortgage rights that give creditors special rights (Effendi Warin, 1989) .

However, in practice, Indonesia has its own problems, especially regarding the legal certainty of land owners or maybe many lands that have not received certificates, even though the government has provided land registration which is held and as a facility for citizens to ensure legal protection of their land, which is directly related to the aspirations of the citizens. The ideals of the state, namely aspects of legal certainty and justice are inseparable from the use and utilization of land that creates prosperity.

Certainty and justice are part of the purpose of the law, but benefit is also an important point so that the benefit referred to in this study is that citizens can use their land rights as objects of financing guarantees. However, this is limited by the law that based on Article 10 of the Mortgage Law, it only mentions the installation of mortgage rights with uncertified land objects. Meanwhile, in practice apart from managing the conversion, a Sale and Purchase Deed is also found as valid authentic evidence for the transfer of rights to land and buildings, and is often associated with uncertified land.

On the other hand, the government also provides relief for its citizens to be able to apply for financing with low credit interest, so that people can take this opportunity by applying for financing through the procurement of credit agreements. The credit agreement is referred to as a real (principal/core) agreement. It is said to be the main agreement, there is an expiration of the guarantee (*assessor*) depending on the principal agreement (credit agreement), meaning that it is real, which is the binding of the promise to the credit agreement marked by the handover of funds in the form of money from the creditor to the debtor (Hermansyah, 2008) .

Currently, the government is actively carrying out development in all fields, for the sake of and for the realization of a strong foundation for realizing a just, prosperous and peaceful society, most of the implementation of which is focused on the economic sector. As a way to increase economic growth, the government implements regulations and policies in the banking sector. The enactment of Law Number 10 of 1998 on the amendment of Law Number 7 of 1992 concerning Banking in the context of restoring the national banking system and its functions has given wide opportunities to develop its network. (Muhammad D Jumhana, 2000) .

With this wide opportunity, it is possible for the community to apply for land security that has not been certified as collateral, because there are statutory provisions as stated in the General Elucidation of

Article 8 Paragraph (1) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1998 . 1992 concerning Banking states that uncertified land or land whose ownership is based on customary law such as land and buildings proof of ownership Letter C can be used as collateral (collateral) in a credit agreement without going through the land registration process first which is then tied with a public official deed. (notary/PPAT) in the form of a power of attorney to impose mortgage rights, deed of granting mortgage rights and mortgage certificates (B1, 2012) .

Land and building proof of ownership of Letter C based on Article 16 paragraph (1), Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) are not included in the legality of ownership of land rights. Land and buildings as proof of ownership of Letter C are actually only used as the basis for tax collection records. Because the contents and contents only include land area, land class, parcel number, owner's name and tax amount (R. Soeprapto, 1986) . Land and building proof of ownership of Letter C were obtained from the Village/Sub-district Office where the land was located and as evidence in the form of records kept by the Sub-District Office/Village (Edy Suparyono, 2008) .

Of course in further explanation, the Notary who is authorized in this case there is the possibility of accepting the financing process of both parties by using a Power of Attorney to impose Mortgage Rights (SMKHT), therefore it is necessary to review the Credit Agreement with collateral for uncertified land which creates a legal debt relationship. receivables between debtors and creditors. Therefore, the researcher examines this issue with the title, "The legal validity of the use of financial guarantees on land that has not been certified".

Research methods

This research is a normative juridical research using a statutory approach, and a case approach. This research is a normative juridical with a literature approach, namely by studying journals, books, legislation and other documents related to this research. Normative law is directly related to the practice of law which involves two main aspects, namely the formation of law and the application of law. This approach views law as synonymous with written norms made and promulgated by official institutions or officials (Poglabba. C, 2017) .

In this study there are 3 (three) legal materials: including primary, secondary and tertiary legal materials. Primary legal materials are provisions relating to financing by the Bank and about guarantees (Yukiko, 2020) . Secondary legal materials are all publications on law that are not official documents (books, dictionaries, journals), while tertiary legal materials are: large Indonesian language dictionaries, Thursday law, encyclopedias and others. The technique of collecting legal materials is by using a literature study model.

The legal material analysis technique used is *content analysis* (content analysis technique) analysis is any systematic procedure that is encouraged to examine the content of the information obtained (Cheng, 2018) . This analysis focuses on all the secondary data obtained, after obtaining the necessary data, this paper analyzes the data logically, systematically and juridically. Logical means that the data collected is analyzed in accordance with the principles of deductive logic, namely drawing conclusions from a general problem to the concrete problems faced . Systematic means analyzing data with one another that are interconnected and dependent. Furthermore, the data were analyzed juridically, namely starting from the existing regulations and related to the positive law that is currently in effect (Lisdiyono, 2017) .

Discussion

1) Overview of the Terms of the Validity of the Credit Agreement

The problem above can be broken down into two parts, the first is in terms of validity based on the terms of the validity of the agreement, and the validity of Letter C (uncertified land) as collateral for financing which can later be studied from the point of view of the legal implications that arise.

Regarding the terms of the validity of the credit agreement, this needs to be returned to the basics of the agreement, where the meaning of the agreement is part of the law of engagement, and the engagement can arise because of the law of engagement. As stated in Article 1313 which reads as follows:

"An agreement is an act by which one or more persons bind themselves to one or more persons" (R. Subekti, 1987a)

R. Subekti argues that an agreement is a legal event where one person promises to another person or where two people promise each other to carry out something. (R. Subekti, 1987b) . Meanwhile, according to Wirjono Prodjodikoro , an agreement is a legal relationship regarding property between two parties, where one party promises to be deemed to have promised to do something or not to do something in the agreement while the other party has the right to demand its implementation. (Wirjono Prodjodikoro, 1981) . From these two understandings, it can be concluded that the elements of the agreement are, the existence of the parties (two or more), reaching an agreement, intending to achieve the goal as a form of reciprocal legal consequences, and made by taking into account the provisions of the legislation.

While the credit agreement has a different basis but still the intent of the corridor of the agreement is the same. Credit itself comes from the Greek *word credere* which means "trust". Because the basis of the word credit is trust, the parties bound in the credit agreement, (creditor) and (debtor), believe that the credit recipient (debtor) in the future can gradually fulfill everything that has been agreed upon . The meaning of what is agreed can be in the form of goods, money or services.

Reymond P. Kent provides an understanding of credit, including the right to receive payment or the obligation to make payments when requested, or at a future time, because the delivery of the goods has been made before payment is received in full. Meanwhile , Malay SP Hasibuan defines credit as the entire loan that must be repaid with interest by the borrower in accordance with the agreed agreement (Malayu Hasibuan SP, 2002) .

It is clear that a credit agreement is a special form of an agreement, or it can also be said that a credit agreement is more concrete including something that is agreed upon after receiving the benefits of the goods or services received first. In the context of this problem, an in-depth study is needed about the cancellation of the terms of the credit agreement and the expiration of the credit agreement.

Based on the nature of the credit agreement is a preliminary agreement or *voorovereenkomst* of the delivery of money. A preliminary agreement as a result of an agreement between the lender and the borrower regarding the legal relationships between the two. In practice in the community, credit is often associated with debt, because the credit system is more oriented towards a pattern of installments paid every certain period, so people have popularly considered it as debt.

The credit agreement agreed upon by the parties may end at any time. The end of a credit agreement is the completion or annulment of an agreement made between two parties, namely the creditor and the debtor regarding something. Something here can mean all legal actions carried out by both

parties, such as buying and selling, accounts payable (Salim HS, 2003) . According to Article 1381 of the Civil Code, the termination of a credit agreement can be concluded as follows: (Ridwan Syahrani, 2000) .

a. Due to payment

The purpose of the end of the credit agreement because the payment is based on the principal cost of payment plus interest has been made payment obligations in cash or in stages. This is the end of the credit agreement because legally it has fulfilled its achievements.

b. Due to the offer of cash payment, followed by storage or custody

The conditions mentioned above can also be said to be repayment or conditional payments, but the creditor has the right to refuse payments made by the debtor because for one reason, the debtor can initiate cash payments for his debts, but through intermediary custody in court an agreed amount of money or goods.

c. Due to debt relief

Liberation of debt or identical with the release of rights carried out by the creditor for certain reasons, which results in the loss of the right to collect on the debtor, including legally enforceable in debts and receivables jointly and severally.

d. Due to the destruction of the goods owed

The destruction of the goods owed is related to the object of the agreement , the purpose of destruction is that the object of the agreement is not in accordance with the initial criteria agreed upon, in other words, it is defective or has a different form, but the abolition of this agreement is absolute error on the part of the debtor and occurs before the debtor is negligent in carrying out the agreement. submission to creditors.

e. Because it's time

The time limit for carrying out a lawsuit for the fulfillment of achievements based on an agreement is 30 years from the date of the emergence of the right.

f. Due to cancellation

This is directly related to the conditions for the validity of the agreement as specified in Article 1320-1337 of the Civil Code, namely subjective conditions and objective conditions. The non-fulfillment of objective conditions (agreement and competence of the parties) gives the party who feels aggrieved the right to file for cancellation of the agreement. Meanwhile, the non-fulfillment of objective conditions (a certain thing and a lawful object) results in the agreement being null and void. The cancellation needs to be submitted to the settlement forum (court or arbitration) designated in the agreement that has been agreed by the parties.

g. Due to the agreement of both parties

The agreement of both parties is one of the causes of the cancellation of the agreement, but in contrast to debt relief which is identified without conditions, regarding the agreement of both parties, other terms can be agreed regarding the agreement.

From the above provisions regarding the cancellation of the agreement, it does not require anything about the object of the collateral that is agreed upon, meaning that legally, a credit agreement based on an uncertified land object is purely a form of agreement (approval) from the creditor, this is in accordance with the will of Article 1320. The Civil Code concerning the terms of the validity of the agreement, so that the credit agreement that has been implemented is a principle (principal) agreement that cannot be canceled or withdrawn by both parties and applies as law for both.

In the next process, the Notary or PPAT (Official Land Deed Maker) issues APHT (Deed of Granting Mortgage) and SKMHT (Power of Attorney for Imposing Mortgage). An authentic deed is a deed made by an official who has the authority to do so, and contains and explains what was done and seen before him. In essence, the authentic deed contains the formal truth in accordance with what was notified and informed to the Notary. Notaries also have an obligation to include what is entitled to be included in the deed and in accordance with the wishes of the parties. To clarify the deed, the Notary will read the contents of the deed in front of the parties, and provide information and access to legislation to the parties, so that the parties can approve or disapprove of the deed made by the Notary. According to Subekti, an authentic deed is a deed which, in the form determined by law, is made by or in the presence of a public official who is authorized to do so at the place where the deed was made (Teguh Samudra, 2004).

Both are in the form of a deed that aims to be used as collateral so that the debtor is responsible for paying his debts to creditors, but it is slightly different regarding SKMHT which is a power of attorney needed if you want to buy a house on credit if the land ownership certificate is still not in the name of the actual owner.

The Notary/PPAT has the authority to issue the deed in the interest of the parties who charge the land to be pledged as collateral. Mortgage rights are born from the provisions of Article 1 of the Mortgage Law, as follows:

"The security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or not including objects that are an integral part of the land, for the settlement of certain debts that provide a position priority to certain creditors over other creditors" (Purwahid Patrik and Kashadi, 2010)

As stipulated in the national land law, that there are several lands that are legally recognized but do not have legality, this is because these lands do not yet have formal legality, including customary law lands, and Letter C whose ownership rights have not been increased, often with the times and increasing with the enthusiasm of the community, the Bank as a credit provider through a Notary/PPAT provides SKMHT facilities as a follow-up to land objects that have not been certified. However, SKMHT has weaknesses including the time limit, which is one month for land that has been registered, and three months for land that has not been registered, and the consequence is that if the SKMHT period is violated, the SKMHT becomes null and void, this is very detrimental to the creditor considering that the bank in its credit agreement explicitly mentions the land to be guaranteed and given SKMHT but no mortgage rights are installed because the SKMHT has expired. *h tempo*.

SKMHT as a deed that has a legal basis in realizing the smooth implementation of the credit agreement of the parties, especially between creditors and debtors, to be able to function as a legal instrument, SKMHT requires concrete efforts from a Notary/PPAT as a party appointed by law to facilitate the interests of the parties involved in the credit agreement, especially in terms of the object of the guarantee.

As explained in Article 15 paragraph (1) of UUHT, it is stated that SKMHT must be made with a notarial deed or PPAT and fulfill the following requirements:

1. Does not contain the power to carry out other legal actions than to impose mortgage rights
2. Does not contain substitution power
3. Clearly state the object of the mortgage, the amount of debt and the name and identity of the debtor if the debtor is not the giver of the mortgage.

Based on the description above, it is clear that regarding an agreement made on the basis of an agreement, even if it is based on an uncertified land guarantee object, it will not invalidate the validity of the agreement, in other words the agreement is still valid because it is in accordance with Article 1320 of the Civil Code which cannot be canceled or withdrawn. returned by both parties and applies as law for both parties.

2) **Review of the Legality of Uncertified Land as collateral for the Credit Agreement**

This chapter will explain the legality of land that has not been certified as collateral, from the point of view of legislation and legal theory. the object of collateral in the provisions of the guarantee law, is a tangible or intangible object, in other words, the amount proposed by the debtor is equal to/equivalent to that which is guaranteed. This was stated by Mariam Daruz Badruzaman formulates a guarantee as a dependent given by a debtor and/or a third party to a creditor (bank) to guarantee his obligations in an engagement.

Meanwhile, Hartono Hadisaputro defines guarantee law as something that is given by a debtor to a creditor to create confidence that the debtor will fulfill obligations that can be valued in money arising from an engagement. (Hadisoeparto, 1984) , while according to Sri Soedewi , explained that the guarantee is a juridical construction of arrangements regarding the provision of credit facilities, with the mechanism of pledging the objects owned as collateral (collateral) (Sri Soededi Masihoen Sofwan, 1980)

Because credit agreements are based on trust but that does not mean ignoring an object to be pledged as collateral, this is done with the intention of providing maximum confidence to the creditor, in general, banks require that the object of the guarantee must meet legal requirements, including the following: (Malayu Hasibuan SP, 2001)

1. Guarantees must have a tangible form
2. Collateral must belong to the debtor with proof of authentic letter
3. If the guarantee is in the form of goods authorized by the owner, then the owner must participate in signing the credit agreement
4. The guarantee is not in court
5. Guarantee is not in dispute
6. Guarantees not affected by government projects

The main provisions as the policy regarding collateral objects that have not been certified is based on Article 10 paragraph (3) of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects related to land, stating as follows:

"If the object of mortgage is in the form of land rights originating from the conversion of old rights that have met the requirements to be registered but the registration has not been carried out, the granting of mortgage rights is carried out simultaneously with the application for registration of the land rights in question".

The statutory provisions provide exceptions for people who still own land that has not been certified to be able to be submitted as collateral on conditions, as regulated in Article 8 paragraph (1) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which states that:

"Credit provided by banks must contain risks, so in its implementation, banks must pay attention to sound credit principles. To reduce this risk, credit guarantees in the sense of confidence in the ability and ability of the debtor to pay off the debt in accordance with the agreement are important factors that must be considered by the bank. To obtain this assurance, before granting credit, the bank must conduct a careful assessment of the character, ability, collateral capital and business prospects of the debtor. Given that the collateral is one element of the guarantee of credit. Therefore, if based on other elements, confidence can be obtained in the ability of the debtor to repay the debt, the collateral can only be in the form of goods, projects or collection rights financed by the credit concerned. **Land whose ownership is based on customary law, namely land whose proof of ownership is still in the form of Letter C/girik/pipil/ petok and other similar types can be used as collateral.**"

Evidence of land ownership that has not been certified or is still at the level of ownership of Letter C and so on, also has a legal basis, as stated in the General Elucidation of Article 24 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which states that:

“ Petok land tax (PPB) / *Landrente* , girik, pipil, kekitir and *Verponding* Indonesia prior to the enactment of Government Regulation Number 10 of 1961 concerning Land Registration, is one of the written evidence that can show proof of ownership of land rights for further investigation. used as one of the completeness for the purposes of land registration or certificates”.

Based on the provisions of the series of regulations above, it can be concluded that it is legally justifiable for land security objects that have not been certified, but there are exceptions, namely that the loading is carried out simultaneously with the process of applying for land registration to the National Land Agency (BPN) in accordance with the orders mandated by Article 10 paragraph (3) UUHT.

Even so, the implementation of the policy must be followed by SKMHT and APHT intended to complete the documents needed for registration of land rights which of course takes a long time to issue the certificate. and null and void, this is in accordance with the provisions of Article 15 paragraph (5) which states as follows:

"The provisions as referred to in paragraphs (3) and (4) do not apply in the event that a Power of Attorney imposes Mortgage Rights granted to guarantee certain credits stipulated in the applicable laws and regulations"

Based on the description in above, it can be concluded that uncertified land can be used as an object of mortgage, but with the condition that it must be carried out simultaneously with land registration, and must be followed by SKMHT along with APHT, these provisions must be followed for serious interested parties, otherwise the applicable consequences are null and void. by law regarding the object of the mortgage that is guaranteed. Considering the existence of the mortgage object which is null and void by law, it will certainly have implications for the execution of the mortgage right where any form of authority to sell or auction the creditor is not entitled to sell it, if the debtor defaults.

Conclusion

Multipurpose financing credit agreement is one of the financing facilities facilitated by the state and private parties, one of the conditions is the existence of a guarantee equal to the amount agreed. Because land in Indonesia still recognizes the old conversion rights, it is often found in the field that people use uncertified land for collateral. There are three points of view on this incident, firstly, the credit agreement as far as it is in accordance with Article 1320 of the Civil Code is legally valid, secondly, if the object of the guarantee is based on uncertified land then the act is legally valid as long as it is followed by registration with the National Land Agency. (National Land Agency) and SKMHT must be included with APHT, if this is not carried out then the object of the guarantee is "null and void", thirdly, because it is null and void, the executorial authority for the creditor is lost if the debtor defaults.

Suggestions that can be given by researchers are, first, for creditors, it is necessary to apply the principle of prudence (*prudential, principle*) in entering into an agreement with the prospective debtor, secondly, for the debtor, it would be better for the sake of legal certainty and justice, the land that has not been certified must first be registered with the property rights before applying for financing, thirdly, if both of them have agreed to use the land that has been acquired, not yet certified as an object of guarantee, it should be confirmed by a notary/PPAT regarding the constraints and timing of the conversion of rights so that a delay in the disbursement of financing for debtors can be carried out for legal certainty and justice for both parties.

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