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Legal Certainty for Banks in the Use of Power of Sale Related to Repossessed Assets

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Abstract: Banks, as financial institutions, have an essential role in the economy, including in terms of providing credit. In the process of granting credit, collateral is one of the main elements that guarantee the debtor's ability to fulfil his obligations. One form of collateral that is often accepted is land rights, which are bound through mortgage rights based on Law Number 4 of 1996 concerning Mortgage Rights. This research aims to analyze the legal certainty related to the use of the power of sale by banks in relation to AYDA (repossessed collateral), as well as examine the legal aspects that need to be considered in its implementation. The research method used is a normative juridical approach, focusing on the analysis of relevant laws and regulations and related legal principles. The result of this research is that the position of a power of attorney to sell has a vital role in resolving bad debts, primarily related to the sale of collateral objects used as collateral in credit agreements. This power of attorney must meet the legal requirements of the contract stipulated in Article 1320 of the Civil Code and can take the form of a deed under the hand or an authentic deed. Legal certainty is critical in resolving bad debts through AYDA. The power of attorney to sell benefits the Bank by facilitating the execution of collateral, but it must also be balanced with strict supervision to avoid abuse of authority. This legal certainty also protects the rights of debtors, ensuring a transparent and fair process in the sale of assets. This increases public confidence in the banking system and provides protection for both parties. This research is expected to give a clearer understanding of the legality and legal implications of the use of a power of attorney to sell in the settlement of bad debts through AYDA.

Keyword: Legal Certainty, Power of Attorney, AYDA.

INTRODUCTION

Banks are one of the most important financial institutions and have a role in the economic life of society; in carrying out their role, banks act as a form of financial institution that aims to provide credit and other services. Banks are financial institutions that gain the trust of the community, so many individuals take advantage of the credit facilities offered. In its role as a

distributor of public funds, banks have an essential contribution in encouraging overall economic activity and supporting economic growth. At the macroeconomic level, banks serve as a tool to set monetary policy. Meanwhile, at the micro level, banks are the primary source of financing for entrepreneurs and individuals (Pratiwi, 2023). Normatively, the definition of banking can be found in Article 1 number 1 of Law Number 7 Year 1992 on Banking, as amended by Law Number 10 Year 1998 and Law Number 4 Year 2023 on Financial System Development and Strengthening (Banking Law). The definition includes everything related to banks, including institutions, business activities, and the process of implementing their business activities (Siringoringo, 2012).

According to Article 1 Point 2 of the Banking Law, a bank is defined as a business entity that collects funds from the public in the form of deposits. Then, it distributes these funds back to the public in the form of credit, financing, or other forms, with the aim of improving people's lives (Siringoringo, 2012).

One of the Bank's business activities that is well known by the public is lending, as stipulated in Article 6 letter b of the Banking Law. Credit is defined in Article 1 Point 11 of the Banking Law as "the provision of money or bills based on an agreement or loan and borrowing agreement between a bank and another party, which requires the borrower to repay the debt within a certain period of time accompanied by the payment of a certain amount of interest" (Siringoringo, 2012). The provision of credit is realized in the legal relationship in a credit agreement. A credit agreement is a credit granting agreement between a credit grantor and a credit recipient. The creditor must provide the agreed money, with the right to receive the money-back from the debtor in due time, accompanied by interest and other costs such as provisions and credit administration costs (Rahmadinata, 2022). The credit agreement is the main agreement that regulates the provision of money, while the guarantee agreement functions as an additional agreement that aims to guarantee that the debtor has the ability to return or repay the credit in accordance with the agreed terms (Dianawati & Purnawan, 2017). The object of the guarantee agreement is the property guarantee requested by the Bank in granting credit, which is an application of the prudential principle in banking (Suyanto, 2016).

The existence of collateral is an important element in banks' credit-granting process. Collateral is defined as a form of bank confidence in the debtor's ability to pay off his obligations. There are two categories of collateral: material collateral and personal collateral (Salim, 2008).

Material security follows the object wherever it is located and gives preference to the creditor. Examples of material security include Mortgage, Fiduciary Guarantee, Pawn, and Ship Mortgage. In contrast, personal guarantees only create obligations for certain parties. In addition to the term guarantee, the Banking Law also recognizes the term collateral. Collateral is an additional guarantee provided by the debtor to the Bank in the process of granting credit or financing based on Sharia principles. One of the forms of collateral most often accepted by banks is land rights. This is because the value of land rights is relatively significant and more marketable than other collateral (Salim, 2008).

Collateral in the form of land rights is credit-bonded through mortgage rights as stipulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT). According to Article 1 paragraph (1) of the UUHT, a hak tangyuan is "a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, along with or without other objects that form an integral part of the land, for the repayment of certain debts, which gives priority to certain creditors over other creditors" (Detria, 2018). If the debtor defaults, the Bank, as the holder of the Mortgage Rights Certificate, can execute the collateral in the form of land rights. Based on Article 20 of the UUHT, there are three ways to manage a mortgage right, namely:

1. The first lien holder has the right to sell the object of the lien by its power through a public auction.
2. Execution is based on the executorial title contained in the Mortgage Rights Certificate, with the irah-irah "DEMI KEADILY BASED ON THE KINGDOM OF THE Almighty."
3. Execution through sale under the hand (Hasibuan, 2020).

In practice, the execution of mortgage rights in the field often faces various obstacles. This is due to the process of executing mortgage rights, which requires a long time and complicated procedures. As a result, this execution is sometimes considered detrimental to the Bank as the holder of the mortgage right (Hasibuan, 2020).

To overcome this problem, banks often look for simpler and more efficient alternatives to resolving bad debts. One of these alternatives is the takeover of collateral pledged by the debtor, by means of the Bank buying the collateral and then reselling it to another party. This process in the banking world is known as Collateral Taken Over (AYDA). The legal basis for the acquisition of this collateral is regulated in Article 12A of the Banking Law (Julyano, 2019).

The definition of AYDA itself is regulated in the Financial Services Authority Regulation Number 40/POJK.03/2019 concerning the Assessment of Asset Quality of Commercial Banks. It is stated that AYDA is "assets obtained by the bank, through auction or outside the auction based on a voluntary submission by the collateral owner or based on the power of sale outside the auction from the collateral owner in the event that the debtor is unable to fulfil his needs to the bank" (Prabandari, 2021).

A power of Attorney to Sell is a deed of power of attorney to sell made between the Bank and the debtor customer. It generally contains the granting of power from the debtor as the authorizer to the Bank as the authorizer. A power of attorney authorizes the Bank to carry out sale and purchase transactions, including other actions required in the process (Prasetio, 2015).

A power of attorney to sell, also known as a power of attorney to sell, is usually prepared in advance by the Bank through a notary. The Bank prepares this power of sale in anticipation of every credit facility being granted to debtor customers. This is generally motivated by the desire to facilitate the process of selling the collateral object in the future if the debtor defaults or fails to fulfil its obligations.

The problem that arises in the AYDA process is the continued use of the power of sale by the Bank. However, in the Banking Law and the Mortgage Law, this power of attorney to sell is no longer regulated or recognized. Therefore, the author will conduct research with a focus on the question: "How is the legal certainty related to the use of power of attorney to sell by banks in relation to Assets Taken Over (AYDA)?"

According to Gustav Radbruch (Julyano, 2019), legal certainty is one of the fundamental values of law that is important to ensure clarity in legal products. According to him, legal certainty has several meanings, namely:

1. Law is something positive, namely in the form of legislation.
2. Law is based on facts, meaning that the law is made based on existing reality.
3. The facts stated in the law must be formulated clearly so that they are easy to implement and avoid mistakes in interpretation.
4. Positive law should be kept the same.

Gustav Radbruch also emphasized that the law must be safe and fair. Only with these two characteristics can the law be implemented in accordance with its mandate. He also argued that the antinomy between justice, expediency, and legal certainty can be overcome by making legal certainty a transindividual power (Julyano, 2019).

METHOD

This research uses a normative juridical approach, which focuses on legal principles and legal synchronization. This research aims to examine and analyze the application of rules or

norms in applicable positive law. The normative juridical approach focuses on the study of favourable legal provisions and legal systems that regulate the cases or legal issues discussed (Ali, 2016). In other words, this approach is within the framework of understanding the intent and purpose of the relevant legal system to observe the normative system in legal science. Therefore, the characteristics of normative legal science must be understood first (Nasution, 2016).

The type of research conducted is normative legal research, which involves a statute approach and an analytical and conceptual approach. This research utilizes primary legal materials, secondary legal materials, and tertiary legal materials.

RESULTS AND DISCUSSION

The Position of Power of Attorney to Sell in the Mortgage Law and the Banking Law

A power of attorney is an agreement between a grantor and a grantee in which one person authorizes or empowers another party to act on his behalf in carrying out a matter. The execution of such affairs includes legal actions, namely actions that have legal consequences or cause legal consequences (Subekti, 2018). A power of attorney must fulfil the legal requirements of an agreement as stipulated in Article 1320 of the Civil Code, namely:

- a. There is an agreement or consent between the parties.
- b. The capacity of the parties to agree.
- c. The existence of a specific object means it has a clear and specific purpose.
- d. A lawful cause must not be contrary to law, public order, or decency.

In practice, there are two forms of power of attorney that are often used: power of attorney under the hand, which is a power of attorney made directly by the grantor and recipient without involving a public official or notary, and authentic power of attorney, which is a power of attorney made by a public official or notary at the request of the grantor and the recipient (Subekti, 2018).

In simple terms, a power of attorney to sell can be defined as the granting of power from the owner of the goods to another party as the recipient of a power of attorney to carry out the sale of specific goods owned by the owner of the goods (Pratiwi, 2023). This power of attorney includes the implementation of actions necessary for the sale of the goods. In its implementation, the power of attorney acts on behalf of the grantor as the owner of the goods. A power of attorney to sell is classified as an agreement. As long as it meets the legal requirements of a contract as stipulated in Article 1320 of the Civil Code, the power of attorney to sell is considered valid. This agreement can be made in the form of a deed under hand or an authentic deed (Novidianto & Retnowati, 2018).

Law No. 4/1996 on Mortgage Rights, which came into force on April 9, 1996, is an implementation of the mandate of Article 51 of Law No. 5/1960 on Basic Agrarian Principles. The article states that mortgage rights can be imposed on property rights, business use rights, and building use rights as stipulated in Articles 25, 33, and 39. These provisions confirm that these rights can be used as debt collateral encumbered by mortgage rights (Setyawan, 2016). The Mortgage Rights Law has several main characteristics, namely:

- a. Gives a unique position or priority to the holder.
- b. It always follows the object of collateral, even if the object changes hands.
- c. It fulfils the principles of speciality and publicity, so it can bind third parties and provide legal certainty to interested parties.
- d. Has an easy execution procedure.

The Mortgage Rights Law is a unification of regulations governing the procedures for encumbering security rights over land and objects related to land. With the enactment of this law, the provisions regarding mortgages in the Civil Code Book II as well as regulations related

to kredietverband (Stb. 1908-542 junctions Stb. 1909-584 and its amendments) are declared revoked and no longer valid (Pratiwi, 2023)

The sale of the object of Mortgage Rights, also known as the execution of the object, is regulated in Article 6 of Law Number 4 Year 1996 on Mortgage Rights. This article states that if the debtor defaults, the object of Mortgage Rights can be sold through a public auction to settle the receivables. Based on this provision, the creditor (Bank) is not allowed to sell the object of Mortgage Rights itself.

However, Article 20, paragraph 2 of the Mortgage Rights Law stipulates that the sale of the object of Mortgage Rights directly by the creditor (under the hand) can be made on the condition that there is an agreement between the grantor and the holder of the Mortgage Rights. This kind of sale is only allowed if it can provide the highest price that benefits all parties. In this context, the use of a power of sale to sell the security object can be done as long as there is an agreement between the creditor and the debtor after the debtor has defaulted or the credit is declared immoral.

However, if the power of sale has been prepared in advance by the creditor and signed by the debtor at the time of granting credit or at the same time as the credit agreement, then the power of sale is not recognized under Law Number 4 Year 1996 on Mortgage Rights. Legally, such a power of sale has no legal force. The sale of a Mortgage object based on such a power of sale is considered contrary to the provisions of Article 6 and Article 20 of the Mortgage Law (Tarigan et al., 2023).

Turning to the discussion of execution under the Banking Law, Article 12A paragraph (1) of the Banking Law provides an option to resolve bad debts through the mechanism of Collateral Taken Over (AYDA). This provision allows Commercial Banks, as holders of Mortgage Rights, to accelerate the process of resolving bad debts due to debtor defaults. In this case, the Bank is allowed to purchase the collateral directly outside the auction, provided that the owner voluntarily submits the collateral.

Based on the two execution mechanisms stipulated in the Mortgage Law and the Banking Law, the author argues that the use of a power of sale depends entirely on the agreement between the parties to the contract. The power of sale is considered valid if there is an agreement between the debtor and the creditor to resolve the default through the sale of collateral at the highest price or through voluntary surrender by the debtor as the owner of the collateral (Dilapanga, 2021).

Legal Certainty for Banks in the Use of Power of Attorney to Sell Related to Repossessed Assets

The Repossessed Asset (AYDA) process is one way banks recover defaulted loans. In this case, the existence of the power of sale and the creditor's authority over the power of sale deed are essential aspects in understanding the credit resolution mechanism while protecting the interests of both parties, namely the Bank as a creditor and the debtor who is experiencing payment difficulties (Syamza et al., 2023).

First, the power of sale provides significant benefits to the Bank as a creditor. Through this power of attorney, the Bank is given the right to sell assets that are used as collateral for the loan, such as property or vehicles, if the debtor fails to fulfil its obligations. This allows the Bank to realize the value of the asset to recover part or all of the loan. With the power of sale, the Bank has apparent authority to execute the collateral (Detria, 2018).

However, the use of authority over the power of sale deed also requires caution. On the one hand, this authority makes it easier for banks to sell collateral assets quickly and effectively, thus accelerating the resolution of bad debts. However, there is a risk of potential abuse of power of attorney by the Bank that could harm the debtor. Therefore, strict legal

regulation and adequate protection are needed to ensure that this authority is used wisely and fairly so that the rights of debtors are guaranteed.

Overall, the existence of the power of sale and the creditor's authority over the power of sale deed in the settlement of bad debts through the AYDA process has advantages and disadvantages that need to be considered. This authority provides flexibility and certainty for banks as creditors to recover non-performing loans. However, to prevent potential abuse and ensure the protection of debtors' rights, adequate supervision and strong legal guarantees are needed (Detria, 2018).

Therefore, clear and transparent regulations are needed to regulate the implementation of the AYDA process and ensure the protection of debtor rights in the settlement of bad debts. This will create a balance between the interests of banks as creditors and the protection of debtors' rights. In addition, education and raising public awareness about the AYDA process and debtor rights are also critical. By providing transparent information and easy access to information related to insufficient debt resolution, the public can better understand their rights and avoid potential abuse of authority by banks.

Legal certainty is a fundamental element in the legal system that serves to provide clarity, justice, and protection for all parties involved. In the context of inadequate debt settlement through the AYDA mechanism, it is essential to analyze the legal certainty related to the power of the sale deed. This has a significant urgency and impact because it plays a role in ensuring the smooth process of credit settlement and protecting the rights of the parties involved (Suyanto, 2016).

First, legal certainty in the power of sale deed provides a clear and firm foundation for resolving bad debts through AYDA. This legal foundation is essential for both the Bank as a creditor and the affected debtor. With a solid legal basis, every step in credit resolution can be carried out systematically, transparently and accountably. In addition, legal certainty provides clarity regarding the rights and obligations of each party. In the context of a power of sale deed, the rights and obligations of creditors and debtors need to be clearly regulated. Debtors must understand their rights and the consequences of a power of sale deed, while creditors need to know the limits and authority they have. This legal certainty will reduce the potential for conflict between the two parties and help create a fair credit settlement.

Furthermore, legal certainty also serves to protect the debtor. In lousy credit conditions, debtors are often in a vulnerable position and at risk of significant losses. With legal certainty, debtors' rights can be better protected. The credit settlement process is carried out in accordance with applicable regulations, and the sale of assets through a power of sale deed is carried out transparently and fairly (Subekti, 2018).

In addition, the legal certainty of the power of sale deed also plays a role in building public confidence in the banking system and credit settlement mechanisms. With a strong legal basis, the public will be more confident that credit settlement is carried out with integrity and in accordance with the principles of justice. This not only strengthens the stability of the banking system but also assures stakeholders.

In terms of urgency, the validity and legal force of the power of the sale deed must be guaranteed. As a profession responsible for making deeds, notaries have an essential role to play in ensuring the validity and legality of the power of sale deeds. In the settlement of bad debts, this deed becomes a legal instrument that regulates the relationship and obligations between creditors and debtors. Notaries need to work carefully and meticulously so that the power of sale deed has legal legitimacy and meets all the requirements set (Salim, 2008).

CONCLUSION

Based on the results and discussion, it is found that the position of the power of attorney to sell has an important role in the settlement of bad debts, especially related to the sale of

collateral objects used as collateral in credit agreements. This power of attorney must fulfil the legal requirements of the agreement stipulated in Article 1320 of the Civil Code and can take the form of an underhand deed or an authentic deed. In the context of mortgage law, the sale of collateral objects by creditors can only be carried out based on a clear agreement between the debtor and the creditor, and a previously signed power of attorney to sell is not recognized as valid. The Banking Law provides an alternative to resolving non-performing loans through the mechanism of Collateral Taken Over (AYDA), which provides an opportunity for banks to resolve non-performing loans more quickly, with clear requirements regarding the sale of collateral.

Furthermore, legal certainty is critical to resolving bad debts through AYDA. The power of sale benefits the Bank by facilitating the execution of collateral, but it must also be balanced with strict supervision to avoid abuse of authority. This legal certainty also protects the rights of debtors, ensuring a transparent and fair process in the sale of assets. This increases public confidence in the banking system and protects both parties. Notaries have an essential role in ensuring the validity and legal force of the power of sale deed by keeping the legal process running in accordance with applicable regulations.

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