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by Juli Moertiono

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Execution of Objects of Mortgage Rights that Have Executorial Title Due to Default by the Debtor

Juli Moertiono
Universitas Muhammadiyah Sumatera Utara
Email: julimoertiono@umsu.ac.id

Abstract

The executorial title is contained in Article 14 paragraph (3) UUHT which reads "The Mortgage Rights Certificate as intended in paragraph (2) has the same executorial power as a court decision which has obtained permanent legal force and is valid as a substitute for the grosse acte Hypotheek as long as it concerns land rights ". The definition of executorial power can be interpreted as "the right to sell the object of mortgage rights over one's own power, which is one manifestation of the priority position held by the mortgage right holder or the first mortgage right holder in the event that there is more than one mortgage right holder. The method taken if the debtor defaults as regulated in Article 20 paragraph (1) letter a of the UUHT can be interpreted to mean that the right to sell under one's own authority the object of the Mortgage Right if the debtor defaults is a simplified implementation of the right of execution which is now granted by law to the creditor of the Rights holder. Dependents so that the exercise of such rights does not go through court and does not need to follow procedural legal procedures. Such authority is the right of execution that is always ready at hand, which is why such execution is called parate execution. Based on Article 20 paragraph (1) letter b UUHT, creditors can carry out execution based on executorial title, this execution is an implementation of the Explanation to Article 14 UUHT.

Keywords: Execution, Mortgage Rights, Executorial Title, Default.

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A. Introduction

Basically, lending and borrowing activities begin with an agreement by both parties who have an agreement or agreement to carry out legal actions in the form of lending and borrowing. The general understanding of agreement can be seen in the Civil Code, specifically Article 1313 of the Civil Code, namely "an act by which one or more people bind themselves to one or more other people". According to R. Setiawan, quoted from Leli Joko Suryono's book, he said that "the definition of agreement as stated in Article 1313 of the Civil Code is too broad, because the term act used can also include unlawful acts and voluntary representation, even though what is meant is not an unlawful act.".[1] An agreement is "a relationship based on wealth between two parties, where one party is obliged to provide a performance on behalf of the other party who has the right to that performance".[2] Money lending and borrowing agreement according to the Civil Code Article 1754 which reads "Lending and borrowing is an agreement whereby one party gives to another party a certain amount of goods which are used up due to use, on the condition that the latter party will return the same amount of the same kinds and conditions."

Lending and borrowing is closely related to collateral law, where the party who borrows will usually guarantee an object that can be used as the object of collateral for the loan. Apart from that, it can also be required by the party receivable or the creditor, regarding the existence of a guarantee which is intended to further guarantee the certainty of repayment of the debt, so that it can be carried out in accordance with what was agreed.[3]

The Indonesian Civil Code does not clearly define what a guarantee is. However, from the provisions of Articles 1131 and 1132 of the Civil Code, the meaning of guarantee can be understood. Article 1131 of the Civil Code states that "all cyber debt (debtor) objects, both movable and immovable,

[1] Leli Joko Suryono, *Pokok-Pokok Hukum Perjanjian Indonesia*, Yogyakarta: LP3M, (2014), p 45.
[2] H. Mashudi dan Moch. Chidir Ali, *Pengertian-Pengertian elementer Hukum Perjanjian Perdata*, Cet. II, Bandung: CV. Mandar Maju, (2001), p 35.
[3] J. Satrio, *Hukum Jaminan Hak Jaminan Kebendaan* cet. IV, Bandung: PT Citra Aditya Bakti, (2002), p 9.

whether existing or new that will exist in the future, become collateral for all personal obligations of the debtor."

Material collateral as an object of collateral is specifically intended as a preventive measure in case a debtor breaks his promise. Ownership of the object of collateral does not transfer to the creditor because of the guarantee. Thus, in a material guarantee agreement, the object remains the property of the debtor, the object is only kept on standby to guard against the possibility of the debtor breaking his promise.[4]

Mortgage rights are one of the objects of collateral that are often used in Indonesia. According to Article 1 number 1 of Law no. 4 of 1996 concerning Mortgage Rights on Land, mortgage rights on land and objects related to the land, hereinafter referred to as mortgage rights, are:

Security rights imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or not including other objects which are an integral part of the land, for the repayment of certain debts, which gives the position giving priority to certain creditors over other creditors. Based on the mortgage rights law, namely Law no. 4 of 1996 concerning Mortgage Rights on Land, the objects of mortgage rights are rights to land and objects related to the land. In Article 4 of the Mortgage Rights Law, it is explained that "Land rights that can be encumbered with mortgage rights are property rights, business use rights, building use rights, use rights on state land which according to applicable provisions must be registered and according to their nature can be transferred and rights -rights to the land including existing and future buildings, plants and works which are an integral part of the land, and belong to the holder of the land rights."

The Mortgage Rights Certificate issued by the Land Office has executorial power (executorial title). The executorial title is contained in Article 14 paragraph (3) UUHT which reads "The Mortgage Rights Certificate as intended in paragraph (2) has the same executorial power as a court decision which has obtained permanent legal force and is valid as a substitute for the grosse acte Hypotheek as long as it concerns land rights ". The word default as explained above is related to the word bad credit, as it is known that not all credit given to debtors can be returned properly because usually some of the returns will be smooth and some will lead to congestion.[5] Default or broken promises for both debtors and creditors often enter into an agreement involving property rights or personal mortgage rights, this is a step to prevent losses for one of the parties to the agreement.[6]

The provisions of Article 6 UUHT provide the right for mortgage rights holders (creditors) to carry out parate execution. This means that, in the event of a breach of contract by the debtor, the holder of the mortgage right not only does not need to ask for approval from the mortgage right giver but also does not need to ask for approval from a court order to carry out the execution of the mortgage right. Furthermore, Article 14 paragraphs (1), (2) and (3) UUHT imply the same executorial power as the court decision behind the irah-irah "For the sake of justice based on the Almighty Godhead" as stated in the certificate of mortgage rights so that it is considered to have power The law remains and applies as a substitute for the mortgage deed as long as land rights are concerned.[7]

A research cannot be said to be research if it does not have a research method.[8] Research methods are one of the factors of a problem that will be discussed[9]. The statutory approach is carried out by reviewing all laws and regulations that are related to the legal issue being handled.[10] Analysis of legal materials is carried out using qualitative analysis methods which are used to explain legal events, legal materials or legal products in detail to facilitate legal interpretation.[11] Analysis of legal materials is carried out using a content analysis method (centent analysis method) which is carried out by describing

[4] *Ibid*.,
[5] Muchdarsyah Sinungan, *Manajemen Dana Bank*, Bumi Aksara, (2000), p 168.
[6] Evie Hanavia, "Eksekusi Hak Tanggungan Berdasarkan Titel Eksekutorial dalam Sertifikat Hak Tanggungan", *Jurnal Repertorium*, 4, No. 1, (2017): p 23.
[7] *Ibid*.,
[8] Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceding Seminar Nasional Kewirausahaan*, 2 No. 1, (2021): p.1052-1059.
[9] Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8 No. 1, (2021): p.23-42.
[10] Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)*. Jakarta: Kencana, (2017), p. 133.
[11] Zainuddin, Rahmat Ramadhani, "The Legal Force Of Electronic Signaturesin Online Mortgage Registration", Jurnal Penelitian Hukum De Jure 21, No. 2, (2021): p. 244

the material of legal events or legal products in detail to facilitate interpretation in discussions.[12] This research was conducted using a problem approach, namely by approaching the results of theoretical empirical studies by looking at various opinions of experts, writers and legal and regulatory studies relating to problems based on legal principles and formulating legal definitions.[13]

The data used in this research comes from secondary data. Secondary data or library data includes:

1) Primary legal materials are binding legal materials.
2) Secondary Legal Materials; Secondary legal materials are materials that provide an explanation of primary legal materials.[14] Secondary legal materials include explanations of primary legal materials in the form of expert doctrine contained in books, journals and websites.[15]
3) Tertiary Legal Materials; Tertiary legal materials are materials that provide meaningful instructions and explanations for primary and secondary legal materials such as legal dictionaries, articles, etc.[16]

B. Discussion

1. Legal Regulation of Executorial Title in the Deed of Encumbrance of Mortgage Rights

The executorial title is contained in Article 14 paragraph (3) UUHT which reads "The Mortgage Rights Certificate as intended in paragraph (2) has the same executorial power as a court decision which has obtained permanent legal force and is valid as a substitute for the grosse acte Hypotheek as long as it concerns land rights ".

Mortgage rights are one of the objects of collateral that are often used in Indonesia. According to Article 1 number 1 of Law no. 4 of 1996 concerning Mortgage Rights on Land, mortgage rights on land and objects related to the land, hereinafter referred to as mortgage rights, are security rights imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Regulations Agrarian Principles, whether or not including other objects which are an integral part of the land, for the repayment of certain debts, which give certain creditors a preferred position over other creditors.

Based on the mortgage rights law, namely Law no. 4 of 1996 concerning Mortgage Rights on Land, the objects of mortgage rights are rights to land and objects related to the land. In Article 4 of the Mortgage Rights Law it is explained that:

Land rights that can be encumbered with mortgage rights are ownership rights, business use rights, building use rights, use rights over state land which according to applicable provisions must be registered and according to their nature can be transferred and rights over land including buildings, plants and produce. existing and future works which are an integral part of the land, and belong to the holder of the land rights.

Article 51 of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, regulates the institution of guaranteeing rights to land or land and buildings or also called mortgage rights. In this regard, the legislators created Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (UUHT). When the debtor breaks his contract or defaults, the creditor as the holder of the mortgage right has the right to sell the collateral object by means of a public land auction in accordance with the provisions of the relevant laws and regulations. The position of the creditor has the right to precede other creditors (Article 1 number 1 UUHT).

Guaranteeing material rights is something that is tied to mortgage rights which guarantee the repayment of creditor debts. When the creditor defaults, the debtor as the right holder can obtain repayment from the proceeds from the sale of the object (HT object) through a public auction house. A breach of promise or default is a condition of negligence or error by the debtor who is unable to fulfill the achievements in the agreement. For debtors who are in default, there is a mechanism for executing mortgage rights as regulated in Article 20 paragraph (1) of Law no. 4 of 1996. When the debtor breaks the contract, the first HT holder has the right to sell the HT object or executorial title stated in the HT

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[12] Rahmat Ramadhani, "Legal Consequences of Transfer of Home Ownership Loans without Creditors' Permission", *IJRS:International Journal Reglement & Society* 1, No. 2, (2020): 33.
[13] Rahmat Ramadhani, "Legal Protection for Land Rights Holders Who Are Victims of the Land Mafia", *IJRS:International Journal Reglement & Society* 2, No. 2, (2021): 89.
[14] *Ibid*, p. 114.
[15] Erwin Asmadi, "Procedure for Destruction of Evidence of the Crime of Narcotics Abuse Based on Formal Law in Indonesia", *IJRS:International Journal Reglement & Society* 1, No. 2, (2020): p.79.
[16] *Ibid*.,

certificate. then, the mortgage object will be sold through public auction. The aim is to pay off the mortgage holder's receivables with pre-emptive rights from other creditors. There are several ways to sell HT objects, namely by doing it privately and through public auction institutions. The sale of HT objects privately is carried out to obtain the highest price so that it benefits the parties, namely creditors and debtors. For the sale of objects or objects of mortgage rights, it may take 1 (one) month from the date it has been notified to interested parties. The auction needs to be announced in at least 2 (two) local mass media where the object of the mortgage is located and the accuracy can be confirmed.

Rights are based on the promise of the mortgage right giver that if one day the debtor breaks his promise, the mortgage right holder has the right to sell the object of the mortgage right by means of a public auction. This process does not require approval from the mortgage provider. The holder of mortgage rights can collect the receivables from the sale proceeds before other creditors. If there is a remainder from the sale proceeds, the remainder of the sale proceeds is the right of the mortgagee. The executorial title in carrying out the execution must be easy and certain, therefore the certificate of mortgage rights contains the irah-irah which reads "For the sake of justice based on belief in the Almighty God" (provisions of article 14 paragraph (2) and paragraph (3) UUHT). Executorial power lies in the mortgage certificate. If the debtor defaults, new executorial powers can be exercised. Direct mortgage rights can be executed directly, because their position is the same as a court decision that has obtained permanent legal force, through procedures and by using parate execution institutions in accordance with civil procedural law regulations. Direct execution can also be called "parate execution", where the execution can be carried out directly by the creditor and there is no need to request a fiat or decree or assistance from the court. The execution is carried out through a public auction so there is no need for court assistance. The meaning of the words "For the sake of justice based on belief in the Almighty God" is the principle of administering judicial power. The existence of these irahs, whether decisions or documents, can be implemented and can also be accounted for to God Almighty. The provisions in Article 20 paragraph (1) letters a and b UUHT provide two legal bases for exercising executorial power, namely:[17]

a. Article 6 of the UUHT explains that the first mortgage right holder has the right to sell the mortgage object; And
b. Executorial title in the mortgage rights certificate (Article 14 paragraph (2) UUHT). Objects of mortgage rights are sold by means of public auction according to the procedures specified in statutory regulations. This method is a process for paying off the mortgage holder's receivables with prior rights over other creditors.

Article 6 UUHT states that the executorial power of HT is binding and mortgage rights are perfect. The executorial power of the mortgage certificate is the basis for coercive efforts so that creditors get back the funds lent to defaulting debtors quickly.

2. Process of Executing the Object of Mortgage Guarantee Based on the Executorial Title of the Deed of Encumbrance of Mortgage Rights

Basically, the execution of the Mortgage Rights certificate is easy because the creditor has the power to sell the Mortgage Rights object if the debtor defaults without the debtor's consent and an order from the District Court. The execution of the Mortgage Rights certificate is certain because Article 14 UUHT confirms that the Mortgage Rights certificate issued by the Land Office functions as proof of the existence of the Mortgage Right, with the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD" to provide executorial power. which is the same as a court decision that has obtained permanent legal force.

Article 6 UUHT states that if the debtor is in default, the first Mortgage Right holder has the right to sell the Mortgage Right object under his own authority through a public auction and collect the receivables from the proceeds of the sale. Therefore, to implement the provisions of Article 6 of the UUHT above, if the debtor is in default, Article 20 of the UUHT states that Article 6 of the UUHT states that if the debtor is in default, the first Mortgage Rights holder has the right to sell the Mortgage Rights object under his own authority through a public auction and collect the receivables from the sales

[17] Nur Rizki Siregar, Mohamad Fajri Mekka Putra, "Tinjauan Hukum Kekuatan Eksekutorial Terhadap Permohonan Lelang Eksekusi Hak Tanggungan Atas Debitur Wanprestasi", *Jurnal USM Law Review*, 5 No. 1, (2022): p 45.

proceeds. Therefore, to implement the provisions of Article 6 UUHT above if the debtor defaults Article 20 UUHT states:

a. If the debtor breaks his contract, then based on:
   1) The right of the first Mortgage Rights holder to sell the Mortgage Rights object as intended in Article 6, or
   2) The executorial title contained in the Mortgage Rights certificate as intended in Article 14 paragraph (2), the Mortgage Rights object is sold through a public auction according to the procedures specified in the statutory regulations for repayment of the Mortgage Rights holder's receivables with prior rights over other creditors;
b. Upon agreement between the giver and the holder of the Mortgage Rights, the sale of the Mortgage Rights object can be carried out privately if by doing so the highest price can be obtained which is beneficial to all parties.

The method taken if the debtor defaults as regulated in Article 20 paragraph (1) letter a of the UUHT can be interpreted to mean that the right to sell under one's own authority the object of the Mortgage Right if the debtor defaults is a simplified implementation of the right of execution which is now granted by law to the creditor of the Rights holder. Dependents so that the exercise of such rights does not go through court and does not need to follow procedural legal procedures. Such authority is the right of execution that is always ready at hand, which is why such execution is called parate execution. Based on Article 20 paragraph (1) letter b UUHT, creditors can carry out execution based on executorial title, this execution is an implementation of the Explanation to Article 14 UUHT. Therefore, the mortgage certificate has executorial power, so that if the debtor defaults, it is ready to be executed, just like a court decision that has permanent legal force.

In order to execute the Mortgage Rights certificate based on the executorial title, the creditor can submit an application to the Chairman of the District Court by showing evidence that the debtor is in default and submitting the relevant Mortgage Rights certificate as the basis. Then the Chairman of the District Court will ask the KPKNL assistance to carry out the auction sale. After that, according to Article 41 paragraph (1) Government Regulation no. 24 of 1997 concerning Land Registration explains that the transfer of rights due to an auction can be registered if there is an excerpt from the auction minutes made by the auction official.

Meanwhile, the following will explain the process of executing mortgage rights objects using executorial title:[18]

1. Article 1 point (1) Law no. 4 of 1996 states that "Mortgage Rights over land and objects related to the land, hereinafter referred to as Mortgage Rights, are guarantees imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles , whether or not the following are other objects which are part of the property, for the repayment of certain debts, which gives certain creditors a preferred position over other creditors."
2. The granting of Mortgage Rights is preceded by a promise to grant Mortgage Rights as security for the repayment of a particular debt, which is stated in and is an inseparable part of the relevant debt and receivables agreement, another agreement which gives rise to the debt, and the granting of Mortgage Rights is carried out by making Deed of Granting Mortgage Rights by PPAT (Article 10 paragraph (1) and (2) Law No. 4 of 1996).
3. The granting of Mortgage Rights must be registered at the Land Office, and as proof of the existence of Mortgage Rights, the Land Registry Office issues a Mortgage Rights Certificate which contains instructions FOR JUSTICE BASED ON THE ALMIGHTY GOD (Article 13 paragraph (I), Article 14 paragraph (1) and (2) Law No. 4 of 1996).
4. The Mortgage Rights Certificate has the same executorial power as a court decision which has obtained permanent legal force, and if the debtor breaks his contract then based on the executorial title contained in the Mortgage Rights certificate, the mortgage right holder requests the execution of the mortgage rights certificate to the Chairman of the District Court. authorized. Then the execution will be carried out like the execution of a decision that has permanent legal force.

[18] https://pn-koba.go.id/mekanisme-permohonan-dan-pelaksanaan-eksekusi-riil/

5. Upon agreement between the giver and the Mortgage Rights holder, the sale of the Mortgage Rights object can be carried out privately, if by doing so the highest price will be obtained which benefits all parties (Article 20 paragraph (2) Law No. 4 of 1996).
6. Private sales can only be carried out after 1 (one) month after being notified in writing by the buyer and/or mortgage right holder to interested parties and announced in at least 2 (two) newspapers circulating in the area concerned and/or local mass media, and no party has expressed objection (Article 20 paragraph (3) Law No. 4 of 1996).
7. A power of attorney to impose mortgage rights must be made using a notarial deed or PPAT deed, and must meet the following requirements: 1) does not contain the power to carry out legal actions other than imposing mortgage rights; 2) does not contain a substitution power; 3) clearly state the object of the Mortgage Rights, the amount of the debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not the provider of the Mortgage Rights;
8. The execution of mortgage rights is carried out in the same way as the execution of a court decision which has permanent legal force.
9. The execution begins with a warning and ends with the auction of the land encumbered with mortgage rights.
10. After the auction is carried out on the land which is encumbered with mortgage rights and the money from the auction is handed over to the creditor, the mortgage encumbering the land will be dismantled and the land will be handed over cleanly, and free from all burdens, to the auction buyer..
11. If the auctioneer does not want to leave the land, then the provisions contained in Article 200 paragraph (11) HIR apply.
12. This is different from sales based on a promise to sell under one's own authority based on Article 1178 paragraph (2) BW, and Article 11 paragraph (2) e Law no. 4 of 1996 which was also carried out through an auction by the State Auction Office at the request of the first mortgage right holder, this promise only applies to the first mortgage right holder. If the holder of the first mortgage right has made a promise not to clear it (Article 1210 BW and article 11 paragraph (2) j Law No. 4 of 1996 concerning Mortgage Rights), then if there are other mortgage rights and the auction proceeds are not enough to pay All mortgage rights that burden the land in question, then the unpaid mortgage rights will still burden the plot in question, even though it has been purchased by a valid buyer and auctioneer. So the auction buyer gets the land with the burden of unpaid mortgage rights. The auctioneer still has to leave the land and if he disobeys, he and his family will be evicted by force.
13. If the auction has been ordered by the Chairman of the District Court, the auction can only be postponed by the Chairman of the District Court and cannot be postponed for any reason by officials of other agencies, because the auction ordered by the Chairman of the District Court and carried out by the State Auction Office, is for execution, and is not a decision from the State Auction Office.
14. The sale (auction) of fixed objects must be announced twice fifteen days apart in a daily publication published in the city or city adjacent to the object to be auctioned (Article 200 paragraph (7) HIR, Article 217 RBg).

C. Conclusion

The executorial title is contained in Article 14 paragraph (3) UUHT which reads "The Mortgage Rights Certificate as intended in paragraph (2) has the same executorial power as a court decision which has obtained permanent legal force and is valid as a substitute for the grosse acte Hypotheek as long as it concerns land rights ". The definition of executorial power can be interpreted as "the right to sell the object of mortgage rights over one's own power which is one manifestation of the priority position held by the mortgage right holder or the first mortgage right holder in the event that there is more than one mortgage right holder.

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The method taken if the debtor defaults as regulated in Article 20 paragraph (1) letter a of the UUHT can be interpreted to mean that the right to sell under one's own authority the object of the Mortgage Right if the debtor defaults is a simplified implementation of the right of execution which is now granted by law to the creditor of the Rights holder. Dependents so that the exercise of such rights does not go through court and does not need to follow procedural legal procedures. Such authority is the right of execution that is always ready at hand, which is why such execution is called parate execution. Based on Article 20 paragraph (1) letter b UUHT, creditors can carry out execution based on executorial title, this execution is an implementation of the Explanation to Article 14 UUHT. Therefore, the mortgage certificate has executorial power, so that if the debtor defaults, it is ready to be executed, just like a court decision that has permanent legal force.

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