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GRANTING OF MORTGAGE LOANS WITH GUARANTEES OF LAND RIGHT OWNED BY THIRD PARTIES IN BANKING AGREEMENTS

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Abstract

This study aims to analyze the process of implementing an agreement between a bank and a third party as a collateral owner/which does not belong directly to the debtor, and analyze the legal protection for the owner of the object of mortgage rights pledged by the debtor. The method of approach used in this research is the juridical empirical approaching method. In the implementation of the agreement between the Bank and the collateral owner third party, it is carried out through the Mortgage Rights mechanism. In the event of default by the debtor. Then, the creditor (bank) can still execute the object of collateral pledged by the debtor in accordance with applicable regulations. Second, the UUHT does not provide enough protection to the collateral owner/third party, considering that the third party/collateral owner is not the direct debtor in the credit agreement. In addition, between the third party and the creditor (Bank) also do not have a direct legal relationship, because the third party only has a direct legal relationship with the debtor. So that the third party will only get legal protection from the debtor in accordance with the agreement made with the third party.

Keyword: Third Party; Mortgage; Agreement; Default Protection;

INTRODUCTION

This lending activity has been around for a long time. In the lives of people who have long recognized money, namely money as a means of payment. [1] And one of the most vital bank activities to support the success of achieving goals is lending.[2] Credit that has been disbursed/given by creditors to debtor customers has risks, risks can be in the form of debtors not being able to return principal and interest debts on time or at all debtors are no longer able to pay their debts, even though they have been given relief and convenience for returning their loans.[3] Credit risk is the result of the failure of debtors and/or other parties to fulfill their obligations to repay credit to the bank, in lending activities, where there may be possibilities that the debtor cannot fulfill their obligations due to various reasons, such as business failure, the character of the debtor who does not have good faith to fulfill his obligations to the bank, or there is an error on the part of the bank in the credit approval process.[4] To guarantee the return of debt/credit, creditors require that debtors provide and provide collateral in the form of

[1] Bahsan, 2015, *Hukum Jaminan Dan Jaminan Kredit Perbankan Indonesia*, Raja Grafindo Persada, Jakarta, pg. 1.
[2] Wasis,1980, *Perbankan Pendekatan Manajerial*, Edisi III, Satya Wacana, Semarang, pg. 64.
[3] Sutarno, 2014, *Aspek-aspek hukum perkreditan pada bank*, cetakan kelima, Alfabeta, Bandung, pg. 6.
[4] Ikatan Bankir Indonesia, 2016, *Manajemen Risiko 1, Mengidentifikasi risiko Pasar, Operasional, Dan Kredit Bank* Cetakan Pertama, Edisi Kesatu, Gramedia Pustaka Utama, Jakarta, pg. 67.

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movable or immovable objects that give creditors the right and power to get repayment by selling/auctioning these goods if the debtor cannot pay his debt at the time specified in the agreement.[5] Basically, collateral is given so that the creditor (the party providing the loan) is confident that the debtor (the party owed) will pay and complete the debt payment obligations.[6] The collateral that is usually given to customers as collateral is land/land certificates, because land collateral will be safer for us to make collateral as repayment of the debtor's debt, both physically and we will adjust the amount of credit that we (the bank) will issue or we (the bank) provide.[7] Within certain limits land is considered a relatively safe collateral object, in the sense that if the land is pledged there is no problem. Land is very profitable for the Bank, because in addition to its high selling price, land also has a value that continues to increase over a period of time and will not experience a decline.[8]

Commonly understood by the public, debtors who will receive credit will provide collateral that is legally controlled by the debtor itself. Thus, all related legal documents are made in the name of the debtor. However, in reality, the implementation of credit agreements is often encountered, where the debtor uses collateral in the name of another person, in this case often referred to as a third party. Credit with land certificate collateral in the name of another person / third party, generally allowed by law. And in the implementation of collateral encumbrance against the land is carried out through the mechanism of mortgage rights. Namely contained in the provisions of Article 15 paragraph (1) and paragraph (2) of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land ("Law 4/1996), and contained in the provisions of Article 1792 of the Civil Code.

This is also the basis for banks or collateral institutions to extend credit to the public with collateral that is not in the name of the debtor directly. And banks often require their debtors to provide collateral, and the form of collateral that is usually given/used in granting credit is generally in the form of land and / or buildings. although basically a debt and credit agreement is not required to be followed by a guarantee agreement. Because in practice, Indonesian law allows a person's assets to be used to guarantee the credit facilities of other parties, where the implementation of collateral encumbrance against these assets is used through the mechanism of mortgage rights. The concept of collateral that uses assets from other people actually comes from the provisions stipulated in the Civil Code regarding insurance, where in Article 1820, it explains that insurance is a form of agreement in which a third party, for the benefit of the creditor, binds himself to fulfill the debtor's obligations, if the debtor does not fulfill his obligations. [9] In this case, the third party in question is the third party granting the mortgage. Which means a third party (another person) who guarantees the debtor's debt with his property. In the event

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[5] Sutarno, *Ibid*, pg. 6.

[6] Yuridis.Id, *Asas Hukum dan Macam-macam Jaminan Kebendaan* https://yuridis.id/asas-hukum-dan-macam-macam-jaminan-kebendaan/, accessed on 15 March 2021 .

[7] Interview with Fauziah Handayani, Employees of Bank Nusa Tenggara Barat (Bank NTB) Mataram Branch, on 28 April 2017.

[8] Nugraha Adi Prasetya, *Perlindungan kreditur sebagai pemegang hak tanggungan dalam surat kuasa membebankan hak tanggungan (STUDI KASUS PUTUSAN MAHKAMAH AGUNG NO.1369K/Pdt/2009, NO.2209K/Pdt/2005, NO. 610PK/Pdt/2002),* thesis , Fakultas Hukum Magister kenotariatan, Universitas Indonesia, Depok, 2012, , pg. 6

[9] Kalih Kriesnaeindra, *Menggunakan asset orang lain untuk jaminan hutang*, https://indonesiare.co.id/id/article/menggunakan-aset-orang-lain-untuk-menjamin-hutang, accessed on 12 June 2022

that the person is a third-party guarantor, the third party's object used as collateral for the debtor's debt can be executed if the debtor defaults.[10]

Guarantees belonging to third parties will not be a problem if the debtor does fulfill his performance as agreed in the credit agreement, but it will be very detrimental to the lien giver who is not a direct debtor, because if the debtor defaults, the third party will be harmed. Because in every credit transaction it will not always run smoothly. In fact, there are often many cases where someone feels trapped to pay someone else's debt, and it could be because the character of the debtor was not based on good faith from the start.

As happened to one of the debtors at a bank in Mataram City, where the debtor had/did not have a good fight from the beginning, where in the credit agreement between the Bank and the debtor on behalf of Kusuma, in the credit agreement a credit of Rp. 250,000,000, (two hundred and fifty million rupiah) was approved (Article 1), with interest of 18 % (eighteen percent), a loan period of 36 months (thirty-six) months, as stated in the credit agreement in Article 4. And the credit disbursement is intended for additional business capital for the debtor (KMU), in the approval of the credit, where there is a reward for granting credit, the bank's negligence in analyzing the debtor, as well as collateral guarantees which include fraud and the debtor does not carry out his obligations to the bank after the credit facility is received. In this case, it is the third party or collateral owner who will be greatly disadvantaged by the default committed by the debtor. Because third parties lack legal protection in the Mortgage Law, considering that the third party / collateral owner is not a direct debtor in the credit agreement. In addition, between the third party and the creditor (Bank) also does not have a direct legal relationship, because the third party only has a direct legal relationship with the debtor. So that the third party will only get legal protection from the debtor in accordance with the agreement made with the third party.

The problem in this study is how is the implementation of the agreement between the bank and the third party as the owner of the collateral/provider of mortgage rights? And how is the legal protection of the third party as the owner of the collateral /provider of mortgage rights if the debtor defaults?

The research approach used in this research is Juridical Empirical research. Juridical Empirical research is legal research on the enactment or implementation of normative legal provisions in action on each specific legal event that occurs in society. Empirical juridical research is field research (research on primary data), namely a study examining legal regulations which are then combined with data and behavior that lives in the midst of society.

In this research, secondary data sources are used, consisting of:

1. Primary legal materials, namely binding legal materials, which consist of legislation, jurisprudence, and treaties.[11] Primary legal materials used in this research are national laws and regulations related to the object of this research.

[10] Letizia Tobing, *Perbedaan Personal Guarantee dan Pihak Ketiga Pemberi Jaminan*, https://www.hukumonline.com/klinik/a/perbedaan-personal-guarantee-dan-pihak-ketiga-pemberi-jaminan-lt5434111e798f2, accessed on 28 July 2022

[11] Soerjono Soekanto, 1998, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Rajawali Press, Jakarta, pg.52.

2. Secondary legal materials, namely all legal materials that provide explanations of primary legal materials. Includes journals, reference books, scientific works of scholars, results of scientific research that review legal issues. scholars, the results of scientific research that reviews the legal issues studied by including other social sciences. which is studied by including other social sciences. Secondary legal materials are mainly law books including theses, and law dissertations, explanations of laws and legal journal.[12]
3. Tertiary legal materials, which are all legal materials that provide guidance / explanation of primary and secondary legal materials. Includes materials from the internet media, dictionaries, articles in journals or newspapers.[13]

Data collection techniques and analysis in this study are carried out qualitatively, namely from the data that has been obtained and then will be arranged systematically then, qualitatively analyzed to achieve clarity on the problems to be discussed. Qualitative data analysis is a research method that produces descriptive data analysis, namely what is stated by respondents in writing / oral and also their real behavior, studied, and studied as a whole.

Analysis is an explanation and interpretation in a logical systematic manner. And Logical systematic shows a deductive-inductive way of thinking and follows the rules in writing scientific research reports. when the data analysis has been completed, the results will be presented descriptively, namely by telling and describing what it is in accordance with the problems studied by the author in this writing. And from these results, a conclusion is drawn which is the answer to the problems raised in this writing.

DISCUSSION

Implementation of the Agreement between Bank Nusa Tenggara Barat and the Third Party as the owner of the Collateral / Mortgage Rights Provider.

The implementation of the agreement between the bank and the third party as the owner of the collateral is basically the same as an ordinary agreement or the execution of an agreement on behalf of the direct debtor/debtor himself, it's just that in its provisions there are differences related to the documents that must be completed by the prospective debtor or documents that will be submitted to the bank, Where the owner of the collateral states that he is willing, there is no coercion, voluntarily involves himself as collateral for the debtor's debt, and knows all the consequences or risks that will arise caused by the debtor, in the event of default or disputes relating to the object of the guarantee. In the event of bad credit as happened, and it is possible to be auctioned, the third party as the owner of the guarantee cannot take any legal action.

Granting credit with collateral belonging to third parties at Bank NTB is allowed, such as collateral on behalf of parents, relatives or on behalf of friends of the debtor, the implementation is the same as granting credit with collateral in the name of the debtor himself/debtor directly and granting credit is bound with a mortgage/done through a mortgage mechanism, but the bank will be very careful because the guarantee is not in the name of the debtor, and the owner of the guarantee must really know the

[12] Suratman dan H. Phillips Dillah, 2012, *Metode Penelitian Hukum,* Alfa Beta, Bandung, pg. 155.
[13] Soerjono Soekanto, *Op.cit.*, pg. 13.

consequences in the event of default by the debtor. In its implementation, it is the same or no different from binding a mortgage in the name of the debtor himself/the debtor directly, the debtor as the owner of the guarantee will sign the APHT in front of the Notary/PPAT who is our partner, but if what is used is a certificate/guarantee in the name of another person or we call it a third party, then the owner of the guarantee or the third party will sign the SKMHT first.[14]

The procedure for granting credit at PT Bank Nusa Tenggara Barat is as follows:[15]

1. Individual Debtor
   - Copy of Debtor's E-KTP (husband & wife)
   - NPWP
   - Photo 4X6 (2 sheets)
   - Financial Report
   - Bussiness License (SIUP, TDP, NPWP)
2. Company Debtor
   - Copy of E-KTP (Management, Owner)
   - Deed of Establishment
   - Deed of Amendment
   - Ratification of the Minister of Law and Human Rights
   - Commissioner Approval Letter
   - Audited Financial Statement (Application above 5 Billion)
   - Business License (SIUP, TDP, NPWP, SIUP, HO, Amdal, etc.) in accordance with the customer's business activities.
3. Debtor Group
   - Written statement stating the cooperation between the debtor and his business group to carry out a project.
   - There must be a statement from the Group to the Bank to authorize the Bank to transfer the incoming term to the financing account Debtor
4. Collateral
   - Financed business
   - Land and/or Building with a minimum value of 125 % of the upper limit of the credit facility received by the debtor
   - Collateral ownership in the form of SHM or SHGB.

Fauziah Handayani, said that there are several stages of credit granting, starting from the application to the realization of credit whose collateral is not in the name of the debtor directly or a third party at Bank West Nusa Tenggara, as follows:[16]

1. Checking the completeness of the applicant's files/documents

   Furthermore, after the requirements mentioned above have been met by the applicant, the bank will examine the files/documents that have been submitted by the applicant, to find out whether the documents needed/needed for the credit application are complete or there are deficiencies, if there are deficiencies, then the bank asks the applicant to

[14] Interview with Fauziah Handayani, Employees of Bank Nusa Tenggara Barat (Bank NTB), on 28 March 2021.

[15] Bank NTB Syariah, *Pembiayaan multiguna IB Syariah,* https://www.bankntbsyariah.co.id/Produkdanlayanan/pembiayaankonsumtif/sebagunaibamanah, accessed on 20 April 2021.

[16] Interview with Fauziah Handayani, Employees of Bank Nusa Tenggara Barat (Bank NTB), on 28 March 2021.

complete the documents required for the credit application. then the bank will see/ check in advance the authenticity of the files that have been submitted by the applicant. In the case of certificates, the bank will check the authenticity of the certificates used as collateral for the loan, and the applicant will be asked to clear the documents with the Land Agency (BPN).

If the certificate is genuine and correct and clear or not in dispute or under bank guarantee, then the West Nusa Tenggara Bank will try to calculate whether the amount of credit requested by the applicant is appropriate or relevant to the ability of the prospective debtor to repay. And also take into account the risks that will occur.

For collateral submitted to the bank, the bank has criteria, such as the value of the collateral must be greater than the credit to be received, taking into account future risks, and the collateral must also have economic value, such as land (land and buildings on it), which will not experience a decline, the period is long compared to the credit facility to be received, and the collateral cannot be damaged, and can also be insured.

Regarding collateral in the name of a third party, Bank Nusa Tenggara Barat will check and ensure, among other things:

1. Is it true that the collateral belongs to a third party;
2. The owner of the collateral is willing to pledge the land rights to Bank Nusa Tenggara Barat;
3. Ascertain whether the collateral owner is in marital status, whether married or not. The bank will check or confirm to the collateral owner, whether the status of the collateral owner is divorced/not, by including evidence that the person concerned is in accordance with his statement;
4. The certificate /land used as collateral is completely clean / not in a condition pledged to other parties, not in dispute, or seized in a court case.

2. Review to the Location/ On the spot

The next stage is On the Spot, this is to observe the collateral. This is done after the bank is sure of the validity of the requirements/documents that have been completed by the applicant, and the next step is that the bank will conduct a survey to the location that is the object of the credit guarantee. When the credit department will conduct a survey, the bank does not notify the applicant, this is so that the bank knows how the conditions in the field and whether they are in accordance with the actual conditions. And to find out whether what will be financed really exists and whether it is in accordance with what is proposed by the applicant. At this stage an assessment of the character of the prospective customer will also be carried out, where the bank applies the principle of prudence in providing credit, where the assessment is carried out to see/know how the personality of a customer, good or bad and also to see whether or not the customer's good faith in the future to carry out his obligations to the bank/ pay financing installments until the predetermined period is completed.

Assessment of customer character is also done by checking the surrounding environment, how customers get along with their neighbors. Apart from assessing the customer's character, it can also be seen from BI checking, BI checking is used to obtain information on the debtor's credit history and will be a consideration whether

or not it is feasible to obtain a credit facility, because BI checking is very accurate, because all records regarding the debtor are good regarding identity, collateral, the amount of credit received, and how the debtor's installment payments, whether the debtor's credit is bad or not. So that the bank can find out the character of the customer in carrying out his obligations/installments whether it is smooth or included in the current category, and to find out whether the prospective customer has financing at another bank or not. then analyzed by the Office Administration section until the decision is with the Head of Unit / HRD.

3. Analyze whether credit is granted or not

   At this stage the bank will research, observe, analyze correctly and precisely based on the 5C principle, this is to see or consider whether the prospective customer's credit is feasible.

4. Credit Decision

   After carrying out the stages of assessment starting from the completeness of documents, validity and authenticity of documents and assessments covering all aspects of creditworthiness, the next step is the credit decision stage. This credit decision is to determine whether the credit proposed by the prospective debtor is eligible to be granted or the credit is rejected, if what is proposed is eligible to be granted then the debtor will prepare the administration. usually credit decisions will include:

   1. Credit agreement to be signed;
   2. The amount of money received;
   3. The term of the credit, and;
   4. Fees that must be paid.

5. Signing of the Deed of Credit/Credit Agreement

   This is a continuation of the credit decision. Before the credit is disbursed, the prospective debtor first signs a credit agreement, then binds the credit guarantee with the binding of Mortgage Rights (APHT). At the time of signing the credit agreement, it is signed by the bank and the debtor, and a third party (Collateral Owner), where the third party signs the credit agreement as the owner of the collateral.

6. Credit Realization

   After the credit contract, the next step is credit realization. Credit realization is given after signing the necessary papers by opening an account or savings at the Bank, so that credit fund withdrawals can be made through the account that has been opened. Disbursement/withdrawal of money from the account as a realization of credit can be taken in accordance with the purpose of the credit proposed by the applicant. The disbursement of funds is left to the debtor, whether the debtor will take it in whole or in stages. After all the procedures for granting credit at Bank Nusa Tenggara Barat have been carried out and all stages are carried out and the realization of the credit contract is carried out, the next step is carried out:

   1. Preparation of Power of Attorney to Enforce Mortgage Rights

      The making of a Power of Attorney to Impose Mortgage Rights (SKMHT) is related to the condition of the object of Mortgage Rights. Because the collateral is not in the name of the debtor directly, the West Nusa Tenggara Bank will first make

SKMHT and then proceed with the installation of the Deed of Granting Mortgage Rights (APHT). The Power of Attorney to Impose Mortgage Rights (SKMHT) itself is a deed of granting Special Power of Attorney for the making of the Deed of Granting Mortgage Rights (APHT) or its continuation after the SKMHT is made. In making SKMHT, the owner of the collateral must participate / must be present before the Notary / PPAT, to sign the SKMHT, where the SKMHT contains, the name of the collateral owner and the consent of his spouse, contains the object of the guarantee, the amount of the loan, the amount of the mortgage, the name of the debtor, the bank.

2. Enforcement of Mortgage Rights

APHT is made with a PPAT deed, the granting of mortgage rights has perfect evidentiary power and does not require other evidence. Mortgage encumbrance is a process consisting of 2 (two) stages, namely the first stage is the granting stage, and the second stage is the registration stage. The stages in the encumbrance of Mortgage Rights at West Nusa Tenggara Bank are:

a. At the stage of granting mortgage rights by the debtor to the creditor by making a Deed of Granting Mortgage Rights (APHT) by a Land Deed Official (PPAT) who is a partner of West Nusa Tenggara Bank, where the granting of mortgage rights is preceded by a promise to provide mortgage rights as a guarantee of repayment of a debt, which will be stated in a debt agreement (Credit Agreement). Furthermore, the debtor, third party and creditor go to the Land Deed Official (PPAT) to make a Deed of Granting Mortgage Rights (APHT).

The parties (debtor (husband/wife) and collateral owner (husband/wife) and the holder of the mortgage (creditor) must go to the Land Deed Official (PPAT), then a Power of Attorney to Enforce Mortgage Rights (SKMHT) will be made. The content of the Power of Attorney to Impose Mortgage Rights (SKMHT) is that the mortgagor (third party) gives special power to the mortgage holder (creditor) to sign the Deed of Granting Mortgage Rights (APHT). then the parties must fulfill all formal requirements for the imposition of mortgage rights.

The Land Deed Official (PPAT) will then clear the certificate used as collateral at the Land Office to ensure the validity of the data, and to find out whether the certificate is not in dispute or under bank guarantee, and then the Power of Attorney to Enforce Mortgage Rights (SKMHT) will be bound by the Land Deed Official (PPAT). Before the signing is carried out, the Land Deed Official (PPAT) will first read and explain what the contents of the Power of Attorney to Impose Mortgage Rights (SKMHT) will be signed in front of the parties, namely the debtor, (wife / husband), the owner of the collateral (husband / wife) and the creditor witnessed by two witnesses from the Notary / PPAT staff then signed by the grantor (third party), the recipient of the power of attorney (creditor), the Land Deed Official (PPAT) and two witnesses from the Notary / PPAT. The Power of Attorney to Encumber Mortgage Rights (SKMHT) is made in duplicate, the first sheet as minutes to be kept by the Notary/PPAT and the second sheet for the registration of mortgage rights at the Land Office. After the stage of making

the Power of Attorney to Impose Mortgage Rights (SKMHT) is completed, the next stage is the making of the Deed of Granting Mortgage Rights (APHT).

The Deed of Granting Mortgage Rights (APHT) contains matters that are mandatory for the validity of a Deed of Granting Mortgage Rights (APHT), including : the name and identity of the holder and grantor of the mortgage right, the domicile of the holder and grantor of the mortgage right, an explanation of the guarantee, the guaranteed debt, the value of the mortgage right and a clear description of the object of the mortgage right.

After making the Deed of Granting Mortgage Rights (APHT), then the Deed of Granting Mortgage Rights (APHT) is signed by the parties, namely the first party (the creditor representing the grantor of the mortgage) and the second party (the creditor representing the bank), PPAT, and two witnesses from PPAT. The Deed of Granting Mortgage Rights (APHT) is made in duplicate, namely two sheets to be signed by the parties, the grantor and recipient of HT, PPAT and witnesses from PPAT, the first sheet to be kept by PPAT as "minuta", the second sheet to be registered at the land office with files in accordance with the contents of APHT. The third sheet in the form of a copy is used for registration of mortgage rights at the National Land Agency (BPN) in making a certificate of mortgage rights consisting of a Deed of Granting Mortgage Rights (APHT) (one sheet that has been signed and one sheet that has been initialed), and the fourth sheet in the form of a standardized Salina is given to the Bank as the creditor.

At the stage of granting a mortgage right by the grantor of the mortgage right to the creditor, the mortgage right has not yet been born. However, the mortgage right will be born when it is recorded in the land book at the land office. So it is necessary to do registration. Which is the next stage.

b. The registration process, in this process must be carried out by the Land Deed Official to the National Land Agency in order to fulfill the principle of publicity. Registration of Mortgage Rights is carried out no later than 7 (seven) working days after the signing of the Deed of Granting Mortgage Rights, the PPAT must send the relevant Deed of Granting Mortgage Rights and other necessary documents to the Land Office. After that, the Land Office follows up on the registration by making a land book of the mortgage right, and then will record it in the land book of the land right that is the object of the mortgage right, after which the Land Office will copy the record on the certificate of the land right concerned. The mortgage right will be born on the date of the land book of the above-mentioned mortgage right. As evidence of the existence of a mortgage right, the National Land Agency (BPN) issues a Mortgage Right Certificate and then the mortgage right certificate is handed over to the bank/creditor holding the mortgage right, while the land title certificate that has been given a note regarding the existence of a mortgage right is handed over to the debtor or the mortgagor as the holder of the land title.

The certificate of mortgage rights contains an irah-irah with the words "DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA".

With the irah-irah, the certificate of mortgage rights has the same executorial power as a court decision that has obtained permanent legal force.

Legal protection for third parties as collateral owners in the event of debtor default.

The law must provide protection to all parties in accordance with their legal status because everyone has the same position before the law. Every legal relationship will lead to different rights and obligations or the parties to the engagement have their respective rights and obligations that must be fulfilled. If the rights and obligations are not fulfilled, it will cause harm to one of the parties in the engagement, therefore in order to protect and reduce problems, legal protection is needed.

The form of legal protection for third parties who are harmed in civil law is regulated in Article 1365 of the Civil Code (KUHPerdata). In the provisions of Article 1365 of the Civil Code, it is stated:

"Every act that violates the law and brings harm to others, obliges the person causing the loss due to his fault to compensate for the loss".

Defaults caused by the debtor's lack of awareness of his binding obligations. defaults made by the debtor, resulting in a loss that is not expected by the creditor and third parties. This default on the part of the debtor must first be stated officially, namely warning the debtor, that the creditor wants payment immediately or within a short period of time. As a legal result of default, sanctions or penalties may be imposed.

1. **Legal Relationship between Debtor, Bank (Creditor) and Third Party Collateral Giver.**

a. Legal relationship between the Debtor and the Third Party Collateral Giver.

The legal relationship between the debtor and the Third Party Collateral Giver is regarding the debtor's guarantee/collateral to the Creditor, namely regarding the transfer/existence of a power of attorney. Where the Third Party Collateral Giver / Landowner authorizes the debtor, through a Power of Attorney to Enforce Mortgage Rights (SKMHT), namely that the landowner or Collateral Giver has authorized the bank to charge a mortgage on the debtor's debt / for the benefit of the Debtor to the Bank in granting credit to be charged with Mortgage Rights.

b. Legal relationship between the Bank as a Creditor and the Debtor.

The legal relationship between the Creditor and the Debtor is related to the credit agreement, where the existence of debts and receivables is bound through a Credit Agreement or contractual relationship and will give rise to rights and obligations where in the agreement there are rights and obligations that must be carried out by the parties (Creditor and Debtor) because of an agreement. Or the relationship with accounts payable is a legal relationship due to a relationship with rights and obligations that are closely related to the debtor's payment to the creditor.

The legal relationship in this Credit Agreement comes from Book III of the Civil Code (KUHPerdata), which regulates obligations whose objects are about property or wealth,

so that the nature of the law contained in Book III of the Civil Code (KUHPerdata) is called "perutangan" law. Where the party entitled to demand is called the debtor/creditor and the party obliged to fulfill the demands is called the debtor/debtor. The legal relationship in debt and credit is a relationship born from an agreement between 2 (two) parties, regarding property / assets where one party has the right to demand something from the other party while the other party is obliged to fulfill these demands.

The general relationship between the Bank and the Debtor is the legal relationship between the Bank and the Debtor Customer According to Law Number 10 of 1998, the form of legal relationship between the Bank and the debtor is a contractual relationship and a non-contractual relationship.

c. Legal relationship between the Bank (Creditor) and the Third Party Guarantor.

Bank (Creditor) in this case has a relationship with the Third Party Guarantor, the legal relationship occurs when the Third Party Guarantor participates in the signing of the APHT which is carried out before a Notary / PPAT. With the signing of the APHT, the third party guarantor is considered to have transferred ownership of the Mortgage Rights to the Debtor as collateral for his debt to the Bank (Creditor), so that the third party must also be responsible for the debtor's credit implementation. Because the third party has voluntarily involved itself in providing credit to the debtor by lending its SHM/land as collateral for the Mortgage.

With the participation of third parties in the signing of the SKMHT and APHT, the third parties are considered to have authorized the Mortgage Rights on their land to the debtor as collateral for the debtor's debt. [17] The third party collateral owner will also be responsible for the debtor's debt, because the third party collateral owner is considered to have agreed and agreed, and knows the consequences that will occur if the debtor defaults, because the third party collateral owner has also signed a power of attorney to impose Mortgage Rights (SKMHT), where the deed is signed before a notary and PPAT first and also explains the purpose of signing the deed, all the consequences, and if the landowner agrees, the collateral owner signs the deed. [18]

The existence of a third party to guarantee the debtor's debt to the Bank, as additional collateral in the credit agreement is an effort to provide privileges for creditors, general collateral, and special collateral, because it has personal rights, namely the right of collection and also property rights that can be sold in public to guarantee the repayment of the debtor's debt if the debtor defaults. This additional guarantee is assembled after the main agreement, where after agreeing on the additional guarantee, it will be registered in the public register, so that absolute rights will be born, so that the creditor's legal guarantee is more secure[19].

Position of Third Party Mortgagee in Credit Agreement.

Regarding the parties directly involved in Mortgage Rights, it has been explained in Article 1 paragraph (2), (3), (4) and (6) of the Law on Mortgage Rights and Land-Related Objects, but there is no specific explanation regarding the involvement of third party

[17] Interview with Yazid Fathoni, S.H., M.H, Lecturer at the University of Mataram, on 23 February 2022
[18] Interview with Muhamad Ali, S.H, M.Kn, Notary and PPAT of Mataram City, on 16 February 2022
[19] Suparji, 2020, Jaminan kebendaan dalam pembiayaan, UAI Press, Jakarta, pg. 8-9.

mortgagors in the law. However, the involvement of third parties is slightly mentioned in Article 4 paragraph (4) of the Mortgage Rights Law, which reads:

"Mortgage rights can also be imposed on land rights along with buildings, plants and works that have existed or will exist which are an integral part of the land, and which belong to the holder of the land rights whose encumbrance is expressly stated in the relevant Deed of Granting Mortgage Rights."

Furthermore, Article 4 paragraph (4) of the Mortgage Rights Law is clarified in the explanation of Article 4 paragraph (5) of the Mortgage Rights Law, which reads:

"As a consequence of the provisions referred to in paragraph (4), the encumbrance of Mortgage Rights on buildings, plants, and works that constitute an integral part of the land whose owner is other than the holder of the land rights shall be carried out simultaneously with the granting of Mortgage Rights on the land concerned and stated in one Deed of Granting Mortgage Rights, signed jointly by the owner and the holder of the land rights or their attorney, both as parties to the granting of Mortgage Rights."

From these Articles, it can be said that there is a possibility that the land secured by the Mortgage Rights can be in the form of land rights belonging to third parties, as stated in Article 4 paragraph (5) of the Mortgage Rights Law , which reads:

"the right to land together with existing or future buildings, plants and works whose owner is other than the holder of the land right."

From the Explanation of Article 4 paragraph (5) of the Mortgage Rights Law, it is explained that the third party as the owner of the object of collateral to be pledged is a person/party other than the holder of the land rights, so it can be interpreted that the third party owner of the object/land to be pledged is the grantor of the Mortgage Rights, as contained in Article 8 of the Mortgage Rights Law, namely the Mortgagee is an individual or legal entity that has the authority to carry out legal actions against the object of the relevant Mortgage Rights. Furthermore, it is also explained that when providing collateral in the form of land rights, the owner must first authorize the debtor in terms of encumbering the Mortgage Rights with the object of collateral belonging to the third party.

The process of encumbering Mortgage Rights with land owned by a third party or not in the name of the debtor is immediately preceded by a promise to grant Mortgage Rights as security for the debtor in the main agreement, then the third party as the holder of the land rights pledges the authority over the land to the bank as security for the repayment of the debtor's debt, namely the third party as the pledgor signs a Power of Attorney to Enforce Mortgage Rights (SKMHT) together with the debtor and creditor in front of a Notary / PPAT. The third party acts as an authorizer and for the benefit of the debtor in granting credit to the bank, the debtor as the authorizer of the third party's assets to be used as collateral in granting credit by the creditor in the context of encumbering the Mortgage Rights on the land.

The position of the third party guarantor in the bank credit agreement is only as a giver of mortgage rights to the debtor as an indebted party in a debt and credit relationship to obtain a bank credit loan. And the debtor who applies for the credit, in the Deed of Granting Mortgage, does not sign the Deed of Granting Mortgage, but the owner of the collateral (spousal consent), but the credit agreement still uses the name of the debtor and the third party as the owner of the collateral.

So the third party and the debtor are considered the same in the Bank's credit agreement. The third party as the guarantor of the debtor's debt in the Credit Agreement, will also fulfill the debtor's obligations, but when the debtor defaults and the Third Party Guarantor will be fully responsible for paying all/part of the remaining principal debt that has been paid / installments, interest and fines or other costs that will be charged by the bank for all actions of the Debtor/when the debtor defaults. And the bank can execute the collateral object in the form of land and objects that are on the land belonging to the third party that is pledged. And this is very detrimental to the third party as the giver of rights to the pledged object in the credit agreement. Especially if the debtor does not carry out his responsibility for payment and repayment of credit in accordance with the credit agreement made, and the third party must give up his land to be executed, if the bank wants to execute the debtor's guarantee.

In the implementation of credit agreements with collateral that is not owned by direct debtors or third parties, there are many problems, where the factors/problems are, among others, due to the business financed by the creditor experiencing a decline, the misuse of credit facilities that have been provided by creditors where they are used for something that is not for the distribution of capital, or indeed the character of the debtor is not good, This also happened in one of the Banks in Mataram City, where the trigger was that the debtor did not carry out his obligations to the bank after the credit facility was received, where one of the debtors did not have good faith from the beginning of the credit application and was included in fraud, where in the credit agreement between the Bank and the debtor on behalf of Kusuma, in the credit agreement a credit of Rp. 250,000,000, (two hundred and fifty million rupiah)- (Article 1), with interest of 18 % (eighteen percent), loan period of 36 months (thirty-six) months, as stated in the credit agreement in Article 4. And the credit disbursement is intended for additional business capital for the debtor (KMU), in approving the credit, in providing the credit facility the bank requires additional collateral from the debtor, apart from the debtor's own business, where the debtor's business is in the form of selling building materials located in cakranegara, for the debtor's credit application. As a form of bank confidence to feel confident that the debtor will repay the credit facility received. With consideration, if one day there is bad credit, then this amount of collateral can be immediately cashed to cover the amount of funds borrowed.

In the credit loan, as specified in Article 7 of the Bank's credit agreement, the debtor submitted the following collateral:

- *A plot of land and the building standing on it, with a certificate of Hak Milik, land area of 400 m2, the land is located in West Lombok in the name of Muhamad (not in the debtor's name directly).*

According to Muhamad Ali, there is no problem if the guarantee is in the name of another person, because there is already permission, knowledge, and the owner of the guarantee has stated that he is willing to voluntarily involve himself, for other people's credit facilities or to guarantee the debtor's debt to the bank. And the owner of the guarantee has also been explained and knows all the consequences that will occur if in the future the debtor does not carry out his obligations to the bank. [20]

Meanwhile, after credit is received, problems arise including:

1. The debtor has defaulted against the creditor by not making payments/installments according to the agreed nominal amount and time. even delinquent payments made by the debtor continue to occur after the 5th installment, and the rest never again make payments according to the nominal amount as agreed in the credit agreement;
2. The explanation of the collateral owner, that the collateral owner, actually does not know the debtor directly (but the wife of the collateral owner)
3. The misuse of credit.

Regarding the problem mentioned above, the author can analyze that this can occur because the owner of the guarantee is not the direct debtor and the bank in analyzing the debtor does not really conduct an in-depth analysis, both in terms of the debtor's character and collateral. On the other hand, this will cause problems if the debtor does not carry out what has been agreed with the bank (credit agreement). Because of this, the mortgages owned by third parties can experience problems with the debtor's actions which result in the collateral provided by third parties in the credit process.

In the case of non-performing loans at the bank, where the debtor cannot and does not have good intentions to return the credit, by paying principal fines and interest. As for the efforts against the debtor, by collecting, directly so that the debtor carries out his obligations, because the bill is ignored by the debtor, then the bank gives a warning/the bank gives a warning letter/summons to the debtor that the debtor's credit is problematic and has made a collection. The creditor has summoned the debtor 3 (three) times in the form of a warning to immediately pay off the debt. The bank has also attempted to restructure the problematic credit, by negotiating with the debtor, but still the debtor does not have good intentions to save the credit. The reason why the debtor did not heed the creditor's summons or bill was because that the debtor had submitted collateral in the form of a certificate as collateral, and according to the debtor, if the debtor was unable to carry out his obligations to the bank, the collateral could be sold, because the owner of the collateral had expressed approval and permission from the owner of the collateral.

The debtor can be said to be in default if there is a principal interest arrears of more than 90 days and there has been no effort from the debtor to save his credit. The bank visits the debtor's place of business to find out whether it is true that the debtor's business is not running smoothly according to the debtor's statement, and to see what obstacles occur that cause arrears and cause the debtor to no longer be able to return the loan money to the creditor for the business that has been financed.

[20] Interview with Muhamad Ali, S.H, M.Kn, Notary and PPAT of Mataram City, on 16 February 2022

To ensure legal certainty for third parties who have been harmed by the debtor, and also due to the negligence of the bank, and of course protection must be provided to avoid violations or crimes both by the debtor and by the bank, because in providing credit, the bank is less careful in analyzing the debtor and the acceptance of rewards for the debtor's credit approval.

In analyzing legal protection, according to the author, in the law it is difficult to explicitly find legal protection for third parties as holders of mortgage rights. Both in Law No.4 of 1996 concerning mortgage rights and objects related to land, as well as in the Civil Code, most of the articles only concentrate on the interests of bank protection, in the mortgage law only regulates legal protection of the interests of creditors, while the form of legal protection for third parties who are harmed as a result of debtor default, is not clearly implied in the mortgage law, with the following analysis:

A. Review of Law Number 4 of 1996 concerning Mortgage Rights.

In the Law on Mortgage Rights and Objects Related to Land there are also provisions regarding the circumstances in which the debtor defaults, namely in the provisions of Article 6 which states that:

"If the debtor is in default, the first lien holder has the right to sell the object of the lien under its own authority through a public auction and to recover its debts from the proceeds of the sale."

Based on Article 6 of the Mortgage Rights Law, the bank does have the right to execute the collateral if the debtor does not pay the debt in full as agreed. If there is a debtor who is reluctant to fulfill his obligations to the bank, and cannot fulfill his obligations with the debtor's property, (collateral in the form of the debtor's business) then the other party or the owner of the collateral will suffer losses, and if this happens, the Bank (creditor) has the authority to demand fulfillment of these obligations from the debtor against collateral objects belonging to third parties/collateral owners. The owner of the collateral cannot avoid the auction if the creditor demands it, because the creditor needs to repay the debtor's debt, after the owner of the collateral is unwilling to sell the collateral independently or sell it directly to pay the debtor's debt, then the way to save the land that is the guarantee of the defaulting debtor so that the collateral is not sold is to pay the debtor's debt and consequently. However, the third party cannot save the land by using legal channels, forcing the debtor to pay his debt to the bank because the debtor has a legal relationship of debt and credit with the bank, so that only the bank can use legal channels to force the debtor to pay his debt based on the debt and credit agreement.

Furthermore, in the provisions of Article 14 Paragraph (3) concerning Mortgage Rights Along with Objects Related to Land, it states that:

"The certificate of Hak tanggungan as also referred to in paragraph (2) has the same executorial power as a court decision that has obtained permanent legal force and is valid as a substitute for the grosse acte hypoteek as far as land rights are concerned."

Article 20, states that:

(1) If the debtor is in default, then based on:

a) The right of the first holder of a hak tanggungan to sell the object of the hak tanggungan as referred to in Article 6, or

b) The executorial title contained in the hak tanggungan certificate shall be sold through a public auction in accordance with procedures stipulated in laws and regulations for the settlement of the receivables of the holder of the hak tanggungan with precedence over other creditors.

(2) With the agreement of the grantor and the holder of the mortgage, the sale of the object of the mortgage may be carried out under the hand if the highest price that is favorable to all parties can be obtained.

Article 21, states that:

"If the grantor of a hak tanggungan is declared bankrupt, the holder of the hak tanggungan is still authorized to do all the things he has obtained according to the provisions of the law."

Based on the articles above, it explains that the creditor has absolute power. Yazid Fathoni states that the characteristic of mortgage rights is droit de suite or the creditor has absolute rights, meaning that if the debtor defaults, the creditor can sell the collateral object without the consent of the mortgagee if the debtor defaults. [21]

This agreement regarding collateral is an accesoir agreement of a debt and credit agreement, and the accesoir agreement depends on the main agreement or credit agreement. this accesoir agreement is intended for the sake of security and protection for creditors. In accordance with Article 10 paragraph (1) of the Law on Mortgage Rights on land and objects related to land, it states that :

"The granting of a mortgage right is preceded by a promise to grant a mortgage right as security for the repayment of a certain debt, which is stated in and forms an inseparable part of the relevant debt and credit agreement or other agreement that gives rise to a certain debt."

One of the characteristics of a mortgage is droit de suite, meaning that the creditor has rights to the object and has the power or authority to sue the object from anyone or wherever the object is located. Droit de suite is an absolute right, meaning that the right attached to an object, gives direct power over the object, and can be defended against anyone's claims. If a mortgage right is attached, the property rights attached to it will still follow it / The mortgage right still follows the object in the hands of whoever the object is. then the mortgage right will not end, even if the object that becomes the mortgage right is transferred to another party for any reason. In accordance with Article 7 of Law Number 4 of 1996 concerning Mortgage Rights and Objects Related to Land.

The creditor holds special rights where the creditor has the right to collect the debtor's debt repayment only, but does not contain the right to own the object, but is given the right to promise the power to sell the collateral object itself, when in the future the debtor defaults. For creditors, it is as if they are more protected by the existence of Parate

[21] Interview with Yazid Fathoni, S.H., M.H, Lecturer at the University of Mataram, on 23 February 2022

Execution, where parate execution is the right of a creditor or bank to make a sale under its own power or as if it were its own, objects that have been pledged by the debtor for the repayment of its debt, in public with the usual conditions, very simply because it does not involve the debtor and without the judge's permission and executorial title. The creditor is given a very protected position because it gives the creditor a better position for the repayment of its debt and is closely related to the special security rights it holds, because it is as if the debtor has set aside part or all of its assets for the repayment of its debt if in the future the debtor defaults.

Because the legal consequences that arise can provide losses for third parties/ owners of the guarantee. However, the owner of the collateral cannot avoid the auction if the creditor demands it, after the owner of the collateral does not want to sell the guarantee independently or sell it directly to pay the debtor's debt, then the way to save the land that is the guarantee of the debtor in default so that the guarantee is not sold is to pay the debtor's debt. So that the debtor's debt is no longer between the bank and the debtor, but between the collateral owner / third party and the debtor.

Third parties cannot save their land by using legal channels, forcing the debtor to pay his debt to the bank because the debtor has a legal relationship of debt and credit with the bank, so only the bank can use legal channels to force the debtor to pay his debt based on the debt and credit agreement.

B. Viewed from the Civil Code.

1. In the case of collateral provided by the debtor to the creditor.

The debtor has obtained collateral, and given it to the creditor as additional collateral, because there has been bad intentions from the start and this is included in fraud, where the debtor and the wife of the collateral owner have an agreement that is not known by the collateral owner and actually the collateral owner and the debtor have never had an agreement with the landowner / collateral owner, to make the land as collateral for the credit submitted by the debtor to the Bank, because the one who has an agreement is the wife of the collateral owner, but there is a bad intention towards the collateral owner.

The main instruments to test the validity of an agreement are regulated in Article 1320 BW, namely the agreement of those who bind themselves, the ability to make agreements, certain things and a permissible cause.[22] When viewed from the valid terms of an agreement, that according to the provisions of Article 1320 of the Civil Code regarding the valid terms of an agreement can be obtained from the analysis of the above case, namely regarding the word "Agreement", so here there is no agreement for those who bind themselves. That the parties in a credit guarantee binding agreement, namely between the debtor, creditor and landowner / collateral owner, all three must have an "agreement" in charging the land as collateral. However, here, it can be said that the debtor obtained the land / guarantee in an unlawful manner, and is included in fraud,

[22] Sumriyah, Jurnal, *CACAT KEHENDAK (WILSGEBREKEN) SEBAGAI UPAYA PEMBATALAN PERJANJIAN DALAM PERSEPEKTIF HUKUM PERDATA*, Trunojoyo Master Law Journal, Vol 1 No 1 Edition of 2019, pg. 663.

because there was bad faith from the start, and the owner of the guarantee or land owner seems to have been tricked into paying the debtor's debt, and the debtor has used the guarantee as an excuse to get something (credit facility) and become an excuse not to carry out his obligations to the creditor, because he already has the guarantee, so it can be said that there is no agreement between the debtor and the owner of the guarantee. Because the agreement made was different.

Because "Agreement" is the conformity between the will and the statement is the basis for the formation of an agreement. Although there is conformity between the will and the statement, a legal action can still be canceled. This happens if there is a defect in the will. A defect in the will occurs when a person has performed a legal act, in which case the will is imperfect.[23] A true agreement is one that has not been misguided, forced, deceived and has not been given due to an abuse of circumstances.[24]

As contained in the provisions of Article 1321 of the Civil Code, which states that:

"There is no valid agreement if the agreement is given by mistake, or obtained by force or fraud."

Article 1321 - Article 1328 B.W. conclude, that "agreement" given on the basis of misdirection, coercion and fraud (and later also misuse of circumstances), is not an "agreement" as referred to in Article 1320 sub 1 B.W., because the agreement that has been given as a result of misdirection, coercion, fraud and misuse of circumstances, is not a valid agreement (Article 1321 B.W.) and therefore can be sued for cancellation.

Thus the person who agrees to an agreement, agrees to the consequences arising from the agreement. Agreeing to "the consequences of an agreement" means wanting the consequences arising from the agreement he agreed to or in other words agreeing to be bound by the consequences of the agreement in question. On the other hand, on the basis of an agreement, he also gets what is his right under the agreement in question. So the agreement that is the basis of all agreements will not always give birth to a valid agreement, if it occurs in the event that the agreement contains a defect of will. The legal force of an agreement containing a defect of will is cancelable (viodable / vemietigbaar). Before there is a cancellation of the agreement it still has legal force like a valid agreement.[25]

2. Judging from the validity of bank credit agreements between debtors and creditors.

Judging from the validity of the agreement as stipulated in Article 1320 of the Civil Code, substantially, the debtor's Credit Agreement is valid and has fulfilled the subjective elements and objective elements. Likewise, when viewed from the theory of Schuld

[23] Harlien Budiono, 2010, *Ajaran Umum hukum Perjanjian & Penerapannya di Bidang Kenotariatan*, Citra Aditya, bandung, pg. 98.

[24] Hukum online, *Sepakat dan permasalahnnya perjanjian dengan cacat kehendak*, https://www.hukumonline.com/berita/a/sepakat-dan-permasalahannya--perjanjian-dengan-cacat-dalam-kehendak-lt5a4c5a257a301, accessed on 15 february 2022

[25] Hukum Online, Catatan Hukum J.Satrio, sepakat dan Permasalahannya: Perjanjian dengan Cacat dalam Kehendak, https://www.hukumonline.com/berita/a/sepakat-dan-permasalahannya--perjanjian-dengan-cacat-dalam-kehendak-lt5a4c5a257a301, diakses pada tanggalaccessed on 19 Februari 2022

and haftung, the debtor does not carry out obligations or achievements as agreed.[26] Therefore, if the debtor is unwilling to pay the debt, the property used as collateral must be confiscated. Due to a power of attorney from the landowner addressed to the debtor regarding the consent and power to sell the collateral in the event that the debtor defaults on the debt or credit from the bank, the Power of Attorney mentions a piece of HM land in the name of a third party.

The credit agreement between the parties remains valid, but when the debtor does not carry out his obligations due to a loss in his business, then against the guarantee of a plot of land with a certificate of ownership in the name of the third party, the Bank can sell the debtor's guarantee which is not in his name, the certificate of guarantee for the plot of land remains controlled by the Bank. In the sense that it can be auctioned as debt compensation. It cannot be denied that if the collateral in the name of a third party will be sold, it is considered very disadvantageous, because the one who made the mistake is the debtor, because the third party has involved himself, then the third party will be responsible for anything done by the debtor.

Article 1365 of the Civil Code stipulates that any unlawful act that causes damage to another person, obliges the person who committed the act to compensate for the damage. Therefore, the third party/guarantee owner is legally at a disadvantage and risk, because the land rights have been pledged with the knowledge and permission of the guarantee owner.

Article 1238 of the Civil Code states that if a provision has been made in the obligation, the debtor must be deemed negligent with the passage of time. So, execution can be carried out if the debtor has been deemed negligent in the sense that the receivables secured by special property security rights have been declared ready for collection. Fund rescue actions by banks are carried out since the credit requires special attention because there are arrears of up to 90 days of payment. In this condition, the bank calls the debtor to discuss the credit that is starting to be problematic.

Legal consequences in case of default.

In providing collateral, the agreement follows from a principal agreement which creates an obligation for the parties to fulfill an achievement. The credit agreement made is binding between the two parties, namely between the creditor and the debtor, which if one of the parties/debtors violates, especially defaults on the stipulated credit agreement, it will be subject to binding rules with legal consequences.

The legal consequences that can be received by the offending party can be in the form of canceling the agreement, compensation and fines that will be imposed. In a credit agreement which is a consensual agreement between the two parties, it is stipulated that the debtor has the authority to make payments in accordance with the agreed terms and conditions.

The debtor's mistake, which can be considered a default, can be seen from when the debtor is said to be deliberately negligent in fulfilling his obligations. In order to know

[26] Kalih Krisnarindra, M*enggunakan asset orang lain untuk menjamin hutang*, https://indonesiare.co.id/id/article/menggunakan-aset-orang-lain-untuk-menjamin-hutang, accessed on 18 April 2022

when the debtor is considered in default, it can be seen in the provisions in the agreed terms and agreements. In the terms and agreements, it must contain a grace period for the implementation and fulfillment of the performance performed by the debtor, while if it contains a grace period in the terms and the debtor continues to default, it can be considered violating and negligent by passing the specified time.

If the debtor (debtor) does not do what he has promised, or the debtor has violated the agreement, it can be said that the debtor is in default, the debtor is negligent, negligent, or breaks the promise, and if the debtor does or does something that he should not do.

As contained in the provisions of Article 1238 of the Civil Code, which states that:

"The debtor is negligent if he has been declared negligent by warrant or by a deed of similar nature, or by his own obligation, namely if the obligation stipulates that the debtor must be deemed negligent by the lapse of a specified time".

Subpoena is defined as a warning or warning so that the debtor can carry out his obligations or achievements at a certain time in a warning letter or summons. If a party to the agreement does not carry out its performance. The purpose of a summons or reprimand is to remind the party who does not carry out his performance so that he can fulfill his obligations in accordance with the agreement agreed upon by the parties, because the agreement applies as law to the parties and is binding, therefore the parties are obliged to comply with the contents of the agreement.

Based on Article 1243 of the Civil Code, the legal consequences for debtors who have defaulted, reimbursement of costs, losses and interest due to non-fulfillment of an obligation are obligatory, if the debtor has been warned that he has neglected his obligations, but then he continues to neglect them or if something must be given or done in a time that exceeds the specified time.

In the provisions of Article 1236 of the Civil Code, which stipulates:

"The debtor is obliged to compensate the costs, losses and interest to the debtor, if he has brought himself in an incapable state to deliver his property, or has not taken proper care to save it".

Furthermore, Article 1239 of the Civil Code stipulates:

"Every obligation to do something, or not to do something, if the debtor does not fulfill his obligations, gets its settlement in the obligation to provide compensation for costs, losses and interest".

In addition, the debtor must bear the above, so what can be done by the creditor in the event that the debtor defaults, there are five possibilities as follows (Article 1276 of the Civil Code):[27]

1. Fulfill/execute the agreement;
2. Fulfilling the agreement with the obligation to pay compensation;
3. Pay the compensation;
4. Cancel the agreement; and
5. Cancel the contract with compensation.

Damages that can be demanded:

- The debtor is obliged to pay compensation, after being declared negligent he still does not fulfill the performance ". (Article 1243 of the Civil Code). "Compensation consists of costs, damages, and interest" (Articles 1244 to 1246 of the Civil Code).
- Costs are all expenses or expenditures that have obviously been incurred by a party.
- Loss is loss due to damage to goods belonging to the creditor caused by the debtor's negligence.
- Interest is a loss in the form of loss of profit, which has been paid or calculated by the creditor.
- Compensation must have a direct relationship (causal relationship) with the breach of promise" (Article 1248 of the Civil Code) and the loss can be expected or should have been expected at the time the agreement was made.
- It is possible that default occurs not only due to the fault of the debtor (negligence or willfulness), but also due to force majeure.
- Willfulness is an act that is known and intended.
- Negligence is an act in which the perpetrator is aware of the possibility of adverse consequences for others.

Basically, what is requested in a summons is the fulfillment of the performance/things promised by the debtor. Then, if the order in the summons is not fulfilled, then the things that are entitled to the creditor/sender of the summons can be demanded. However, the summons can also include potential losses that will be suffered by the creditor if the debtor still does not carry out the performance, which will be requested for compensation to the debtor if the summons is not implemented. [28]

[27] Law Firm Andreas Bagus & Partners Advocates, *Catat ! Inilah Upaya Hukum Yang Dapat Dilakukan Jika Terjadi Wanprestasi,* https://abpadvocates.com/catat-inilah-upaya-hukum-yang-dapat-dilakukan-jika-terjadi-wanprestasi/, accessed on 01 March 2022

[28] Elfrida R.Gultom, *Bisakah somasi langsung menuntut ganti rugi,* https://www.hukumonline.com/klinik/a/bisakah-isi-somasi-langsung-menuntut-ganti-rugi-lt60740b4a39bf9, accessed on 15 May 2022.

Forms of Legal Protection For Third Parties In The Event Of An Occurrence Caused By A Defaulting Debtor.

The law must provide protection to all parties in accordance with their legal status because everyone has the same position before the law. Every legal relationship will give rise to different rights and obligations or the parties to the engagement have their respective rights and obligations that must be fulfilled. If the rights and obligations are not fulfilled, it will cause harm to one of the parties in the engagement, therefore in order to protect and reduce problems, legal protection is needed. According to Philip M. Hadjon, there are two legal protections for the people, namely preventive legal protection and repressive legal protection.

a. Preventive measures for third parties (collateral owners).

Preventive measures are actions or efforts taken before the occurrence of a dispute and violation of norms. Preventive legal protection is applied with regulations according to the Law which aims to provide restrictions to prevent violations. In the case of collateral on behalf of non-direct debtors / third parties, the legal protection efforts made are by making a notarial deed of credit agreement, so that it binds the parties, both debtors, creditors and collateral owners, because the deed of agreement will be mentioned in detail, both regarding the owner of the collateral, the nominal debt, the amount of debt to be paid, and the deadline for repaying the debt, so that the parties will be protected.

The bank needs to make a special/separate agreement between the debtor and the collateral owner, regarding the collateral.[29]

There are several conditions that can be considered as a form of protection to the guarantor, one of which is during the process of encumbering the mortgage itself. The presence of the guarantor in the process of encumbering the mortgage is a form of providing "awareness" to the guarantor, that his actions will have legal consequences. Because the legal consequences that arise have the potential to cause harm to the third party. [30] The owner of this guarantee will not be transferred to the creditor because of the guarantee. so that in the agreement, the object that becomes the guarantee remains the property of the owner of the guarantee, and the guarantee object is only to be alerted in anticipation of the possibilities that will occur, where the debtor breaks the promise or defaults.[31]

b. Represif legal protection

Repressive legal protection is protection against laws that have the aim of resolving disputes. Repressive legal protection is the last legal protection that contains sanctions. sanctions such as fines, imprisonment, and additional penalties are given if a dispute has occurred or a violation has been committed. the bank's repressive steps are that

[29] Interview with Sahruddin, S.H., M.Hum, Lecturer at the Faculty of Law, University of Mataram, on March 20, 2022.

[30] KalihKrisnarindra, M*enggunakan asset orang lain untuk menjamin hutang*, https://indonesiare.co.id/id/article/menggunakan-aset-orang-lain-untuk-menjamin-hutang, accessed on 23 May 2022

[31] Interview with Prof. Dr.M.Arba, S.H., M.H, Lecturer of Law Faculty of Mataram University, on 13 April 2022

the bank can sell the object of the credit agreement through a public auction and the bank can also file a lawsuit with the District Court on the basis of default.

CONCLUSION

A third party lienor is a third party (another person) who guarantees the debtor's debt with their property. By law, applying for credit with collateral on behalf of another person or not on behalf of the debtor directly is permitted, as contained in the provisions of Article 15 paragraph (1) and paragraph (2) of the Law on Mortgage Rights on Land and Objects Related to Land and in Article 1792 of the Civil Code. However, here the guarantee that uses other people's assets is the third party granting the mortgage or other person, who guarantees his property for the debtor's debt. And the implementation of the agreement between the bank and the third party as the owner of the guarantee, is basically the same as an ordinary agreement or the execution of an agreement on behalf of the debtor himself/debtor himself, only in its provisions, there are differences related to the documents that must be completed or submitted to the bank, stating that the owner of the guarantee /third party actually submits the certificate of ownership of his land as collateral, where the owner of the guarantee states that he is willing and voluntary, involving himself to guarantee the debtor's debt, and knows all the consequences or risks that will arise caused by the debtor, when defaulting or disputes related to the object of the guarantee.

In the event of bad credit as happened, and it is possible to be auctioned, then the third party as the owner of the guarantee cannot do any legal action. And this will be very detrimental to the third party as the giver of rights to the object pledged in the credit agreement. And because the third party has made a special agreement with the debtor and has made SKMHT, there is no reason for the third party or collateral owner to avoid execution.

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