Juridical Analysis Of The Rental Process Of The Object Of Liability To Realize Legal Certainty (Research Study At PT.Bank Mestika Dharma, Tbk In Batam City)

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ABSTRACT

In the lease agreement, several problems often arise where the object of the mortgage is still under the guarantee of the Bank, issues regarding the rights and obligations of both the lessee and the lessor, namely the ownership of the object being leased, whether it really belongs to the party who rents it out or belongs to a third party who owns it. provide legal protection for building tenants who stand on the executed Mortgage object and examine the legal position of the building tenant on the executed Mortgage object, so that the rights of the tenant can be known. The writing of this thesis uses a normative juridical approach by searching for data or information that already exists and is descriptive of an analysis that systematically explains the house rental agreement whose object is guaranteed at the Bank. The results of this study are that the lessee should be able to occupy the object of the lease until the end of the lease period according to Article 1576 BW which contains the rule that with the sale of the leased goods, a lease made previously, is not decided unless this has been agreed upon at the time of leasing the goods. Then the position of the third party can still occupy the house until the end of the lease period ends because the creditor (Bank) cannot directly auction the object of collateral because there must be a permanent determination from the Court, if the debtor defaults to the creditor (Bank).

Keyword : *Bank, Lease, Mortgage.*

INTRODUCTION

The impact of the COVID-19 pandemic has hit the world which has resulted in a sharp increase in the number of job cuts, to overcome this problem, opening a business is the main solution, this is done so that people can meet their needs and improve their lives for the better. at the same time will be able to provide encouragement that is constructive, namely in an effort to increase people's economic growth in society. The inability of the community to buy a place of business, both buying through cash and buying through credit, leasing is a common method, leasing can be done by individuals or legal entities, leasing is carried out even though sometimes the land and buildings being rented are still objects of bank guarantees, object of credit guarantee submitted by the debtor and approved by the Bank, must be immediately bound as debt collateral. In the lease agreement there are 2 (two) parties, namely the lessee and the lessor. The party who leases submits the goods to be rented to the lessee to fully enjoy what was handed over by the lessee.

Definition of renting (huur en verhuur) is an agreement between the lessor and the lessee. The advantage obtained by each party in carrying out the lease agreement is that the lessee can save some of his funds when renting out an item rather than having to buy it, while the party who rents out can benefit from the payment and rental price and can expand his business field. In the Lease Agreement, it often raises several problems where the object of mortgage is still under the guarantee of the Bank, issues regarding the rights and obligations of both the lessee and the lessor, namely the ownership of the object being leased, whether it really belongs to the party who rents it out or

belongs to a third party who owns it. giving power of attorney, then the issue of the expiration period of the agreement both written and unwritten and the issue of repeating the lease or transferring the leased object to a third party without the consent of the owner of the leased object.

LITERATURE SOURCE

As a reference for the author to obtain valid data, the author follows the sources of regulations that are currently still valid, namely:

1. Code of Civil law (KUHPerdata)
2. Law Number 4 of 1996 concerning Mortgage Rights
3. Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking
4. Other laws and regulations related to the problems of writing this journal.

RESEARCH METHODOLOGY

In terms of collecting legal materials, the author uses a literature study technique method, where this method is the sole method used as normative juridical legal research. Literature study technique or library research (library research), is a research that seeks the theoretical basis of research problems by studying and recording information, literature, regulations, scientific works and documents related to research so as to show the way to solve research problems. In connection with this research, using the following approaches:

1. Legislative approach (statute approach) A normative research must use a statutory approach, because what will be studied are various legal rules that are the focus as well as the central theme of a research.
2. Analytical approach , The main purpose of the analysis of legal materials is to know the meaning contained by the terms used in the laws and regulations conceptually, as well as to know their application in practice and legal decisions.
3. Comparative Approach , The importance of a comparative approach in legal science because in the field of law it is not possible to carry out an experiment, as is usually done in empirical science.

FORMULATION OF THE PROBLEM

Based on the description of the background above, the problem can be formulated as follows:

1. What is the legal arrangement for the Lease Process for the Mortgage Object to realize the legal certainty of the lease?
2. How is the implementation of the rental process on the object of mortgage to realize legal certainty?
3. What are the factors that become obstacles/obstacles as well as solutions to the leasing process for the right of responsibility to realize legal protection and certainty?

DISCUSSION

LEGAL ARRANGEMENTS FOR THE LEASING PROCESS FOR MORTGAGE OBJECTS TO REALIZE LEGAL CERTAINTY

In a lease agreement there are always 2 (two) parties who always bind themselves to achieve each other. This party is the subject of the lease. The subject of leasing is a legal subject where there are 2 (two) legal subjects, namely: private persons and legal entities. Rights and obligations can arise from the existence of an agreement made by the parties or that has been determined by law. An agreement made by the parties will lead to an engagement in which the engagement is the content of an agreement, so the engagement that has been carried out by the parties in an agreement provides demands for the fulfillment of rights and obligations for the implementation of the contents of the agreement, especially this lease agreement.

1. In the legal principle of the lease agreement above, there are elements of the lease which include:
2. Is an agreement.
3. There are parties who bind themselves.
4. One party gives enjoyment of an item to the other party for a certain time and the other party pays a price for the enjoyment he gets from the item.

In the case of this writing, the lease agreement is made after the credit guarantee agreement at the Bank is first made. In the agreement set forth in the lease agreement between the debtor and a third party hereby have mutually agreed and agreed. The first party first explains where the object of the lease is in the form of a permanent residence building with 1½ (one and a half) story and the land is currently still a credit guarantee status at a bank in the city of Medan. So that the third party already knows if the house is guaranteed to the bank.

In the lease agreement, there is something that becomes the object. Basically what is the object of the lease is what is the object of the law. So the object of leasing is a legal object. What is meant by legal object (recht subject) is: everything that is useful and can be controlled by legal subjects and can be used as objects in a legal relationship. Likewise, what happens in this lease agreement includes all types of objects, both movable and immovable objects as long as they are not prohibited by law and public order. As the object of debt guarantee which is commonly used in a debt, in general, bank credit guarantees can be grouped into 3 (three), namely movable goods, immovable goods, and individual guarantees (debt guarantee). Based on the provisions of Law no. 42 of 1999, movable goods consist of tangible and intangible. Because the guarantee institution has the task of launching and securing credit, a good (ideal) guarantee is:

a. Can easily help obtain credit by those who need it.
b. Does not weaken the potential (strength) of the credit seeker to carry out (continue) his business.
c. Provide certainty to the creditor, in the sense that the collateral is available for execution at any time, i.e. if necessary it can be easily cashed to pay off the debt of the credit recipient (taker).

The link with the provisions of the laws and regulations governing a credit guarantee object is to clarify the type so that the Bank can consider it in accordance with its policy regarding the types of credit guarantee objects it can accept. Clarity on the type of object of credit guarantee, among others, is also required for the possibility of binding in accordance with the applicable guarantee institution. Mortgage has principles that support its existence as a material guarantee institution. Based on the characteristics of the land guarantee institution for the settlement of certain debts, the Mortgage Rights has five important principles, namely as follows:

1. Droit de preference, as regulated in General Elucidation Number 4 UUHT in conjunction with Article 1 point 1 in conjunction with Article 6 UUHT, creditors holding Mortgage Rights have the right to take precedence in repayment;
2. Droit de suit is the most important feature or the most basic of material rights. According to Article 7 UUHT, creditors can defend their rights to the object of Mortgage, even though the object is under the control of another person, for example, the object of Mortgage is about to be purchased or rented by a third party..
3. Asas Spesialitas namely the principle which requires that the contents of the Deed of Granting Mortgage must include provisions as confirmed in Article 11 UUHT.
4. The principle of publicity is the recording of the encumbrance of Mortgage objects, so that they are open and can be known by the public.21 Mortgage rights are registered at the local Land Office, where the Mortgage object is located, so that the public knows whether the land rights have been encumbered with Mortgage Rights or not. Regarding the principle of publicity, this is explained in the General Elucidation of Number 3 C UUHT.
5. Easy and Sure the Execution is as regulated in Article 6 in conjunction with Article 14 in conjunction with Article 20 UUHT with the existence of a Mortgage Certificate as proof of the encumbrance of Mortgage Rights which contains references "For the sake of Justice Based on the One Godhead", the Mortgage Certificate has the power the same execution as a court decision that has permanent legal force and as a Grosse Acte.

In Article 1320 of the Civil Code there are four conditions for a valid agreement which are divided into two types, subjective conditions and objective conditions, namely:

a. There is an agreement by both parties.
b. The ability of the parties to make an agreement.
c. The existence of the object of the agreement / a certain thing.
d. A lawful reason.

The first two conditions are subjective conditions and the next two conditions are objective conditions. Thus, it can be concluded that the Mortgage Agreement must also contain these four conditions. In the Mortgage Agreement, the agreement of the parties is stated in the form of a Mortgage Deed and will bind the parties and also third parties when it has been registered at the Land Office. The existence of skills is also needed in the Agreement on the Imposition of Mortgage. Usually this skill is always associated with a person's maturity. Even though a person may be capable of acting under the law but is not authorized to carry out a legal act.

In Article 11 UUHT it is stated about absolute things that are guaranteed in every Mortgage Granting Agreement. The existence of these objects is a certain thing that must be fulfilled so that an agreement has a certain object. Certain objects contained in Article 1 Point 1 UUHT clearly state that in this Agreement for Granting Mortgage, as an agreement that creates an engagement without Schuld but with Haftung, the Mortgage Holder does not question the implementation of the performance of the Mortgage Giver but solely to confiscate, sell and obtain prepayment of their guaranteed receivables, on a non-pari passu and non-prorate basis. Article 8 of the UUHT stipulates that the Provider of Mortgage is an individual or legal entity that has the authority to take legal action against the object of the Mortgage concerned. The giver of the Mortgage Rights must be the owner of the land right who has fulfilled the requirements for land ownership and has the authority to act on the ownership of the land right as regulated in Article 8 paragraph (2) of the UUHT. While the Mortgage Holder is the person or party who receives the Mortgage as collateral for the receivables given. Here it has nothing to do with the terms of land ownership, because the Mortgage Holder holds collateral in principle, not with the intention that later if the defaulting debtor has a collateral parcel.

The object of the Mortgage itself is regulated in Article 4 - Article 7 of the UUHT. From the laws and regulations relating to land, it can be identified the object of Mortgage, namely:

1. Property Rights.
2. Cultivation Right
3. Use of Land Rights on state land which according to its provisions must be registered and according to its nature can be transferred.
4. Land use rights Management Rights.
5. Ownership rights over flat units that stand on property rights, building use rights, or use rights on state land.

Mortgage objects are basically objects (land) that will be used as collateral for a debt and are encumbered with Mortgage Rights. The object of the mortgage must meet the following requirements:

1. Can be valued in money, because the debt that is guaranteed in the form of money;
2. Including the rights listed in the general register, because they must meet the requirements of publicity;
3. Has a transferable nature, because if the debtor is in breach of contract, the object used as collateral will be able to be sold in public; and
4. Requires appointment by law

Article 12 UUHT which prohibits the inclusion of a promise immediately which gives authority to the holder of the Mortgage to own the object of the Mortgage if the debtor breaks the promise is null and void by law. This promise in Mortgage is known as “vervalbeding”. And according to Article 1178 of the Civil Code, such a promise is null and void. In other words, from the beginning the agreement was deemed non-existent. The prohibition aims to protect the debtor, so that in his weak position when applying for credit, he must be forced to accept the promise. In addition, the prohibition prevents a decrease in the price or value of the object that is burdened with a mortgage so that it can result in all debtor's debts being paid from the sale of the object if later forced to be auctioned.

IMPLEMENTATION OF THE LEASING PROCESS FOR MORTGAGE OBJECTS TO REALIZE LEGAL CERTAINTY

Since a lease agreement is made, the formulation of all the wishes of the parties must be based on good faith shown by openness, sincerity and honesty. Good faith is always considered to be in an agreement even though it is not explicitly stated. The provisions stating that the agreement must be carried out in good faith are contained in Article 1338 paragraph (3) of the Civil Code.

If in its implementation one of the parties is unable to fulfill the obligations arising from the agreement made, then if it causes harm to the other party, it can be said to have broken a promise or is in default. Default according to Abdulkadir Muhammad is defined as follows: "Default means not fulfilling the obligations set out in the engagement". Default according to article 1239 B.W stipulates: "Every engagement to do something, or not to do something, if the debtor does not fulfill his obligations, gets a settlement in the obligation to provide compensation for costs, losses and interest.”.

The basis for the tenant to control the object of the lease is the existence of a legal relationship in the form of a lease agreement made between the party who rents out and the tenant, the legal relationship contained in the lease agreement as stated in article 1548 B.W., it only binds both parties, namely the tenant and the renter. as binding by law, and the legal relationship includes a personal relationship between the two parties, so that it only binds both parties, excluding third parties, in this case the creditor as the holder of the mortgage on the object of the lease..

In the event that the goods rented by the lessee are to be sold, the owner of the goods being leased must give notice to the lessee well in advance of the time for the sale of the goods. In the practice of implementing a lease agreement in general, in the clause if the leased goods are to be sold by the owner of the leased goods, it is explicitly stated in the written agreement by including the conditions that must be agreed upon by both parties, namely the lease owner and the lessee for the lease agreement. the sale of the leased goods can be carried out. The lease agreement between the debtor and a third party is made notarial through a notary who has been appointed by the creditor (bank) in accordance with the Bank's policy which requires the agreement to be made notarially. Based on this loan agreement, the borrowing party becomes the owner of the loan and must then return the same type to the lender. Therefore, this credit agreement is a real agreement, namely that the occurrence of a credit agreement is determined by the "delivery" of money by the Bank to the customer. Juridically there are 2 (two) types of credit agreements or bindings used by the Bank in providing credit, namely:

1. Agreement under the hand.
2. Agreement in the form of notarial.

Agreement is a law for those who make it for the validity of an agreement, it must fulfill 4 (four) elements as regulated in Article 1320 of the Civil Code, namely:

a. Agree on those who bind themselves;
b. The ability to make an engagement;
c. A certain thing;
d. A lawful reason.

If any of these conditions are not met then the agreement can be canceled or automatically null and void by law. If the law stipulates the subject of the agreement, namely the party entitled to the achievement and the debtor who is obliged to carry out the achievement, then the essence or object of the agreement is the achievement itself.. Regarding the banking credit agreement, there is no specific regulation. However, the credit agreement according to Indonesian civil law is one of the forms of lending and borrowing agreements regulated in the third book of the Civil Code. So that in its implementation it is left to the will of the parties who bind themselves.

OBSTACLES AND CONSTRAINTS AND SOLUTIONS TO THE LEASING PROCESS FOR MORTGAGE OBJECTS TO REALIZE LEGAL PROTECTION AND CERTAINTY

One form of agreement made by the parties is a credit agreement. The credit agreement binds the parties with collateral rights. This guarantee agreement makes a promise by binding certain objects / abilities of the debtor, with the aim of providing the principal guarantee. In the credit agreement, there are many obstacles or losses that can occur or be experienced by both the debtor and creditor. The solution taken, namely the obligation to submit debt guarantees by the borrower in the context of borrowing money, is closely related to the agreement between the parties who borrow and borrow money. The credit agreement also contains guarantees or collateral that can be used as a substitute for paying off debts if in the future the debtor defaults.

1. Protection of Debtors, Mortgages, and Third Parties

a. Granting Authentic Rights

Deed of granting mortgages authentically, at the same time there is a guarantee of protection for parties related to the existence of these mortgages. Both concurrent debtors, debtors providing mortgages and third parties (the party buying the mortgage object), can clearly address the rights of the mortgage holder and the mortgage object itself. If an authentic deed is used as evidence in a word, the deed has 3 (three) strengths of evidence, namely the strength of formal, material, and outgoing evidence (against third parties).

b. There are specialist and publicity requirements

Specialty conditions that must be met in the implementation of the mortgage law, the mortgage giver is given a legal guarantee that the object of the guarantee will be sold after the conditions for that are met and the proceeds will be taken for the amount of the debt that has not been paid. If the calculation of the debt is out of the specialization requirements, of course there will not be a fiat sale execution (auction) from the chairman of the District Court, because it will not be possible to order it to be carried out (sell) if these conditions are not met. This is also in accordance with the conditions for the validity of an agreement as stipulated in article 1320 of the Civil Code, if the conditions for certain things (specificity in this case) are not fulfilled, the promise is objectively flawed and results in null and void. Likewise, debtors, mortgage holders and third parties will be protected by law, although through the principle of publicity, creditors, mortgage holders also have material rights to the object of the mortgage. Before maturity, the right is only passive and cannot be used (to sell the object of the mortgage). Except after maturity of the mortgage giver. Except after the maturity date, the

mortgage giver breaks the promise and has been summoned by the mortgage holder not to pay off his receivables, and even then, it will be filtered with special conditions as mentioned earlier in using his preference rights.

c. There are forbidden promises

The interests of the debtor and mortgage giver will be protected by the existence of a promise that is prohibited to be made between the mortgage holder and the mortgage provider, as stated in article 12 UUHT that:

"A promise that gives authority to the mortgage holder to own the mortgage object if the debtor breaks the promise, null and void by law".

Based on the article, if the incident is not prohibited by law, at first glance it can be justified, considering that debt must be paid by owning the collateral because the debtor is unable to pay it. This can be wrong, when it is understood correctly that the surrender of the object of collateral is to be controlled and to be used as a guarantee for the repayment of the debt in the future if those who are unable to pay it. So, instead of being handed over and because they are unable to pay the debt, they are promised to be able to become the property of the mortgage holder.

Furthermore, in the explanation of the article it is stated that the provision is made in order to protect the interests of the debtor and other mortgage providers, especially if the value of the mortgage object exceeds the amount of the guaranteed debt. Mortgage holders are prohibited from automatically becoming the owner of the mortgage object because the debtor is in default. However, it is not prohibited for the mortgage holder to become the buyer of the mortgage object as long as it goes through the applicable procedures.

2. Elimination of Mortgage

a. Cause it was deleted

In accordance with the nature of the accesoir of the mortgage, the existence of the mortgage depends on the existence of receivables that are guaranteed to be paid off or for other reasons, automatically the mortgage in question is also nullified..

The mortgage law has stipulated that the abolition of the mortgage is stipulated in article 18 paragraph (1), among others as follows:

1. Elimination of debt guaranteed by mortgage, this is a consequence of the accesoir nature of mortgage.
2. The release of the mortgage by the holder of the mortgage, is stated by a deed given to the mortgage.
3. Clearing of mortgages based on ranking by the Head of the District Court, at the request of the buyer of the mortgage object, if the proceeds from the sale of the mortgage object are not sufficient to pay off all debts of the debtor. If a clean-up is held, the mortgage in question will still burden the object purchased.
4. Elimination of land rights that are used as collateral. In this case, the abolition of the mortgage due to the write-off of the encumbered land title does not result in the write-off of the secured receivables. Receivables from creditors still exist, but are no longer receivables that are specifically guaranteed based on the creditor's special position.

If the encumbered land rights expire due to their term and are then extended, the respective mortgage rights do not become nullified, because the encumbered land rights continue for the duration of the extension. It is different if the land rights in question are renewed, because the previous land rights have been erased. If the original object will still be used as collateral, a new mortgage must be charged.

b. Mortgage Clearing

c. The purchaser of the mortgage object, either in a public auction on the orders of the chairman of the general court or voluntary sale and purchase, may request the mortgage holder so that the object he buys is cleared of any mortgage burden that exceeds the purchase price. In this case, the mortgagee then makes a written statement that contains the release of the mortgage which burdens the object of the mortgage in excess of the purchase price. On the basis of this statement, the Head of the Land Office recorded the clearance in the land book and certificate of land rights which was used as the object of collateral.

d. Sales under hand

In the event that the sale through a public auction is not expected to produce the highest price, upon the agreement of the grantor and the holder of the mortgage and certain conditions are met, it is possible for execution to be carried out by selling the object of the mortgage under the hand, if in this way all parties benefit from each other. This provision does not provide an explanation, presumably underhand sales are also possible in the event that a public auction has been conducted, but no bid has been obtained that reaches the specified minimum price. Although the sale of the mortgaged object is carried out under the hands or without going through a public official (auctioneer), but the sale according to PP no. 24 of 1997 concerning Land Registration, it must still be carried out before the PPAT who makes the deed of sale and purchase and is followed by registration at the local Land Office.

CONCLUSIONS AND RECOMMENDATIONS

1. CONCLUSIONS

1. Rights and obligations can arise from the existence of an agreement made by the parties or that has been determined by law. An agreement made by the parties will lead to an engagement where the engagement is the content of an agreement, so the engagement that has been carried out by the parties in an agreement provides demands for the fulfillment of rights and obligations for the implementation of the contents of the agreement, especially this lease agreement.
2. Creditors (Banks) may give permission to debtors to rent out 1 (one) house which is the object of the Bank's credit guarantee to third parties by giving prior approval on the basis of trust from the creditor (Bank) to debtors who already have good credibility in the eyes of the debtor. creditor (Bank). If the object of collateral will be leased for more than 1 (one) year, the debtor in this case must first ask permission from the creditor (Bank) to lease the object of credit guarantee to a third party with consideration of whether or not the debtor is eligible to lease credit collateral for more than 1 (one) year.
3. The position of third parties can still occupy the house until the end of the lease period ends because the creditor (Bank) cannot directly auction the object of collateral because there must be a permanent decision from the Court, if the debtor defaults to the creditor (Bank).

2. SUGESTION

1. It is better if the clause of the lease agreement is stated more firmly the position of the third party so that if there is a default by the debtor, the position of the tenant in this case is not harmed and gets legal certainty. The third party who will lease the leased object must be notified in advance if the leased object is under Bank collateral so that the third party knows all the risks that will occur to him in the future.
2. Creditors (Banks) in this case must be stricter and more careful in giving permission to debtors to be able to lease objects of credit guarantees to third parties to avoid possible disputes in the future. If the lease agreement for the collateral object is more than 1 (one) year, then a new agreement must be made.
3. If there is a dispute between the creditor (Bank) and the debtor, the creditor (Bank) must attach importance to the third party who rents the object of collateral to be able to provide the opportunity for the third party to occupy the house until the end of the agreement.

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