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RESEARCH ARTICLE

EXECUTION OF BAD CREDIT BASED ON DEED OF AKNOWLEDGEMENT OF DEBT AND DEED OF SALE (A CASE STUDY IN A BANK IN BEKASI, INDONESIA).

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Abstract

This research explores the execution of bad credit guarantee based on the deed of sale and deed of acknowledgement of debt. The case study was conducted at a bank in Bekasi, Indonesia. The collateral elements studied are collateral as an additional guarantee and collateral submitted by the debtor to the bank in which the purpose of collecting collateral is to obtain credit or financing facilities. The method used in the research is Juridical Normative. The juridical approach is literature research approach by studying literature materials to conduct specifications, analyze data, and approach normatively because it relates to the rules of law. By conducting field research, data are collected and analyzed. The establishment of notarized deed of sale notifies legal protection for the parties. Considering that a notary is a public official authorized to make an authentic deed and provide legal advice, the notarized deed of sale can provide equal legal protection for the parties. The results of the research indicate that the execution of bad credit guarantee is not regulated in the land rights guarantee institution, that cause the execution is not easy, does not meet the speciality and publicity principles.

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Introduction:-

There is a problem found that the non performing debtor does not pay the credit of the house and also abandon it and let the house ruin. It is known that the bank does not place a mortgage right on the object of the right which is used as a debt guarantee so that it does not have the executorial power against the collateral with the mortgage rights. In order to refund the credit and losses on the abandonment of land and buildings, the Bekasi branch of the bank undertakes efforts to sell the bank guarantee to other parties by using the deed of sale and deed of acknowledgement of debt.

The execution of bad credit guarantee in the Bekasi branch based on the deed of sale and deed of acknowledgement of debt without placement of mortgage rights to collateral guarantee still needs further research to understand the legal consequences of the execution of bad credit guarantee based on Law number 4 year 1996 concerning on the mortgage rights on land and property. The transfer of land rights due to bad credit based on the deed of sale and deed of acknowledgement of debt is based on Government Regulation number 24 year 1997 on Land Registration

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and the Prohibition on the Use of Absolute Power as the Transferor of Land Rights regulated in the Instruction of the Minister of Home Affairs number 14 year 1982.

The formulation of the problem in this research is how efforts can be made by Bekasi Branch Bank as the creditor to execute the unregistered mortgage rights as well as the legal consequences for creditor in executing the bank guarantee of bad credit based on the deed of sale and deed of acknowledgement of debt.

The purpose of this study is first to analyze the legal consequences for creditors due to the unregistered mortgage right on land and property of the guarantee object, in case of default of the debtor as a result of bad credit, based on the Mortgage Acts. Second, to analyze the legal consequences for creditors who execute collateral of bad credit with the deed of sale and deed of acknowledgement of debt

Research Method:-

Legal research is a scientific activity based on certain methods, systems and thoughts, which aims to study a particular legal phenomenon by analyzing it. In addition, there is also an in-depth examination of the legal facts to attempt a solution to the problems that arise in the relevant phenomenon [1].

Legal research is needed to find the truth of an existing legal problem. Legal research is carried out in scientific activities, in which one seeks the truth based on the thought of an expert, laws and the results of the truth of the findings specified in the research process. Legal research is conducted to solve legal issues, identify legal issues, conduct legal reasoning, analyze problems encountered, and then provide solutions to the problems [2].

The approach used in this study is normative juridical consisting of library research, analysis of the data obtained, and approach performed normatively because it relates to the rules of law, and it also conducted by conducting field research and then the data are collected and Analyzed. Research with normative juridical method is a legal research conducted by examining library materials or secondary data, as a basic material to be investigated by tracing the rules and the literatures related to the problems studied [3].

The specifications of this research uses analytical descriptive that describes the laws applied thoroughly and systematically. Further, the analysis of problem solving for the implementation of laws in the execution of bad credit in the Bekasi Branch Bank based on the deed of sale and deed of acknowledgement of debt, with the collateral guarantee of Subsidized Mortgage/KPR FLPP that is home and Land is conducted.

The data collected in this research are primary, secondary, and tertiary data. Primary materials i.e. data obtained through library research that aims to examine and trace the primary legal material as the basic norms obtained directly to be used in this study. Secondary legal materials are materials that are closely related to primary legal materials and can help analyze the primary legal materials including literature, scientific papers, research results and interviews, workshops related to research materials. Tertiary legal materials are materials that provide guidance and explanation of primary and secondary legal materials intended to providing the understanding of research conducted by the author.

After the secondary and tertiary data have been collected, they are analyzed qualitatively considering the collected data are descriptive data. Qualitative analysis is relating the existing problems in the execution of Bekasi Branch Bank against bad credits by the use of the deed of sale and deed of acknowledgement of debt that is not regulated in the legislation of Mortgage Guarantee institutions due to the mortgage credit guarantees which their rights of dependent has not been not registered.

The author conducted an analysis of the credit agreement namely loan agreement and guarantee agreement of collateral guarantee that is land and buildings with guarantee institutions as collateral Mortgage guarantees particularly Subsidized mortgage/KPR FLPP to address the problems found by the author.

The author conducts an analysis of the deed of sale and deed of acknowledgement of debt made by creditor as additional agreements of the principal agreement of debts and receivables associated with the prohibition of absolute power in the transfer of land rights. Furthermore, the results of the analysis will be manifested in a clear and concise descriptive in the interests of the parties, especially the Notary and PPAT for the benefit of debt resolution through

execution by unregistering the collateral right against credit guarantee in which Notary and PPAT is demanded to be active in providing legal issues and problems encountered.

The research location is Pelita Harapan University Library, Notary Office and Branch Office in Bekasi, Indonesia. As previously described, Bekasi branch Bank is one of the executing bank in granting subsidized mortgages/KPR FLPP mortgage financed by the government.

Results And Analysis:-

The agreement of FLPP Mortgage in Bekasi Branch Bank contains terms which include the amount of debt the debtor, the amount of interest over the loan, repayment period, the payment placement, clauses which contain the loss of authority power as a debtor if the debtor conducts defaults, and explain the binding of collateral guarantee of such credit facilities.

In the KPR agreement, collaterals are land and buildings purchased by the loan paid to the developers as settlement of the land and buildings purchased by the debtor. The material guarantee must be made in a collateral agreement in a guarantee agreement which constitutes material rights and accessory on a particular receivables based on the credit agreement or other debt agreements so that its existence is determined by the existence of receivables with guaranteed repayment. Collateral guarantee of subsidized KPR mortgages with material rights is deposit rights therefore, in conjunction with the signing of the Mortgage Agreement, the debtor also signs SKMHT with the same period of time as the credit agreement term.

The attorney letter charges the Guarantee Right (SKMHT) made and signed by the debtor with the term that is in accordance with the credit period based on the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency number 4 year 1996 Article 1 that is to guarantee the Small Business Credit where the period of the SKMHT is up to the end of the main agreement namely credit agreement. Subsidized KPR FLPP is considered as a small business because it includes mortgages for core houses, simple Houses, or flats with a maximum land area of 200 m² (two hundred square meters) and the building area is not more than 70 m² (seventy square meters), with a credit platform not more than Rp. 250.000.000, - (two hundred and fifty million rupiah).

In reality, the SKMHT is not followed up by the establishment of APHT until it becomes bad credit, so that the creditors do not have the executorial power and the position of Bekasi Branch Bank creditor become concurrent creditor. Concurrent creditor is a creditor who does not have privileges or rights over material guarantee. As long as the debtor does not commit any injury or default, it is not a problem for the creditor, otherwise in the case of Bekasi Branch Bank, the debtor does not pay the obligations, the debtor cannot be found, and the debtor abandons the house and the land and leave the house empty, damage and ruin.

According to the manager at Bekasi Branch Bank [4], from 2014 to 2016 there were 1,200 bad credit using KPR FLPP subsidized mortgage facility. The efforts made by the Bank as the creditor is to make gradual settlement and to category them as bad credit. The settlement of the bad credits is handled by two different sections, namely by Collection Unit which handles debtors who are late in paying from 0 (zero) day to 360 (three hundred and sixty) days by giving first warning letter (SP1) and calling the debtor to settle the collateral of the house reminding and warning the debtor to pay the credit. The second warning (SP2) is conducted by attaching a red sticker to the house/buildings writing that the debtor has not paid the credit within a certain time. In the final warning, if SP1 and SP2 is not responded by the debtor, the bank will paint black on the house or buildings showing a strong warning for debtors who do not pay credit placement and the interest. Second, Asset Management Division (AMD) unit will handle debtors who are late to pay the credit more than 360 (three hundred and sixty) days by searching the residence, office, or business place of the debtor in order to seek the debtor. If the debtor is not found, it will be summoned through announcement in the national mass media. The next step is checking the collateral condition (house and land) of the debtor. If the house and land is empty and damaged, the debtor may be declared to have neglected and did not inhabit as the designation of the mortgages that is to get assistance from the government. One of the main conditions to get KPR FLPP subsidized mortgage is the debtor does not have a house and promises to occupy the house as a decent dwelling place. The debtor handled by the AMD unit is an unfulfilled debtors, no attempt to settle the obligations, the debtor cannot be found and abandon the house and land in a period of time more than 360 days. To the debtor who breaches the pledge, Bekasi Branch Bank make efforts to summon in newspaper, but first giving warning letter up to three times.

Another effort made by the creditors is to conduct the sale of collateral guarantee in public based on the deed of sale and deed of acknowledgement of debt under the real conditions (empty house, damaged or ruined), because no placement of liability to subsidized LFPP KPR mortgage in Bekasi Branch Bank. The absence of the liability or insurance on the collateral house and land is due to the consideration of fees charged to the debtor, considering that the subsidized KPR FLPP is a type of small business credit and of the ability of the debtor to pay the processing fee, and the costs related to the credit agreement and guarantee agreement.

The deed of sale and is used by the creditor as a means of execution or selling collateral materials in public upon the authority granted by the debtor to the creditor to sell the collateral materials house and land if the debtor defaults as the fulfillment of the debtor's debt repayment. Bekasi Branch Bank executes collateral bad credit with Deed of Sale because the debtor has no intention to settle the obligation to return the credit facility he has received. The sale of Collateral as the way taken by creditors for the benefit of the debtor in the settlement of his debt in accordance with the deed of acknowledgement of debt. The non performing debtor in this case does not pay its obligations, cannot be found and violates the terms of use of facilities provided by the government that is subsidized KPR FLPP and abandons the house and let it ruin. The collateral house and the land should be maintained and used properly by the debtor as its function. Various ways of guiding and efforts to resolve bad credit have been conducted by the Bekasi Branch Bank.

SKMHT on collateral guarantee which is not followed up by APHT or due to unregistered mortgage right increasingly makes Bekasi Branch Bank as a creditor has difficulty in executing bad credit. As creditor holder of mortgage rights, it does not have privilege upon other creditors to collect receivables and cannot execute mortgage rights and does not have the authority to sell the mortgage in public to gain repayment of its receivables as stipulated in Article 20 if the debtor defaults.

The deed of sale and deed of acknowledgement of debt is not a guarantee institution set out in UUHT, so that the execution does not fulfill the principle of speciality and publicity that can bind the third party and provide legal certainty to the interested parties; and the Bank as the creditor cannot carry out the execution easily and surely, it must wait for a considerable time for the return of its receivables upon bad credit, and must meet the requirements specified in the regulations related to subsidized KPR FLPP/subsidized mortgage and meet the prerequisite in the Decree of the Head Office of National Land Agency, Republic of Indonesia number 4398/17.3-300/XI/ 2011 in relation to the transfer of rights carried out by the Sale and Purchase Agreements/deed made by PPAT on the basis of the deed of sale and deed of acknowledgement of debt. The execution conducted by using the deeds by the Bank in order to repay the receivables of bad credit credit specially for subsidized KPR FLPP is a legal act which is not regulated in the land rights guarantee institution that is the Mortgage Rights Act.

If the debtor defaults while the creditor's position is as a concurrent creditor (in this case is Bekasi Branch Bank), there are two ways in the settlement of this civil case, first by litigation to be settled in a court, where the credit Agreement, SKMHT, the deed of sale and deed of acknowledgement of debt are used as evidences of the authentic deed of the creditor who has been injured by the debtor; in a case of a prosecution from the debtor or any other party. Or second, by non-litigation means legal settlement conducted outside the court, in which the dispute settlements are conducted by negotiation, mediation, conciliation and arbitration. Negotiation is frequently conducted by the bank by rescheduling, reconditioning, or restructuring the debts. The bank provides the opportunity for the debtor or another party to pay the main debt. The interest and penalty are calculated from the first time the debtor did not perform the credit payment.

These measures can be taken if the debtor can be found to manage the settlement, but the problem that occurred in Bekasi branch bank is that the debtor could not be found so that the creditor conduct collateral guarantee execution using the deed of sale and deed of acknowledgement of debt.

The execution by using the deed of sale and deed of acknowledgement of debt is non-litigation settlement undertaken by the Bank for bad credit of subsidized mortgage KPR FLPP for non performing debtors by which the creditor or bank has complied the process in the collection unit and Asset Management Division (AMD) unit in this case debtors are late in making payments exceeding 360 days and has neglected the house or building to be damaged or ruined. This method can not be applied to other types of credits as it is not a mortgage guarantee institution provided for in UUHT.

The power of attorney to sell given by debtor to creditor in relation to the Credit Agreement has been voluntarily agreed by the debtor for the debtor's own interest. The Deed of Sale is valid as long as the credit agreement, whereby if the credit agreement expires when the debtor repay its obligations so that the power of attorney to sell also ends.

The legal consequences of creditor action, in the case of civil litigation of the debtor, is that the authorization is null and void legally. The execution of the guarantee made by the creditor against the credit collateral is not in accordance with the provisions of Article 6 UUHT, whoever receives and holds the guarantee shall not buy or sell the goods as collateral either for himself or for others, warranty goods may only be sold auction and auction or in public and under applicable law. The authorization given and signed by the debtor to the creditor on the date of signing the deed of sale and deed of acknowledgement of debts against the principle of public interest (van openbare order) according to Herlien Boediono [4] due to the sale of the collateral must be voluntary.

The author juridically conducts an analysis that the deed of acknowledgement of debt and power of Attorney to sell made by the debtor before notary is a perfect authentic deed because it is based on the debtor will and for the benefit of the debtor itself in repayment of debts to creditors as agreed in the principal agreement namely the credit agreement of subsidized KPR FLPP. The execution of collateral conducted by the creditor is the result of the act of the defaulted debtor. The legal protection of the creditor in the credit agreement is due to the defaulted debtor.

Article 1238 of the Civil Code regulate "the debtor is considered negligent with the passage of time specified", there are three (3) circumstances namely the debtor does not meet the achievement, debtor meets achievement but wrongly, the debtor meets the achievement but not on time, the debtor meets the achievement not according to the agreement. Authentic deeds made by the debtor are SKMHT, the deed of sale and deed of acknowledgement of debt which may be used as evidence in a court if there is a claim on the execution. Besides the creditor efforts to resolve by conducting negotiation and settlement of the debts can also be used as strong evidence to suggest that the debtor has defaulted.

Thus, transfer of rights due to bad credit of subsidized mortgage/subsidized FLPP by the Sale and Purchase Agreements under the deed of sale and deed of acknowledgement of debts is valid/irrevocable, this is the result of the promissory debtor, where the debtor does not have good ethics (debtor missing) in the credit settlement. Bekasi branch bank action in doing the transfer of rights under these Terms of Decree of the Head of National Land Agency of the Republic of Indonesia, Deputy of Land Rights and Land Registration number 4398/17.3-300/XI/2011 dated 22 November 2011, which provides a clear explanation that the deed of sale which shall be conducted based on Deed of sale and Deed of Recognition of Debt underwritten due to non performing debtor and the condition of abandoned house can be executed by Bank as creditor. Deed of sale run by creditors are efforts to resolve the debtor's obligations in the interest of debt payment, not an absolute power which is set in the Instruction of the Minister of Home Affairs number 14 year 1982 on the Prohibition of use of absolute power for the land assignment governing the transfer of rights. The main function of the guarantee is to convince the bank or creditor that the debtor has the ability to pay off the credits granted to him in accordance with the agreed credit agreement. Based on the article 1, number 23 of Act number 7 year 1992 on Banking as amended by Act number 10 year 1998, collateral is an additional guarantee submitted by the debtor to the bank to get credit facilities. The Bank carries out the execution or sale of the collateral because the debtor breaches the pledge or default. Due to the debtor's default, the creditor has the right to demand a finance refund used by the debtor. The Bank strives for ways to enable the debtor to be able to fulfill his obligations at such as carried out by Bekasi Branch Bank. As time passes, each unit of collection unit including AMD unit and mass media notification makes strong evidence that the debtor is not found, the debtor is not responsible, and has no good intentions to settle his obligations. If in the future there is a lawsuit from the debtor or a third party, the bank will provide all the evidence indicating that the bank's action on the execution of the collateral using the deed of sale and deed of acknowledgement of debts is true, this is the last attempt that can be made by the creditor on the basis of the power granted by the debtor before the notary which indicates it as a perfect authentic deed.

Conclusion:-

Based on the results of research and discussion, it can be concluded that the execution of collateral guarantee under the Deed of Acknowledgment of Debt and Deed of Sale due to bad credit can be carried out with the consideration that the mortgage FLPP/Subsidized Mortgage is a small business loan which has SKMHT deadline until the expire of the validity period of the principal agreement as stipulated in the Regulation of the Minister of Agrarian /Head of

National Land Agency number 4 year 1996 on the time limits of the placement of the use of Power of Attorney imposing mortgage rights to guarantee the payment of particular bad credit.

Attorney letter imposing mortgage rights which was not followed up with the attachment of the mortgage rights will result in the creditor to become concurrent creditor if the debtor takes legal acts. There are two legal efforts the creditor can take to settle that. First is the settlement of law case outside the court so called non litigation settlement by conducting negotiation and second the litigation settlement in the court where SKMHT and mortgage rights are made perfect proof because it is an authentic deed made by Notary.

The deed of sale made by notary is a deed made by a debtor to authorize a creditor to sell collateral in the event that the debtor can no longer meet the obligation to pay the debt based on the credit agreement as the valid principal agreement as a law for those who make it, as regulated in Article 1338 of Civil Code. The authorization by the debtor in the Deed of sale is valid if the principal agreement as the basis of the authorization is legal.

Notarized Deed of Acknowledgment of Debt and Deed of Sale provide legal protection for the parties, since the notary as public official has authority to make authentic deed can provide legal advice so that the deed provides impartial legal protection for both parties.

The execution of collateral guarantee in public based on Deed of Acknowledgment of Debt and Deed of Sale is a creditor protection in case the debtor breaches the pledge or defaults as stipulated in Article 1238 of Civil Code. The non performing debtor that disappeared can be proved by the creditor's attempt to find the debtor by giving notification letter up to three letters and summoning in national newspaper.

Besides, the non performing debtor does not meet the debtor's payment obligation and violates the terms of use of FLPP credit facility provided by the government as stipulated in Regulation of Minister of Public Works and Housing of the Republic of Indonesia number 20/PRT/M/2014 on Liquidity Facility of House Financing in order to acquire a house by credit/Financing house ownership for low income communities. In particular, Article 17 states that the government has the right to revoke and withdraw FLPP facilities if the debtor does not utilize the house as it is intended.

Deed of sale is an accessory agreement deed of the principal agreement and it is not an absolute power which is stipulated in the instruction of the Minister of Domestic Affairs No. 14/1982 on the prohibition of absolute power as the transfer of land rights. It is explained in the dictum that this instruction is made to effectively control the use of the authorities and ownership of land through the granting of absolute power by making the transfer of the land in disguise by using the form of absolute authority.

In making the Deed of Sale and Purchase, Official Land Registry/PPAT is based Deed of Acknowledgment of Debt and Deed of Sale that can be executed with one main condition that there is a bad credit especially on subsidized KPR in which the debtor breaches the pledge of defaults and cannot be found and the creditor in this case BTN has made efforts to give the debtor an opportunity to meet this obligation as determined in the Decree of the Head of the National Land Agency of the Republic of Indonesia Deputy of Land Rights and Land Registration number 4398/17.3-300/XI/2011 dated 22 November 2011.

The execution of collateral for non-performing loans Deed of Acknowledgment of Debt and Deed of Sale is a legal act not regulated in the land rights guarantee institution number 4 year 1996 on mortgage rights on Land and property so that the execution is not easy, does not meet the speciality and publicity principles as the Mortgage Rights which add the aggression to provide the same execution power as the court decision having a permanent legal force.

Future research recommendations is for banking institution as a provider of subsidized housing ownership credit for the low income society and as a creditor to place the mortgage rights on the collateral of the house and land in the implementation of the Mortgage Rights Act to ensure legal certainty in execution of collateral for bad credit in order to settle the debtor's debt who breaches the pledge or defaults as regulated in Article number 6 of Act number 4 year 1996 on mortgage rights of land and property. Likewise, the Notary and PPAT should understand the meaning and purpose of the Deed of Acknowledgment of Debt and Deed of Sale which is the accessory agreement of the principal

agreement of credit agreement, which is different from the absolute power of attorney as stipulated in the Instruction of the Minister of Domestic Affairs number 14 year 1982.

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