



Journal Homepage: [-www.journalijar.com](http://www.journalijar.com)

INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)

Article DOI:10.21474/IJAR01/16052
DOI URL: <http://dx.doi.org/10.21474/IJAR01/16052>



RESEARCH ARTICLE

THE IMPLEMENTATION OF PRUDENTIAL BANKING PRINCIPLES AND THE VALIDITY OF POWER OF ATTORNEY TO CHARGE MORTGAGE RIGHTS MADE BASED ON A SALE AND PURCHASE PRELIMINARY AGREEMENT AND POWER DEED OF SALE

Amalia Indah Ahasani¹, Tri Lisiani Prihatinah², Sulistyandari³ and Sri Wahyu Handayani⁴

1. Master Student, Faculty of Law, Jenderal Soedirman University, Indonesia.
2. Associate Professor, Faculty of Law, Jenderal Soedirman University, Indonesia.
3. Senior Lecturer, Faculty of Law, Jenderal Soedirman University, Indonesia.
4. Senior Lecturer, Faculty of Law, Jenderal Soedirman University, Indonesia.

Manuscript Info

Manuscript History

Received: 20 November 2022

Final Accepted: 24 December 2022

Published: January 2023

Key words:-

Prudential Banking Principle, Power of Attorney to Charge Mortgage Rights, Sale and Purchase Preliminary Agreement

Abstract

Banks carry out their business it must apply the principle of prudential in granting credit. In the High Court Decision Number 23 / Pdt / 2017 / PT YYK stated that Bank Perkreditan Rakyat Gunungkidul had violated the prudential banking principle because of the credit disbursement too fast. In addition, making a Power of Attorney to Charge of Mortgage Rights based on a Sale and Purchase Preliminary Agreement followed by a Power Deed of Sale is against the law. The research method is normative juridica, using secondary data from library research. The application of the prudential principle of banks in extending credit is by analyzing the 5 C's principles, namely Character, Capacity, Capital, Collateral, and Condition of Economy. So that credit disbursement that is too fast does not violate of the prudential principle. Power of Attorney to Charge of Mortgage Right whose object is still based on a Sale and Purchase Preliminary Agreement and Power Deed of Sale, based on Article 1334 paragraph (1) of the Civil Code, which relates to goods that will exist. However, after the Power of Attorney to Charge of Mortgage Rights is made, a transfer of rights must carry out by following Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration Juncto Article 2 paragraph (2) Government Regulation 37 of 1998 as amended by Government Regulation Number 24 of 2016 concerning Regulations for the Position Land Deed Officials so that a deed of granting mortgage rights can make.

Copy Right, IJAR, 2023,. All rights reserved.

Introduction:-

The obligation to apply the prudential banking principle business activities stated in Article 2 and Article 29 paragraph (2) of Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking. The bank must apply the prudential principle because this relates to the bank's obligation to maintain its level of soundness so as not to harm the interests of customers who entrust their funds to the bank. In extending credit, the prudential principle is applied to the 5C's principle, namely Character, Capacity, Capital, Collateral and Condition of economy (14). Is reflected in the elucidation of Article 8 paragraph (1) of the Banking Law that to gain bank confidence before extending

Corresponding Author:- Amalia Indah Ahasani

Address:- Master Student, Faculty of Law, Jenderal Soedirman University, Indonesia.

credit, banks must conduct a thorough assessment of the character, ability, capital, collateral, and business prospects of debtor customers. Banks, as creditors in the stages of granting credit, generally ask for guarantees from the debtor.

A Mortgage is a guaranteed right that is imposed on land rights, and this is implied in Article 1 paragraph(1) of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects related to Land. The Granting of Mortgage Rights is carried out with a written agreement, which is stated in the Deed of Granting Mortgage Rights. This Deed of Granting Mortgage Rights is a deed of the Land Deed Officials which contains the granting of mortgage rights to certain creditors as collateral for repayment of the debt (19).

Land Deed Officials which is public officials who do authentic deeds regarding specific legal actions, regarding rights to land or ownership rights to apartment units (Article 1 paragraph (1) Government Regulation Number 37 of 1998 as amended by Government Regulation Number 24 of 2016, concerning Regulations for the Position Land Deed Officials). Land Deed Officials have the authority to make deeds of certain legal actions, such as sale and purchase, exchange, grants, entry into the company, entitlement deed treasures together, granting building rights/right to use the property, granting mortgage rights, and the power of attorney charge of mortgage rights (Article 2 paragraph (2) of Government Regulation Number 37 of 1998 concerning Regulations for the Position Officials Land Deed). Therefore, if a land right obtained from a sale and purchase is to be used as collateral, but the right has not been legally transferred, then the right must be transferred first, namely using a Sale and Purchase Deed drawn up by the Land Deed Official. The function of the Land Deed Officials deed is as evidence that a legal action has been carried out and makes it a solid basis for registering the transfer of rights and encumbrance of the rights concerned (6).

In buying and selling land rights objects, some are preceded by an agreement called the Sale and Purchase Preliminary Agreement. A Sale and Purchase Preliminary Agreement is an assistance agreement that functions as a preliminary agreement (pactum de contrahendo). In this agreement, the parties bind themselves to create a new/central arrangement which is the parties' goal (3). Sale and Purchase Preliminary Agreement, as a preliminary agreement, usually in the agreement, contains promises from the parties containing provisions when the conditions for buying and selling before the Land Deed Officials have been fulfilled. Still, the prospective seller may need help to come back to sign the deed of sale to buy it. Therefore, the buyer is authorized to carry out his buying and selling, either representing the prospective seller or himself as a potential buyer before the authorized official. This power of attorney is also stated in the Deed of Power made by a Notary.

The mortgage rights giver must be present before the Land Deed Officials to grant mortgage rights. If, for some reason, he is unable to attend in person, and he is obliged to appoint another party as his proxy, with a Power of Attorney To Charge of Mortgage Rights, which is in the form of an authentic deed, according to General Explanation number 7 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects related to Land.

Based on the description above, the problem that will study is the existence of a court decision that has permanent legal force, that initially, the Plaintiff was the legal owner of the Freehold Title Number 01881/Wonosari covering an area of 864 m² (eight hundred and sixty-four square meters) is located in the village of Wonosari, Wonosari District, Gunungkidul Regency. Then the Freehold Title was borrowed by Defendant I and Defendant II to be guaranteed to Defendant III (Bank Perkreditan Rakyat Gunungkidul). However, for the guarantee process, Defendant II asked Plaintiff to reverse the name of the Freehold Title to Defendant II. Finally, a sale and purchase agreement was made between Plaintiff as the seller and Defendant I as the buyer, which started in Sale and Purchases Preliminary Agreement Number 114 dated 14 July 2015, followed by Power Deed of Sale Number 115 dated 14 July 2015 made Co-Defendant I (Notary and Land Deed Officials). Then on the same date, 14 July 2015, down the credit application approval letter, followed by a credit approval letter and Credit Agreement on 15 July 2015, Number: 09430/KSBR/BOG/VII/ between Defendant I and Defendant II as debtors and Defendant III as a creditor by including collateral in the form of Freehold Title Number 01881/Wonosari. To bind the guarantee then made Power of Attorney to Charge off Mortgage Right Number 132/2015 dated 15 July 2015 was created by Co-Defendant I (Notary and Land Deed Officials). Defendant I, as a power of attorney to Defendant III (Creditor/Bank Perkreditan Rakyat) as the beneficiary to charge mortgage rights to guarantee the repayment of the debts of Defendant I and Defendant II as debtors. Based on the Power Deed of Sale Number 115, a Sale and Purchase Deed was issued on 30 July 2015, then Granting Deed Mortgage Rights Number 302/2015 was made on 24 August 2015 by the Co-Defendant I (Notary and Land Deed Officials). As time went on, as debtors, Defendant I and Defendant II had defaulted by not making instalment payments, so Defendant III (Creditor/Bank Perkreditan Rakyat Gunungkidul) would conduct an execution auction. That made Plaintiff feel disadvantaged. Plaintiff filed a lawsuit Act against the Law that the Defendants carried out. The lawsuit was due to the process of transferring Freehold Title s Number 01881/Wonosari from on behalf of Plaintiff to on behalf of Defendant

II, along with the imposition of mortgage rights on both of them, was engineered and not by the actual legal facts and material truths.

The case led to a different verdict. At the District Court Decision Number 25/Pdt.G/PN.Wno, the decision of the Supreme Court of the Republic of Indonesia Number 771/K/Pdt/2018 and Judicial Review Decision Number 134 PK/Pdt/2020 have the same decision, stating that all of the Plaintiff's lawsuits were rejected, so all of these legal events are valid and not against the law. However, it is different from the decision at the Appeal Level, namely high court decision number 23/Pdt/2017/PT YYK, which granted part of the Plaintiff's lawsuit and stated that the Defendants had committed an unlawful act and harmed the Plaintiff, and stated that all of these legal events were invalid and has no binding force.

The formulation of the problem that is the subject of discussion is, first, how is the application of the prudential banking principle in granting credit to Decision Number 23/Pdt/2017/PT YYK. Second, what is the validity of the Power of Attorney for Charge Mortgage Rights made by the Land Deed Officer with objects still based on a Sale and Purchase Preliminary Agreement followed by a Power Deed of Sale?

Research Method:-

This research will be structured using normative juridical analysis (15). The method used in this research is a statutory approach, conceptual approach and case approach (9). The specification of this research is prescriptive, namely research that studies the purpose of law, the values of justice, the validity of legal rules, legal concepts and legal norms (9). The data needed to be used in this research is by using secondary data. Primary legal materials include the Civil Code, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Law Number 16 of 1996 concerning Mortgage Rights on Land and Land-Related Objects, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 37 of 1998 which has been amended by Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Regulations for the Position Land Deeds Official. Then the secondary legal materials include libraries in law, research results in the field of law, scientific articles, journals, and the internet. Primary and secondary legal materials will be analyzed normatively qualitatively, namely carried out by describing the data obtained based on legal norms, theories and legal doctrines and rules that are relevant to the subject matter (15).

Results and Discussion:-

Application of the Prudential Banking Principles in Granting Credit in Decision Number 23/Pdt/2017/PT YYK.

The obligation to apply the prudential principle in banking business activities is expressly stated in the provisions of Article 2 of the Banking Law that "Indonesian banking in carrying out its business is based on economic democracy by using the prudential principle". Then it is stated in Article 29, paragraph (2) of the Banking Law that banks are required to carry out business activities by the prudential principle. Based on the central functions of the banking system, we can understand that banks, as financial institutions, have various risks that will cause. Therefore because of such bank functions, must the implementation of prudential principles in banking must be implemented (2). The prudential principle, as the main principle in banking activities, is closely related to public trust, it means the public trust will grow and develop if banking transactions and activities always apply the prudential principle (13). Prudential banking principles means that a bank, in making policies and running its business activities, must always comply with all effective laws and regulations based on good faith (11). The prudential principle obliges banks to always be careful in their business activities. This is manifested in the form of consistent application based on good faith towards all requirements and statutory regulations related to credit granted by the banks concerned (7).

One of the bank's business activities that must be carried out with due regard to the prudential principle is in the provision of credit. Based on the elucidation of article 8 of the Banking Law, what must be assessed by a bank before giving credit is the character, ability, capital, collateral, and business prospects of the debtor's customer, which is then known as "the five C's of credit analysis" or the 5 C's principle (16). Therefore, the prudential banking principle is applied by banks before determining whether a credit application is accepted by carefully analyzing credit applications submitted by prospective debtors and implementing 5 (five) regulations which are part of the prudential principle. caution (14):

Character

Character, namely analyzing the nature of the prospective debtor, is carried out through credit analysis by identifying the data of the prospective debtor provided by the bank. Before disbursing credit from the bank, the verification team met the Debtor and checked all the data needed to apply for credit.

Capacity

Capacity, namely analyzing the ability of the prospective debtor, is carried out by analyzing the application for funds submitted by the debtor, whether it is by his skills or not. Whereas initially, the debtor had applied for a credit loan on 12 June 2015 for the Elpiji Bulk Filling and Transportation Station permit acceleration process with a loan amount of Rp. 2,000,000,000.00 (two billion rupiahs) within 6 (six) months, then based on a general credit analysis of the debtor, the verification team surveyed the place of business and collateral. The analysis team provides an approved credit ceiling recommendation of IDR 400,000,000.00 (four million rupiahs) within 3 (three) months.

Capital

Capital, namely analyzing prospective debtors' worth, is carried out by reviewing the potential of existing money. Whereas the debtor applied for credit for the Elpiji Bulk Filling and Transportation Station permit acceleration process, meaning that the debtor already has initial capital for his Elpiji Bulk Filling and Transportation Station business, this has been done by a survey team of 4 (four) people from the creditor's side.

Collateral

Collateral, namely analyzing the collateral/guarantee provided by the debtor to the bank and assessing whether it is comparable to the credit requested or not so that if the debtor is unable to repay the loan, can sell the collateral can be sold. The survey team for the collateral object met directly with the original owner of the land, namely Plaintiff, who stated that she had sold the land to defendant II to pay for her children's education. Then the analysis team provided a recommendation for an approved credit ceiling of Rp.400,000,000.00 (four million rupiahs) in 3 (three) months with a guarantee of 3 (three) parcels of land with ownership rights. One is Freehold Title number 01881/Wonosari in the name of Plaintiff. And based on a statement letter Number: 69/Not/VII/2015 dated 15 July 2015, which was signed by the Notary and Land Deed Official, stating that the three plots of land with ownership rights certificates were in the process of selling and buying back the names of Defendant I.

Condition of Economy

Condition of Economy, namely analyzing the economic situation of prospective debtors, whether it is possible to give credit by the bank or not. Based on the survey team, the debtor has a Liquefied Petroleum Gas refuelling business in the Munkid area, Magelang, so according to the creditor, the debtor's condition allows for credit.

According to Munir Fuady, quoted by Rachmadi Usman that banks providing credit, in addition to applying the 5C's principle, also use what is called the 5 P principle (18):

Party

The party is the central point that is considered in every credit granting. For this reason, the lender must obtain the "trust" of the parties, the debtor. In this case, the creditor has made a survey team of 4 (four) people and has surveyed debtors.

Purpose

The goal is to see whether will use the credit for positive things that can increase the company's income and must also be monitored so that the distinction is intended for the purpose. The debtor submits a credit application for the Elpiji Bulk Filling and Transportation Station operational permit acceleration so that the business can run.

Payment

It must also consider whether the source of credit payments from the prospective debtor is sufficiently available and secure enough so that it is hoped that the credit to be launched can be repaid by the debtor concerned. The Elpiji Bulk Filling and Transportation Station business is a bonafide business because Liquefied Petroleum Gas fuel is needed by many people and is a basic need.

Profitability

Creditors must anticipate whether the profit the company will obtain is greater than the interest on the loan and whether the company's income can cover credit repayments, cash flow, etc. There is a survey team and credit analyst from the Bank, so everything has been considered.

Protection

Required protection against credit by the debtor company. For this reason, it is essential to pay attention to the protection of the company group, the holding company's guarantee, or the company owner's personal guarantee. For

collateral objects provided by the Debtor in Freehold Title, a Mortgage Certificate has to be installed so that creditors have protection for credit issued or are called preferred creditors.

Whereas in the legal considerations of the judge in the High Court Decision Number 23/PDT/2017/PT.YYK:

"Considering, based on this description it turns out that the loan application letter by the applicant does not include the day, date, month, year and is not signed by the applicant without a stamp and the process is very fast in just 1 (one) day, then this is a Bank Perkreditan Rakyat Gunungkidul has violated the prudential principle, namely violating the prudential principle in banking law so that the actions of Defendants I, II, III who were assisted by Co-Defendant I and Co-Defendant II constitute an unlawful act."

According to the author, the judge's legal considerations did not have sufficient grounds/reasons to state that the Bank Perkreditan Rakyat Gunungkidul did not apply the prudential banking principle. This is based on the legal considerations of the District Court judge that the photocopy of the Loan Application Letter dated 11 June 2015, is the name Debtor; the Photocopy of General Credit Analysis dated 14 June 2015; Photocopy of Credit Agreement Number: 09430/KSBR/BDG/VII/15 dated 15 July 2015, signed by Defendant I and Defendant II as Debtors and Defendant III as Creditors, so that the credit loan application already exists the date and timeframe from the credit application submitted to the approval of the credit application, which is then followed by the acceptance of the credit grant and the credit agreement, there is a grace period of approximately one month for the process of receiving the application. The process was speedy in the High Court judge's consideration that "the credit analyst part of Bank Perkreditan Rakyat Gunungkidul approved Defendant I credit application on 14 July 2015, which was followed up with a credit agreement between Defendant I and Defendant III on 15 July 2015 which then received credit approval also on 15 July 2015". According to the author, this was by the procedures and not too fast because before the application is approved, there is already a loan application, and a survey has been carried out on the debtor and the collateral object so that after the application is approved, the credit approval can be immediately implemented, followed by a credit agreement.

If a bank is declared to have violated the prudential banking principle in granting credit, it will not cancel or delete the existing credit agreement. According to Rachmadi Usman, Article 1381 of the Civil Code, which regulates how can be terminated, can also be applied to bank credit agreements. Of the ten ways mentioned in article 1381, in general, bank credit agreements must be deleted or terminated due to the following matters (18):

1. Payment
2. subrogatie
3. Renewal of debt
4. Debt meeting

Thus if the bank is said to have violated the prudential principle in granting credit, it will not cause the debtor's debt to be erased or the agreement to be canceled. Banks that violate the prudential regulation will affect the health of the bank. According to Sutan Remy Sjahdeini, quoted by Rachmadi Usman, the objective of applying the prudential principle is none other than for the bank to always be in good health, in other words, always to be liquid and solvent (18).

Validity of the Power of Attorney To Charge of Mortgage Rights made by the Land Deed Official with Objects that are still Based on the Sale and Purchase Preliminary Agreement and Followed by the Power Deed of Sale.

Mortgage rights are collateral rights to land for repayment of certain debts, which give priority to certain creditors over other creditors. In Article 1, point 1 of the Mortgage Law, it is stated that in the mortgage agreement, there are legal subjects related to the agreement on granting mortgage rights, each of which is mutually binding.:

1. The giver of the mortgage right, namely the person or party who guarantees the object of the Mortgage Right, namely an individual or legal entity that has the authority to carry out legal actions against the thing of the mortgage in question (Article 8 paragraph (1) Mortgage Law).
2. Holders of mortgage rights, namely people or parties who receive mortgage rights as collateral for the receivables they provide, namely individuals or legal entities who are domiciled as debtors (Article 9 Mortgage Law).

Encumbering Mortgage can be done in two ways, namely firstly the Mortgage giver comes directly to give it before the Land Deed Official by directly signing the Granting Deed Mortgage secondly Charge Mortgage by using Power of Attorney To Charge of Mortgage Rights as a basis for acting in Granting Mortgage Rights (7). The second method is used if the mortgagee cannot be present in person before the Land Deed Officials (in General Explanation number 7 Mortgage Law). Arrangements regarding Power of Attorney to Charge of Mortgage Rights are in Article 15 Mortgage, in Article 15 paragraph (1) states that:

"A power of attorney for Charge Mortgage must be made with a notarial deed or Land Dees Officials act and meet the following requirements:

- a. Does not contain the power to perform other legal actions than Charge Mortgage;
 - b. Does not contain the power of substitution;
 - c. Clearly states the object of the Mortgage, the amount of debt and, the name and identity of the creditor, the name and uniqueness of the debtor if the debtor is not the giver of the Mortgage."
- Salim HS. Define Power of Attorney to Charge of Mortgage Right:

"Power of Attorney To Charge of Mortgage Right is a letter made in front of and before a notary or Land Deed Official, which regulates the legal relationship between the power giver and the power holder, where the power giver gives power to the power holder to charge mortgage rights on land rights or property rights on apartment units which will be used as collateral for the debt" (6).

Power of Attorney To Charge of Mortgage Right must have perfect strength based on its substance and shape. Power of Attorney To Charge of Mortgage Right made by Land Deed Officials must comply with the provisions of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Registration Soil (1).

From the research results related to the validity of an authentic deed, Power of Attorney to Charge of Mortgage Right must meet formal requirements in making it, including (5):

- 1) Made before and before a notary or Land Deed Official;
- 2) It does not contain the power to perform other legal actions rather than charge mortgage rights.
- 3) Does not contain the power of substitution. According to this law, the notion of substitution is the replacement of a power of attorney through the court.
- 4) Include clearly:
 - a. Mortgage object;
 - b. The amount owed and the name and identity of the creditor; and
 - c. Name and identity of the debtor if the debtor is not the mortgagee;
- 5) Must be given directly by the mortgage right and must meet the requirements regarding the contents (Explanation of Article 15 Mortgage Law);
- 6) Irrevocable; and
- 7) It cannot be terminated for any reason unless it has been implemented; or because it has expired.

Suppose the Power of Attorney to Charge of Mortgage Rights does not fulfill the conditions required in Mortgage Law Juncto Perkaban Number 3 of 2012 in form and substance. In that case, the legal consequence is that the Power of Attorney to Charge of Mortgage Right is null and void, and the Land Deed Officials are prohibited from making Granting Deed Mortgage. The Power of Attorney to Charge of Mortgage Right made in this study is an authentic deed because it was made by and before an authorized official, namely the Land Deed Officials. In addition, the substance and form are also by applicable regulations because, in this case, a Mortgage Certificate has been issued by the Ministry of Agrarian Affairs and Spatial Planning or National Land Agency. Thus the validity of the Power of Attorney to Charge of Mortgage Rights as an authentic deed fulfills the formal requirements.

Regarding the material requirements for the validity of an authentic deed, in this case, it relates to the fact of an agreement because basically, Power of Attorney to Charge of Mortgage Right is made in the form of a contract, namely between the authorizer and the authorized person to carry out a specific action or business. The legal terms of the agreement are contained in Article 1320 of the Civil Code (17):

- 1) Agree with those who bind themselves.
 - 2) Capable of making an agreement.
 - 3) Regarding a certain matter.
 - 4) A lawful cause.
- a. Conditions for the validity of the agreement.

The signing of the Power of Attorney to Charge of Mortgage Rights between the Debtor and the Creditor (represented by the Main Director of the Bank Perkreditan Rakyat Gunungkidul before the Co-Defendant I (Notary

and Land Deed Official) means that they have agreed to bind themselves to a power of attorney agreement, without any elements of misrepresentation or mistake, aspects of coercion or fraud.

b. Relating to the Validity of the Proficiency Agreement.

Everyone is considered capable of taking legal action as long as it is not otherwise determined by law, as stipulated in Article 1329 of the Civil Code. Debtors and creditors are people who are capable of making engagements. The debtor is old enough and not under guardianship, while the principal director of Bank Perkreditan Rakyat Gunungkidul represents the creditor.

c. Relating to the Terms of the Validity of a Certain Matter Agreement

Requirements for some issues are requirements regarding particular objects of an agreement(5). Based on the research data, the collateral object that became the object of the dispute was only carried out by the Deed of Sale and Purchase process on 30 July 2015. However, the object was already used as collateral by the debtor (Defendant I and Defendant II) based on the Credit Agreement dated 15 July 2015, with Power of Attorney To Charge of Mortgage Rights being made on 15 July 2015. The new collateral object was made by Sale and Purchased Preliminary Agreement and Power Deed of Sale on 14 July 2015, so that when assembled the Credit Agreement and Power of Attorney To Charge Of Mortgage Right, had not transferred the collateral object, it was still on behalf of the Plaintiff. Therefore, in the High Court Decision, the object guaranteed in the Power of Attorney To Charge of Mortgage Rights is invalid and has no legal force based on the judge's legal considerations:

"Considering that based on evidence Deed of Sale and Purchase of the object of case Number 259/2015 made before Notary and Land Deed Officials (Co-Defendant I), which was made on Thursday, 30 July 2015, when connected with evidence in the form of a Power of Attorney Deed Charge Mortgage Number 132 which created to Notary and Land Deed Officials dated 15 July 2015, along with the attachment of such fingerprint evidence is against the law and the law because, on 15 July 2015, the land certificate object of the dispute still belongs to the Plaintiff thus the issuance of the Mortgage Certificate on behalf of Defendant I is invalid and has no legal force."

The existence of the making of the Sale and Purchase Preliminary Agreement paid off, followed by the deed of power of attorney to sell, shows that there is already confidence in the notary that, at that time, a sale and purchase had taken place. Buying and selling adhered to in civil law is only obligatory, meaning that the new sale and purchase agreement places reciprocal rights and obligations between the two parties. The seller is obliged to surrender the ownership rights to the goods he sells and give him the right to demand payment of the agreed price. The Buyer is obliged to pay the price of the goods in return for his right to demand the transfer of ownership rights to the goods he purchased. In other words, buying and selling which is adhered to in the civil book, buying and selling have not transferred property rights (16). Because the Civil Code system itself distinguishes two legal actions that give rise to an "obligatoir" agreement and a legal action that gives rise to a "Levering" agreement for the delivery of the agreed object, so that every legal action taken does not necessarily result in a transfer of rights over something, which brings legal consequences other (12).

Land which is an immovable object for its transfer must be legally surrendered (Juridis levering). The submission must carry out with a deed drawn up by the Land Deed Officials. The transfer of land rights it has regulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Juncto Land Registration and Article 2 of Government Regulation Number 37 of 1998 concerning Regulations Position of the Land Deed Officials, which in essence, for the transfer of land rights must carry out with a Deed of Sale and Purchase made by Land Deed Officials.

According to Herlien Budiono Sale and Purchase Preliminary Agreement is an aid agreement that functions as a preliminary agreement in an accessible form(4). According to Agus Pandoman, if an agreement has its reasons (not dependent on other agreements), then an agreement like this is a principal agreement, and vice versa; if an agreement whose reasons make depends on the existence of another agreement, then an agreement like this is an agreement on assistance or called Pactum De Contrahendo (11). A Sale and Purchase Preliminary Agreement is a preliminary agreement (pactum de contrahendo) before the main agreement because the Sale and Purchase Preliminary Agreement is made depending on the existence of another agreement and is carried out before the main agreement is made. The main agreement, in this case, is a Deed of Sale and Purchase. In addition to the usual promises, the Sale and Purchase Preliminary Agreement also includes the right to give power of attorney to the buyer. This happens if the seller is unable to attend the signing of the Deed of Sale and Purchase before the Land Deed Officials (4). Thus the deed of power of attorney here is the leverage instrument.

However, based on the legal considerations of the judges of the Supreme Court of the Republic of Indonesia at the cassation level, "when the object of the dispute is charged with a mortgage, the object of the dispute is in a clean condition, supported by valid documents drawn up before the notary a quo". Based on these considerations, they do not see how the process of making Power of Attorney to Charge of Mortgage right is the basis for making Granting Deed Mortgage. However, it only looks at when the registration of the imposition of mortgage rights will carry out, that the object of mortgage rights is already in the name of the mortgage holder and the object of guarantee after checking is clean. Mortgage Right can be said to be goods or objects that will exist, and this is by the provisions of Article 1334 paragraph (1) Civil Code "goods that will only exist in the future can become the subject of the agreement." Therefore, the process of imposing mortgage rights with Granting Deed Mortgage made based on the Power of Attorney to Charge of Mortgage Rights with a newly created collateral object based on the Sale and Purchased Preliminary Agreement and Power Deed of Sale is legal and Power of Attorney To Charge of Mortgage Right here is an obligatoir agreement, because it just creates the rights and obligations of the parties. After the Power of Attorney to Charge of Mortgage Rights was made on July 15 July 2015, continued to make a Deed of Sale and purchase on 30 July 2015, for the collateral object, so that when made the Granting Deed Mortgage on 24 August 2015, the collateral object was already in the name of the Mortgage Giver and this is by Article 8 paragraph (1) Mortgage Law. Therefore, the authority in the process of burdening the Mortgage right already exists with the Mortgage giver at the time the Mortgage registration carry out (Article 8 paragraph (2) Mortgage Law). The Elucidation of Article 8 Paragraph (2) also states that "because the birth of the Mortgage is when the Mortgage is registered, the authority to take legal action against the Mortgage object must be with the Mortgage giver at the time of making the Mortgage land book. For this reason, we must prove the validity of this authority at the time the Mortgage in question is registered. This can see in the General Explanation of the number 7, namely that:

1. The process of imposing a Mortgage carry out through two stages of activity, namely: the stage of granting a Mortgage, by making a Granting Deed Mortgage by the Land Deed Officials, which is preceded by a guaranteed loan agreement,;
2. The stage of registration by the Land Office, which is when the Mortgage is imposed.

Thus, when the mortgage is about to be registered, the collateral object is already in the name of the mortgage right, the result of checking the collateral object is in a clean condition and the Deed made for registration is Granting Deed Mortgage made by the Land Deed Official. This is by the provisions in Article 2 paragraph (2) of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Official and Article 44 paragraph (1) of Government Regulation 24 of 1997 concerning Land Registration. Therefore can continue registration until the Mortgage Certificate is issued.

d. Related to the legal requirements of a causal agreement that is lawful

A lawful cause is the purpose and content of the agreement itself, which may not contradict the law, decency, and public order (9). That the author only sees the cause from the point of view of making the Power of Attorney To Charge of Mortgage Right between the Debtor and the Creditor, which is not against the law, decency, or public order and has a lawful cause.

Conclusion:-

1. Applying the prudential banking principle in extending credit to Decision Number 23/Pdt/2017/PTYYK is inappropriate because the prudential principle is based on 5 C's and 5P. Credit disbursement that is too fast, from approval of credit application to approval of credit granting, is not a violation of the prudential principle. Violating the prudential principle will only affect the bank's health and will not void the credit agreement.
2. The validity of Power of Attorney to Charge of Mortgage Rights made by Land Deed Official. with objects still based on the Sale and Purchase Preliminary Agreement followed by Power Deed of Sale, according to District Court Decision Number 25/Pdt.G/2016/PN.Wno, Supreme Court Decision Number Number 771K/Pdt/2018 and Judicial Review Decision Number 134 PK/Pdt/2020 is a valid deed and has binding force. This is based on Article 1334, paragraph (1) of the Civil Code relates to goods that will exist. Therefore, after the Power of Attorney to Charge of Mortgage Rights is made, a transfer of rights must carry out by Article 37 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration Juncto Article 2 paragraph (2) Government Regulation 37 of 1998 as amended by Government Regulation Number 24 of 2016 concerning Regulations Position of the Land Deeds Official so can make Granting Deed Mortgage.

Suggestion:-

Giving credit is the same as giving some of the bank's assets to other parties; therefore, banks must always be careful when giving some of these assets. Lending must carry out by applicable procedures and careful calculations, especially on the character side (related to the debtor's intention to request a credit facility) and the debtor's object to be guaranteed by the debtor (a form of security as a measure to reduce risk). Notaries and Land Deed Official must be careful in making Power of Attorney to Charge of Mortgage Right whose object is still based on the Sale and Purchase Preliminary Agreement (not yet Deed Of Sale and Purchase) even though with Sale and Purchase Preliminary Agreement Paid followed by the Power Deed of Sale, because according to the provisions of our land law, the person concerned is not yet the owner of the collateral object, let alone still there is a possibility that the sale and purchase as referred to in the Sale and Purchase Preliminary Agreement may not carry out as it should.

Acknowledgment:-

The authors thank those who have helped and supported to compile of this journal. Moreover, special thanks are addressed to the lecturers of the Faculty of Law at Jenderal Soedirman University who have supported in finishing this article.

References:-

1. Adjie, Habib. (2019). Pemahaman Terhadap Bentuk Surat Kuasa Membebaskan Hak Tanggungan (SKMHT). Edisi Revisi. Bandung : Mandar Maju.
2. Aziz, Syahid Suhandi. Bambang Utoyo. Analysis of the Implementation of Prudential Banking Principle in Overcoming Problematic Financing Management in Muamalat Indonesia Banks in 2013-2017, International Journal of Innovative Science and Research Technology, Volume 4, Issue 4, April-2019. 337-342
3. Budiono, Herlien. (2009). Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan. Bandung: Citra Aditya Bakti.
4. Budiono, Herlien. (2016). Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan Buku Kesatu. Bandung : Citra Aditya Bakti.
5. Fuady, Munir. 2014. Konsep Hukum Perdata. Jakarta : Raja Grafindo Persada.
6. HS, Salim. (2016). Teknik Pembuatan Akta Tanah Pejabat Pembuat Akta Tanah. Jakarta: Rajawali Pers.
7. Hermansyah, (2008). Hukum Perbankan Nasional Indonesia. Cet, Ke IV. Jakarta : Kencana Prenada Media Group.
8. Kanter, Anjel Ria Meiliva., Moch Bakri. Imam Koeswahyono. Keabsahan Jual Beli atas Objek Jaminan Hak Tanggungan oleh Bank yang dilakukan Tanpa melalui Mekanisme Lelang, Jurnal Universitas Brawijaya Surabaya : Perspektif Hukum, Volume. 17 No. 1 Mei 2017. hal 47-64.
9. Marzuki, Peter Mahmud. (2005). Penelitian Hukum (Edisi Revisi). Jakarta: Kencana Prenada Media Grup.
10. Meliala, A Qirom Syamsudin. (1985). Pokok-pokok Hukum Perjanjian Beserta Perkembangannya. Yogyakarta : Liberty.
11. Mulyati, Etty. The Implementation of Prudential Banking Principles to Prevent Debtor with Bad Faith. Padjadjaran Journal of Law Volume 5 Number 1 Year 2018. 89-108.
12. Pandoman, Agus. (2017). Perbuatan Hukum Tertentu dalam Sistem Hukum Agraria di Indonesia. Jakarta : Raga Utama Kreasi.
13. Putera, Andika Persada. The Prudential Principle As The Basis In Implementing Banking Transaction. Hang Tuah Low Jurnal, Volume 4 Issue 2. Oktober 2020. 52-60
14. Sembiring, Sentosa. (2000). Banking Law. Bandung: CV. Mandar Maju.
15. Soekanto, Soerjono dan Sri Mamudji. 1985. Penelitian Hukum Normatif (Suatu Tinjauan Singkat). Jakarta: Rajagrafindo Persada.
16. Soimin, Soedharyo. (2004). Status Hak dan Pembebasan Tanah. Jakarta: Sinar Grafika.
17. Subekti. (1963). Hukum Perjanjian. Jakarta: Intermasa.
18. Usman, Rachmadi. (2001). Aspek-Aspek Hukum Perbankan di Indonesia. Jakarta : Gramedia Pustaka Utama.
19. Usman, Rachmadi. (2008). Hukum Jaminan Keperdataan. Jakarta: Sinar Grafika.