The Provision of Lend Based on Collateral in the Form of Inherited Objects on Behalf of the Heirs in Relation to the Principle of Legal Certainty

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Abstract: Financial limitations to make ends meet, allow everyone to borrow some money from individuals and banking institutions. In granting credit to debtors, the bank requires the debtor to provide collateral. In practice, there is land and/or buildings which are objects of inheritance on behalf of the testator which are used as collateral when applying for credit to the bank. This study aims to understand and examine legal certainty for banks as creditors if the debtor uses the object of inheritance as collateral in applying for credit. In this study the authors used a legal research method that used a normative juridical research type, namely research that was intended to conduct a study of the application of rules or norms in positive law. The data source used by the author in this study is secondary data obtained from library research. The results of the research show that collateral is an important requirement in granting credit. Collateral is the bank's belief in the ability and ability of the debtor to pay off his debt obligations according to the agreement, so that the bank should have strict criteria for receiving guarantees from the debtor. behind the first name on behalf of the heirs in order to provide legal certainty for the bank as a creditor.

Keywords: Granting Credit, Collateral, Object of Inheritance on Behalf of the Heir, Legal Certainty

INTRODUCTION

Everyone has different needs in life that they must fulfill, including clothing, food, and shelter. Financial limitations to meet the needs of life, allow everyone to borrow some money from individuals or banking institutions. According to Law Number 10 of 1998 on the Amendment to Law Number 7 of 1992 on Banking, a bank is a legal institution that gathers money from the public in the form of deposits and distributes it to the public in the form of credit or other forms in order to enhance people's lives.

People might seek for credit at banks if they require loans for money. The definition of credit in question is regulated in Article 1 paragraph 11 of Law Number 10 of 1998 concerning Banking which states that: "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan and borrowing agreement between a bank and another party that requires the borrower to repay his debt after a period of time with interest." Banks in providing credit to debtors will conduct an assessment of character (character), ability (capacity), collateral (collateral), capital (capital) and business prospects (condition) known as the 5C principle.

According to Kamsir's opinion, there are several benefits of providing credit that can be felt as a debtor, namely that it can be an increase in business capital, debtors can also get the opportunity to obtain other product and service facilities offered by the creditor, which in this case is the bank, while the benefit for the bank is that the bank gets income from the interest received from the debtor and the bank can also market bank products and services (Kamsir, 2014).

Article 1131 of the Civil Code (KUHPerdata) states that: "All the property of the debtor, both movable and immovable, both existing and new ones that will exist in the future, become collateral for all individual obligations." In providing loans to debtors, banks require collateral from debtors. Guarantee is an agreement between the creditor and the debtor, in which the debtor promises to return some of his property according to the applicable laws and regulations, if the debtor's debt is delayed within the specified time (Supramono, 1996). A guarantee in the form of an unrestricted right to an object known as material collateral is a promise that follows the object at all times, can be used to defend against anyone, and can be transferred at any moment (Salim, 2017). Meanwhile, immaterial (individual) guarantees are guarantees that give rise to a direct relationship to certain individuals that can only be maintained against certain debtors against the debtor's property in general (Muhammad, 2018). In general, the form of collateral used in granting credit is land and/or buildings which are included in the material guarantee category.

In practice, there is land and/or buildings in the name of the heir that are used as collateral when applying for a loan to the bank. Blood relatives, both legally and without marriage, as well as the husband or wife who lives the longest are eligible to inherit under Article 832 of the Civil Code. Inheritance has elements that must be fulfilled in order to be called an inheritance event, namely the heir, the inheritance and the heirs (Haliman, 2003). The heir is the person to whom the inherited property is bequeathed, and the heirs are the husband and wife who live the longest as well as the blood relatives who are married or not. In general, the property that is transferred from the testator to the heirs is the subject of inheritance law. This property may take the
shape of real estate, a variety of already-existing items, and/or bills. The object of inheritance in the name of the testator which is used as collateral for the repayment of the debt of the heirs as debtors to the bank as a creditor can cause legal uncertainty. A Deed of Granting Mortgage Rights (APHT) cannot be made and the Land Office cannot issue a Mortgage Title Certificate if the land title certificate used as collateral to settle the debts of the heirs as debtors is still in the testator’s name and has not been moved to the name of the heirs. As a result, if the debtor defaults, the bank as a creditor cannot instantly execute the collateral object.

RESEARCH METHODS
This study employs a legal research technique known as normative juridical research, which is research designed to examine how rules or norms are used in positive law. The author employed secondary data from library research as the basis for this study.

RESULTS AND DISCUSSION
Article 1 point (2) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, explains that: "Bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the lives of the people." There are 3 main functions of banks, namely:

1. Banks serve as a vehicle for obtaining and distributing money to the general public.
2. The bank’s role is to raise public money for investments in the nation’s growth.
3. The bank serves as a business that offers financial services to the local populace so that they can feel secure in their ability to save money.

Based on the definition of bank above, therefore the bank has a function as an intermediary institution which in carrying out its function must maintain public trust by applying the principle of prudence (Putera, 2020). Banks in providing credit to debtors are based on the belief that the debtor can repay the credit at the agreed time between the bank and the debtor, in accordance with the credit agreement. The credit agreement is the main agreement, because the credit agreement contains the need for collateral in the form of something or objects that are directly related to the requested credit, while the guarantee agreement is an additional agreement (Badruzman, 1998).

According to (Sari, 2010) The procedure for granting credit and credit assessment in the banking world between one bank and another is generally not much different. In granting credit the bank will conduct an assessment of Character, Capacity, Capital, Condition, Collateral known as the 5C principle. Based on the 5C principle, the bank conducts a creditworthiness assessment through a credit analysis officer based on the data obtained, what is meant by 5C is as follows:

1. Character
   Character is the state of character or nature of the debtor, so that the bank can examine whether the prospective debtor has an honest character and tries to fulfill his obligations.
2. Capacity
   Capacity is the ability of prospective debtors to repay loans. To measure it, creditors can examine the debtor’s ability in management, finance and marketing.
3. Capital
   Capital is the amount of own capital owned by prospective debtors or seeing how much capital is invested, the debtor will be seen as more serious in running his business.
4. Collateral
Collateral is something that is pledged based on an agreement between the customer and the bank in case the debtor does not repay the loan. The value of the collateral is usually higher than the value of the loan.

5. Condition of economy

The economic situation of prospective debtors in the present and also in the future. This economic condition is related to the prospects of prospective debtors.

In the process of granting credit, the bank sets several criteria which are the principles of granting credit, one of which is collateral. Apat said that the guarantee is juridically legal certainty of repayment in a credit agreement or certainty of realization of an achievement in an agreement. This legal certainty is by binding a collateral agreement (Rianto, 2010). The word "certainty" implies "provision; decision," and when it is paired with the word "law," it is referred to as "legal certainty," which is defined as a national legal framework that can ensure each citizen's rights and obligations (Remaja, 2014).

The principle of legal certainty is a guarantee that a law must be carried out in a new or appropriate way (Wijayanta, 2014). Legal certainty is one of the goals of law in order to realize justice, so that with legal certainty, every person and legal entity in Indonesia can be held accountable for all their actions. (Mertokusumo, 1999) defines "Legal certainty is a protection for justice seekers against arbitrary actions which means that someone will be able to get something that is expected in certain circumstances." According to Sudikno Mertokusum, legal certainty is a guarantee that the law is upheld, that those who are entitled under the law can acquire their rights, and that the judgment can be carried out. Society expects legal certainty since it will make society more orderly.

According to (Sangsun, 2009) In practice, land and/or buildings that become inherited objects can be used as collateral in applying for credit.

However, there are a number of procedures that must be followed if you wish to utilize an inherited item as collateral. One of these procedures is registering the transfer of rights due to the successor, which is covered in Government Regulation Number 24 of 1997 about Land Registration.

a. For land parcels that have been registered and ownership rights over apartment units that are required by the terms of Article 36 of Government Regulation No. 24 of 1997, the person who inherits the land rights or ownership rights over apartment units concerned must submit to the Land Office, the certificate concerned, the death certificate of the person whose name is recorded as being the heir.

b. Documents referred to in Article 39 paragraph (1) letter b of Government Regulation No. 24 of 1997 must also be submitted for inherited land portions that haven't been registered.

c. If there is only one person receiving the inheritance, the evidence letter designating that person as the heir must be used to register the transfer of rights to that person.

d. When the transfer of rights is registered, a deed of division of inheritance that states that the land rights or ownership rights over an apartment unit will be transferred to the appropriate recipient of the inheritance based on the evidence letter as the heir and the deed of division of inheritance must be included if the recipient of the inheritance is more than one person.

e. Inheritance in the form of land rights or property rights over a flat unit that must be shared among several recipients of the inheritance in accordance with the deed
of division of inheritance, or in the event that there is no deed of division of inheritance when the deed of division of inheritance is registered, the transfer of rights shall be registered to the entitled recipients of the inheritance as their joint rights based on the evidence letter as heirs and/or the deed of division of inheritance.

This is done to give full authority to the debtor, who in this case is the heir, to become the grantor of the Mortgage so that the debtor can guarantee the object of inheritance, in accordance with Article 8 paragraph 1 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land which states that: "The Mortgagor is an individual or legal entity that has the authority to carry out legal actions against the relevant object of Mortgage Rights."

In pledging a plot of land, there are several processes that must be carried out. If land is used as collateral in a credit agreement, a Deed of Granting Mortgage Rights will be made, which is the basis for granting Mortgage Rights. Mortgage Rights according to Article 1 paragraph 1 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land are: "A security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or excluding other objects that are an integral part of the land, for the repayment of certain debts, which gives priority to certain creditors against other creditors." In the sense that if the debtor defaults, the creditor holding the Mortgage Rights has the right to sell through a public auction the land pledged as collateral in accordance with the provisions of the relevant laws and regulations, with prior rights over other creditors.

However, because in practice it is found that the object of inheritance has not been transferred from the heir to the heir, SKMHT (Surat Kuasa Membebankan Hak Tanggungan) is made to become the basis for making APHT. SKMHT is a letter stating the granting of power or delegation of power from the grantor of the mortgage right to the recipient of the mortgage right, where the grantor of the mortgage right is the debtor and the party receiving the power of attorney generally acts as a creditor (Yusuf, 2018). As stipulated in Article 15 of the UUHT (Mortgage Rights Law), if the predetermined conditions are not met, it can result in the power of attorney concerned cannot be used as the basis for making APHT and Article 15 paragraph (1) of the Mortgage Rights Law also states that SKMHT must be made by notarial deed or PPAT deed. SKMHT is also limited in duration with the aim that the Mortgage Rights can be implemented immediately so as to create legal certainty and legal protection for debtors and creditors. The limitation of the SKMHT period for registered land is determined in Article 15 paragraph (3) of the UUHT (Mortgage Rights Act) which states that: "A Power of Attorney to Impose Mortgage Rights regarding land rights that have been registered must be followed by the making of a Deed of Grant of Mortgage Rights no later than 1 (one) month after it is given."

Therefore, if the certificate of land rights used as collateral to repay the debts of the heirs as debtors is still in the name of the testator and has not been changed into the name of the heirs, a Deed of Granting Mortgage cannot be made, causing legal uncertainty for the bank as a creditor. If a Deed of Granting Mortgage is not made, the Land Office cannot issue a Mortgage Title Certificate so that the bank as a creditor cannot immediately execute the collateral object if the debtor defaults.

The Mortgage Rights Certificate itself is proof that a person has a security right
encumbered on land rights owned by the guarantor, which gives priority to the holder of the Mortgage Rights over other creditors. The Mortgage Rights Certificate also has an important function in carrying out the execution of the Mortgage Rights if the debtor defaults, this is because the Mortgage Rights certificate contains the irah-irah "For the Sake of Justice Based on God Almighty" so as to make the Mortgage Rights certificate have the same executorial power as a court decision that has permanent legal force, as stipulated in Article 14 paragraph (2) and paragraph (3) of the Mortgage Rights Law.

CONCLUSION

Based on the description above, it can be concluded that in applying for credit to a bank, there are conditions that must be met, one of which is the existence of collateral. In practice, there are debtors who apply for credit to the bank by providing collateral in the form of a plot of land which is the object of inheritance. The problem is that the pledged land title certificate has not been reversed from the heir to the name of the heir, thus complicating the guarantee execution procedure if one day the debtor experiences bad credit or default and does not provide legal certainty for the bank as a creditor.

Collateral is the bank's belief in the ability and ability of the debtor to pay his debt obligations in accordance with the agreement, so the bank must have strict criteria for accepting collateral from the debtor. If the bank receives collateral in the form of a piece of land that is the object of inheritance, then the certificate must first be reversed into the name of the heir so that it does not cause problems in the future. Problems may occur if the credit disbursement has been made by the bank but the name change process has not been completed, while the debtor has bad credit, making it difficult for the bank to execute the collateral, or conduct a collateral auction, because the certificate is still in the name of the deceased heir. Therefore, the precautionary principle must be applied by the bank as the recipient of the collateral.

REFERENCES

Hukum Online “Tentang Sertifikat Hak atas Tanah dan Sertifikat Tanggungan”
https://www.hukumonline.com/kl_inik/a/tentang-sertifikat-hak-atas-tanah-dan-sertifikat-hak-tanggungan- l518b9e0d8a7a8/ , diakses pada tanggal 15 Desember 2022 pukul 02.58 WIB.
Kitab Undang-Undang Hukum Perdata.
Indonesia dalam Buku Hukum Jaminan Indonesia”, Elips, Jakarta.
Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan Atas Tanah Berserta Benda-Benda yang Berkaitan dengan Tanah.