

Legal Power of the Power of Attorney to Impose Mortgage Rights (SKMHT) based on the sale and purchase agreement (PPJB) (Case Study at PT. Bank Tabungan Negara Pekanbaru Branch)

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Abstract: *In the Credit Agreement in banking, there is a legal guarantee to provide legal protection for the parties, one of which is the dependent rights contained in the Power of Attorney Charging Dependent Rights (SKMHT). In practice, the object of warranty contained in the Power of Attorney imposes dependent rights (SKMHT) contrary to Article 15 of Law No. 4 of 1996 on Dependent Rights. This research aims to find the subject matter, namely; How the Power of Attorney Process imposes dependent rights on subsidized home owner's credit at PT. Bank Tabungan Negara Pekanbaru Branch and How the Legal Power of Attorney Imposes Dependent Rights on Subsidized Home Owner Loans at PT. Bank Tabungan Negara Pekanbaru Branch. This legal research uses an empirical juridical approach that focuses on analysis and study in banking practices that are associated with the object of guaranteeing the rights of dependents by looking at the prevailing legal norms then linked to the legal facts contained in the field.*

Key Words: *Legal Force, Power of Attorney To Charge Dependent Rights, Binding Agreements on Sale and Sale.*

1. INTRODUCTION:

Banks are financial intermediary institutions whose main activity is to collect funds from the public in the form of loans.

Article 1 point 11 of the Banking Law is formulated that credit is the provision of money or equivalent claims, based on an agreement or loan agreement between the bank and another party which requires the borrower to pay off its debt after a certain period of time by giving interest. To get credit for land and buildings, it is necessary to have a credit agreement. As a form of credit agreement, the fulfillment of the subjective requirements for the provision of guarantees is the Mortgage Right, if the subjective requirements are fulfilled, the validity of the agreement as stipulated in Article 1320 of the Civil Code. Given the importance of ensuring the distribution of these funds, it is necessary to have adequate guarantees in providing protection and legal certainty for credit providers and recipients as well as other interested parties. Therefore it is necessary to regulate the relationship of these parties into a balanced regulation, which in this case is specifically regulated in Law Number 4 of 1996 concerning Mortgage Rights. hereinafter referred to as the Mortgage Rights Law.

Basically, the granting of a mortgage must be carried out by the owner himself in accordance with the prevailing general principle that basically legal actions must be carried out by those with their own interests. Thus it does not mean that this right cannot be excluded if a situation demands it. The granting of mortgage itself only binds a third party, when the mortgage has been registered and announced.

2. CONCEPTUAL FRAMEWORK:

a. Strength Of Law

Strength ThePower of the Agreement is based on the form of the agreement, whether in written or oral form, but except on the fulfillment of the terms of the agreement based on Article 1320 of the Civil Code, meaning that as long as the agreement is in accordance with the terms of the agreement, the agreement will have legal force bind.

b. Deed of Charge of Liability (SKMHT)

In the Law of Liability Law of Deed of Charge of Liability (SKMHT) is the power given by the Giver of Liability as a giver to a specific authority to charge a thing with a Deed of Liability.[1]

c. Sale and Purchase Agreement (PPJB)

A Sale and Purchase Agreement (PPJB) is an agreement made by the prospective seller and prospective buyer of a land / building as a preliminary binding before the parties make a Sale and Purchase Act (AJB) before the Land Act Making Office (PPAT).

d. PT Bank Tabungan Negara, (Persero), Tbk (BTN)

PT Bank Tabungan Negara, (Persero), Tbk (BTN) is a State Owned Business Entity (SOE) operating in the field of Banking. BTN Bank has become a Bank that serves and supports the financing of the housing sector through three main products, individual banking, business and sharia.[2]

3. THEORITICAL FRAMEWORK:

a. Covenant Theory

Juridical Agreement is regulated in the Civil Code (*Burgerlijk Wetboek*) Book III in Article 1313 which states that an agreement is an act whereby one or more people bind themselves to one or more people.

b. The Theory of Legal Certainty

According to Rene Descartes, a Frenchman who argues that: "A legal certainty can be obtained from the method of sanctions imposed on legal subjects, both individuals and legal entities, which emphasizes the process orientation of the implementation process not on the results of the implementation. Certainty provides clarity in carrying out legal actions during the execution of the contract in performance even when the contract is in default." [3]

4. LITERATURE REVIEW:

Definition of credit according to Article 1 paragraph (11) of Law Number 10 of 1998 concerning Banking "Credit is the provision of money or an equivalent claim, based on a loan-borrowing agreement or agreement between the Bank and another party which requires the borrower to repay the debt after the certain time by giving flowers."

The sale and purchase according to Article 1457 of the Civil Code is a reciprocal agreement in which one party (the seller) promises to give up property rights over an item, while the other party (*the buyer*) promises to pay a price consisting of an amount of money in exchange for the acquisition of rights. property.[4]

Sales and purchase agreements that are born generally are due to obstacles or there are several requirements stipulated by law relating to the sale and purchase of land rights, such as: obstacles in the settlement of sale and purchase transactions of land rights or certificates are in the process of being processed etc., while the sale and purchase agreement arising from the law, for example, the sale and purchase transaction between the parties has been paid off, then a sale and purchase deed (AJB) can be made signed by the seller and the buyer before the Land Deed Making Official (PPAT).

Basically, the granting of a mortgage must be attended and carried out by the guarantor of the security right as the party authorized to carry out legal actions to impose mortgage rights on the object that is used as collateral. However, if it is really necessary and unable to do so, then his presence to provide mortgage rights and sign the APHT can be empowered to other parties.

5. METHOD:

The method used in this research is juridical empirical, namely research that focuses on analysis and studies in the community.

6. DISCUSSION:

If you look at the provisions of Article 10 paragraph (3) of the Mortgage Rights Law and its explanation, then at the formal legal level it is possible to make proof of girik, detail and the like used as collateral for debt, but at the operational level of the bank it is difficult to accept such evidence. This is the problem, because in reality PT. Bank Tabungan Negara Pekanbaru Branch at the time of the credit agreement based on the Agreement of Sale and Purchase Agreement (PPJB), the master certificate which is still registered in the name of the developer (*developer*) and has been bound with mortgage rights through a credit agreement / construction house. Objects with master certificates that have been registered are repainted in the SKMHT. Based on Article 15 paragraph (1) letter c describes the clear inclusion of the object of the Mortgage, in this case the Notary / PPAT who is authorized to carry out the registration process of the mortgage must explain in detail the object which is the right of the dependent, but in reality the master certificate has been tied with a guarantee of the mortgage, it is loaded back into the SKMHT, where the certificate is in the process of being split, has not paid the sale and purchase tax, and must have roya exhaust before the name of the certificate is reversed.

In theory, the date when taking the SKMHT deed number should also match the date when the Deed of Sale and Purchase number was taken. Furthermore, do not issue a copy of SKMHT beforehand until the certificate has been completed in the breakdown and removal of roya. This is because the objects contained in the SKMHT are objects that have been registered or are in the registration process, according to the time of the credit agreement. This also relates to the period owed in the credit agreement.

7. ANALYSIS:

A. The process of issuing Power of Attorney to Charge the Liability (SKMHT) on Home Ownership Credit (KPR) Subsidy at PT. Bank Tabungan Negara Pekanbaru Branch

The process of registration of this liability is as a bridge for the existence of debt bonding between debtors and creditors. If the grantor of liability can not appear in front of the Notary / PPAT, then the grantor of liability can use the Deed of Charge of Liability (SKMHT) in the form of an authentic act and must meet the conditions. Pursuant to Article 51 of the Basic Agrarian Law hereinafter referred to as UUPA, liability rights shall be regulated by law, namely Law No. 4 of 1996 on Liability Rights hereinafter referred to as UUHT on land rights and land-related matters, e.g. a national security law is realized, as mandated in Article 51 of the UUPA. [5]

For a person who will receive the right of liability, must pay attention to the provisions of Article 8 paragraph (2) UUHT which determines, that the authority to carry out legal acts against the object of liability as referred to in Article 8 paragraph (1) UUHT must be with the Grantor of Liability at the time of registration the right of liability is exercised. The authority to prosecute against the object of liability is at the time of registration of the liability, then the authority to prosecute against the object of liability is required by the grantor of liability at the time of making the book of land of liability, therefore the validity of that authority must be proved at the time of registration the rights of the dependent concerned.

Analysis of subsidized mortgage agreements in the PPJB contract which if in the period of the debtor's credit has a bad credit then SKMHT can not be paired in APHT due to the difference of the guarantee object. The object described in SKMHT PPJB contract is the object of guarantee of the master certificate. If an agreement does not meet the subjective conditions, then the agreement can be revoked, while the SKMHT made by both parties does not meet the objective conditions of the legal act performed that is "certain things" contained in Article 1320 KUHPdata about the legal terms of the agreement explains that if in the "object of agreement" is not clear then the agreement is void for the sake of law.

B. The Law Enforcement of the Power of Charge of Charge of Liability (SKMHT) on Home Ownership (KPR) Subsidy credit at PT. Bank Tabungan Negara Pekanbaru Branch

The purpose of the liability is to provide a strong guarantee for the creditor who is the holder of the liability to be preceded by other creditors. If the liability of the liability is possible to be seized by the court, then it means the court ignores and even negates the preferred position of the creditor of the liability holder. The assertion in the law of liability law that the right of liability cannot be confiscated, but can provide legal certainty to all parties. [6]

Based on Article 11 of the Regulation of the Minister of Finance Number 93 / PMK.06 / 2010 also states that the formal legality of the subject and the auction object must be met, that the auction object must be clear. The object of guarantee that the burden of liability preceded by the granting of SKMHT for auction must be in accordance with the certificate number. For the installation of APHT, the guaranteed object must be in accordance with what object obtained by the debtor at the time of the mortgage agreement agreement and the legal issue is the object made in SKMHT is a master certificate then for installation from SKMHT to the Liability Grant Act (APHT) is not can be done, while for auctions with legal consequences can not have the force of execution because the object of credit guarantee is considered to be legally defective.

Charge of liability also has several weaknesses, including the SKMHT deadline to be followed up as APHT before issuing a certificate of liability and the consequences if this SKMHT term is violated and the security object in this Mortgage Mortgage is bound in 2 (two) SKMHT then the SKMHT becomes void for the sake of law. This is very detrimental to creditors since the Bank in its credit agreement explicitly states the land that will be guaranteed and granted by SKMHT but can not be installed liability because SKMHT has matured and has violated Article 15 paragraph (1) on the assertion of security objects in SKMHT.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- Provision of Power of Attorney to impose a mortgage on the subsidized housing loan in the agreement of the sale and purchase agreement, the parties who have agreed with the signing in every minute of the Notary / PPAT deed, as well as the number and date issued as a copy of the deed by the Notary / PPAT, so that it is clearly said to have contravened the law and the objective conditions that were not fulfilled in Article 1320 of the Civil Code regarding the validity of the agreement, because the objects in the SKMHT were different from the objects in the credit agreement.
- Legal Power of Power of Attorney Imposes Mortgage Rights (SKMHT) on Subsidized Housing Loans at PT. The Pekanbaru Branch of the State Savings Bank is that the SKMHT in the PPJB credit agreement made by a Notary / PPAT in collaboration with PT. The Pekanbaru Branch of the State Savings Bank cannot be paired with a Deed of Encumbrance because the object of the credit guarantee is not suitable so that it cannot provide legal certainty for creditors. The principle of legal certainty means that a law must be carried out properly or appropriately. Therefore, attention must be paid to the object of guarantee made in 2 (two) SKMHT which is processed with the Deed of Granting Mortgage Rights so that SKMHT has legal certainty and legal force. If the SKMHT period is violated and the collateral object in this subsidized KPR is tied into 2 (two) SKMHTs then the SKMHT has no legal force or is null and void.

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