

## THE LEGAL POSITION OF THE POWER OF ATTORNEY TO SELL IN THE CREDIT AGREEMENT FOR THE OBJECT BOUND BY THE GUARANTEE OF DEPENDENT RIGHTS

<sup>1</sup>Ori Jani Perdana, <sup>2</sup>Prof. Dr. Busyra Azheri, <sup>3</sup>Dr. Beatrix Benni  
<sup>1</sup>Master Of Notary Student, <sup>2</sup>Master Of Law Lecture, <sup>3</sup>Master Of Law Lecture  
Faculty Of Law, Andalas University, Padang, West Sumatera, Indonesia  
Email – orijanip@gmail.com

**Abstract:** *This thesis discusses the position of the power of attorney for sale in the credit agreement on the object bound by the guarantee of dependent rights. The problem discussed in this study is about how the position of the power of attorney is made by binding dependent rights and how the legal consequences of using a power of attorney to sell on objects bound by dependent rights.*

**Key Words:** *Power of Attorney to Sell, Credit Agreement, Guarantee of Dependent Rights.*

### 1. INTRODUCTION :

The sale can only be carried out after one month has passed since it has been notified in writing by the giver and or the holder of the Mortgage to interested parties (debtors and third parties) and announced in at least two newspapers in the area concerned and or mass media. local area, and neither party expressed any objections. Since the enactment of Law Number 4 of 1996 concerning Mortgage Rights, it should be in the practice of binding bank credit with debtor customers, banks no longer prepare a power of attorney to sell, because there is a Mortgage institution, but the deed of power of attorney to sell still exists in certain credit bindings. with the reason that the bank prepares the selling power of attorney to anticipate the debtor in case of default.

### 2. THEORITICAL FRAMEWORK:

- Legal Certainty Theory  
According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented.[1]
- Theory of Guarantees  
The existence of guarantees in an agreement is needed by creditors, because creditors have an interest that they will actually fulfill their obligations, namely to pay debts.

### 3. LITERATURE REVIEW:

According to Salim HS: "agreement is a legal relationship between one subject and another in the field of assets, where one legal subject is entitled to achievements and so are other legal subjects who are obliged to carry out their achievements in accordance with what has been agreed".[2] The granting of power of attorney is: "An agreement by which a person gives power (authority) to another person, accepts it for and on his behalf carries out an affair".[3]

Mortgage is a Guarantee Right that is imposed on land rights as referred to in Law Number 5 of 1960 concerning the basic rules of Agrarian Principles, including or not including other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors.

### 4. METHOD:

The method used in this study is a normative juridical approach, which is an approach that focuses on reviewing and researching legal material with reference to legal norms contained in legislation, court decisions and legal norms that exist in society [4].

### 5. DISCUSSION:

The prohibition on the use of absolute power can only be sold by auction, it is not entitled to sell the object of collateral belonging to the debtor with an absolute power of attorney to sell from the debtor if the debtor is in default.

However, the reality is that some banks as creditors still require a power of attorney to be signed along with the signing of the credit agreement and the binding of Mortgage Rights so that the object is eventually easily sold to a third party (buyer).

## 6. ANALYSIS:

- **Legal Position of the Power of Attorney for Sale Made Simultaneously with the binding of Mortgage**

The first condition is referred to as a subjective condition because it relates to the subjects who make the agreement, while the second and third conditions are called objective conditions because they relate to the object in the agreement. Each of the conditions (subjective and objective conditions) above has the consequence of being null and void if one of the elements in it is not fulfilled, namely the first is *voidable*, if the first and second conditions or one of them are not fulfilled then one of the parties can request the cancellation of the agreement through the court as long as is not canceled by the judge, then the agreement is still considered valid and binding on both parties. And the second is *null and void*, if the third and fourth conditions or one of them are not fulfilled then the agreement is null and void. Which means the agreement is considered never existed.

- **The legal consequences of using a power of attorney to sell objects that are bound by Mortgage Rights**

The law only provides a bridge so that the community is not burdened with too large a fee when applying for credit at the bank. So that if there is a non-performing loan, the bank (creditor) must continue to make efforts for further legal action against the Power of Attorney to impose Mortgage Rights (SKMHT) for certain credits so that they have executive power in accordance with applicable laws.

## 7. CONCLUSION: From the discussion as explained earlier, several conclusions can be drawn, including:

- The legal position of the power of attorney to sell related to credit is carried out on the basis of the wishes of the creditor and the agreement of the parties as a tool to execute the object of mortgage by selling under the hand, but applies if it stands alone in the sense that it does not exist in the form of binding and other charges such as mortgages.
- The legal effect on the position of the power of attorney in the credit agreement on the object that is bound by a mortgage guarantee is null and void, because it should not be carried out simultaneously with the binding of the mortgage because the binding of the mortgage has given strong legal force to the creditor with the existence of a mortgage certificate that has executorial power, namely the same power as a court decision.

## REFERENCES:

1. Sudikno Mertokusumo, 2007, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, page 160.
2. Salim HS, 2008, *Hukum Kontrak, Teori & Teknik Penyusunan Kontrak*, Jakarta: Sinar Grafika, page 27.
3. Djoko Prakoso, 2007, *Dasar Hukum Persetujuan Tertentu di Indonesia*, Jakarta: Bina Aksara, page 191.
4. Zainuddin Ali, 2011, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, page 105.