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The implementation of simple lawsuit in non-performing loan by binding a power of attorney to impose mortgages right (SKMHT)

A implementação de ação simples em crédito inadimplente por vinculação de procuração para imposição de direito hipotecário (SKMHT)

La implementación de una demanda simple en préstamos en mora mediante la vinculación de un poder notarial para imponer derechos hipotecarios (SKMHT)

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Amin Wicaksono
ORCID: https://orcid.org/0000-0002-5731-4014
University Sebelas Maret, Indonesia
E-mail: aminwicaksono22@gmail.com
Muhammad Rustamaji
ORCID: https://orcid.org/0000-0002-4751-7803
University Sebelas Maret, Indonesia
E-mail: hatchi_ajie@gmail.com
Anjar Sri Ciptorumi Nugraheni
ORCID: https://orcid.org/0000-0002-1254-5409
University Sebelas Maret, Indonesia
E-mail: aenugrah@gmail.com

Abstract
In general, credit risk is due to failure or default. The guarantee will ease the creditor to supervise the debtor for his debt and also minimize the occurrence of problems in the future. The finish of bad credit by creditors still has many obstacles because the binding using SKMHT (Power of Attorney to Impose Mortgages Right) has not been upgraded to the binding of APHT (Deed of Granting of Mortgage). This results in settlements through legal wat that can't be carried out by the bank. This research aims to provide an alternative settlement of bad credit through a Simple lawsuit. This type of research is normative legal research. The data collection method was in the form of library data by collecting primary legal materials, such as legislation, and secondary legal materials, such as literature, books, and documents. The characteristics of this research were prescriptive research. In the process of resolving non-performing loans through litigation, it was only carried out when non-litigation efforts have been unable to provide a solution. This was due to the nature and function of the Power of Attorney to Impose Mortgages Right (SKMHT) only as a power of attorney to provide the Deed of Granting of Mortgage (APHT). It was not allowed to contain other legal actions other than those described in Article 15 of the Mortgage Law. Simple lawsuit is a mechanism for resolving cases quickly. examined is a simple case with a material claim value of at most 500 million that can be settled with a simple lawsuit following PERMA Number 4 of 2019.
Keywords: Bank credit; SKMHT; APHT; Simple lawsuit.

Resumo
Em geral, o risco de crédito é devido a falha ou inadimplência. A garantia facilitará ao credor a fiscalização do devedor por sua dívida e também minimizará a ocorrência de problemas no futuro. A finalização da inadimplência por parte dos credores ainda tem muitos entraves, pois a vinculação utilizando SKMHT (Procuração para Imposição de Direito Hipotecário) não foi atualizada para a vinculação de APHT (Escritura de Outorga de Hipoteca). Isso resulta em liquidações por via judicial que não podem ser realizadas pelo banco. Esta pesquisa tem como objetivo proporcionar uma alternativa de liquidação de créditos incobráveis por meio de uma ação do Simples. Esse tipo de pesquisa é a pesquisa jurídica normativa. O método de coleta de dados foi na forma de dados de biblioteca, coletando materiais jurídicos primários, como legislação, e materiais jurídicos secundários, como literatura, livros e documentos. As características desta pesquisa foram a pesquisa prescritiva. No processo de resolução de créditos de cobrança duvidosa por via contenciosa, apenas foi realizado quando os esforços não contenciosos não conseguiram dar resposta. Isso se deu pela natureza e função da Procuração para Impor Direito Hipotecário (SKMHT) apenas como uma procuração para fornecer a Escritura de Outorga de Hipoteca (APHT). Não foi permitido conter outras ações judiciais além das descritas no artigo 15 da Lei de Hipoteca. A ação judicial simples é um mecanismo para resolver os

casos rapidamente. examinado é um caso simples com um valor de reivindicação material de no máximo 500 milhões que pode ser resolvido com uma ação simples seguindo o PERMA Número 4 de 2019.
Palavras-chave: Crédito bancário; SKMHT; APHT; Processo simples.

Resumen
En general, el riesgo de crédito se debe a la quiebra o incumplimiento. La garantía facilitará que el acreedor inspeccione al deudor por su deuda y también minimizará la aparición de problemas en el futuro. La finalización del incumplimiento por parte de los acreedores todavía tiene muchos obstáculos, ya que la vinculación mediante SKMHT (Proxy for Imposition of Mortgage Law) no se actualizó a la vinculación APHT (Deed of Mortgage Grant). Esto da lugar a acuerdos judiciales que el banco no puede llevar a cabo. Esta investigación tiene como objetivo brindar una alternativa para la liquidación de insolvencias a través de una acción Simples. Este tipo de investigación es la investigación jurídica normativa. El método de recopilación de datos fue en forma de datos de biblioteca, recopilando materiales legales primarios como legislación y materiales legales secundarios como literatura, libros y documentos. Las características de esta investigación fueron de investigación prescriptiva. En el proceso de resolución de insolvencias vía litigiosa, sólo se llevó a cabo cuando las gestiones no litigiosas no dieron respuesta. Esto se debió a la naturaleza y función del Poder Notarial para Hacer Cumplir la Ley Hipotecaria (SKMHT) solo como un poder notarial para proporcionar la Escritura de Concesión Hipotecaria (APHT). No podía contener otras acciones legales que las previstas en el artículo 15 de la Ley Hipotecaria. La demanda simple es un mecanismo para resolver casos rápidamente. examinado es un caso simple con un valor de reclamación material de no más de 500 millones que puede resolverse con una acción simple siguiendo PERMA Número 4 de 2019.
Palabras clave: Crédito bancario; SKMHT; APHT; Proceso sencillo.

1. Introduction

A type of service from the bank is credit used by people who require funding sources. Banking regulations have been regulated in Article 1 point 2 of Law no. 10 of 1998 concerning amendments to Law no. 7 of 1992 concerning Banking. Based on the article, a bank is an institution in the form of a business that receives funds in the form of public deposits and then distributes them to other people in the form of loans. In the economy and trade, credit can increase the usability, circulation, and traffic of money or goods as a means of economic stability, and also increase the spirit of the economy or income.[1] The bank functions as a financial intermediary to support national development, not individual development to make the welfare of the people increases evenly. Thus economic growth increases and maintains national stability.[2]

The description of credit, in general, is a money provider whose payment method is in installments, or loans up to a certain amount approved by the bank or other entity. It is based on a contract or loan agreement between the bank and another party. It requires the creditor to pay interest and repay the debt after a certain period.

The distribution of credit to the public through banking is generally carried out through a credit agreement between the creditor and the debtor. Hence, there is a legal relationship between the parties, because a credit loan through a bank is of course a loan agreement between the lender and the creditor, and credit agreements are usually made by the lender or bank. Debtor only follows these rules and understands. Credit agreements have a very important function. Both parties need to pay special attention to this loan agreement. An important role in granting, managing, and implementing it is because there is an agreement between the interested parties, namely the debtor and creditor.[3]

Common risks are due to loan failure or default (credit risk), market trend risk (market risk), bank failure to meet debt (liquidity risk), and weakness of loan laws. Aspects caused by the lack of supporting law (legal risk). Because it is important to

[1] Rosita. A. (2021). Credit Agreement with Power of Attorney Imposing Mortgage on the Binding Agreement for Sale and Purchase of Land Rights (Study on Pt. Bank Mandiri (Persero) Tbk. Universitas Islam Sultan Agung, Kendari Hlm. 1

[2] Harahap. MY. (1997) *Some Overview of Legal Issues Book Two.* Citra Aditya Bakti. Bandung. Hlm 210

[3] Sjahdeini. SR. (1999) *Provisions on Mortgage Fundamental Principles and Problems Faced by Banking (A Study on the Mortgage Law).* Bandung. Hlm. 26

ensure the distribution of these funds, there must be legal protection and adequate legal certainty guarantees to lenders and recipients as well as other interested parties.

The guarantee will ease creditors to supervise debtors because debtors feel that there are goods that are guaranteed for their debts and also minimize the occurrence of problems in the future, although it can't be denied that the main problem that often occurs is the dispute that the debtor is in default.

The type of risk that banks may face is the legal risk of disbursing the credit. Lending is a banking business with many risks that are difficult to predict in advance. The risks that arise in banking, particularly credit risk, are the result of a temporary separation between the perception of service and the considerations that will be achieved in the future. The longer the loan term, the higher the risk, because human skills can predict what the bank is likely to do after repaying the loan. Uncertainty in the future and unpredictable risk. Some of the legal risks that may be faced in lending by banks are classified as follows:[4]

a. Predictable and even controlled risks can be prepared from the very beginning while lending;
b. Unpredictable risk is not considered a legal risk. It needs to be anticipated so that it can result in substantial losses in the future, both materially related or to the bank's reputation.

In granting credit, a common legal risk is the existence of credit problems. Almost all banks have experienced credit problems. Non-performing loans carry risks with all the conditions. This risk can be in the form of bad credit carried out by the debtor. Or Credit is not returned on time. Banks cannot avoid this because lending is one of the forms of banking business. A loan is classified as non-performing if the credit quality is assessed as collectibility, substandard, doubtful, and loss.

In general, lending will be based on a credit agreement to be the basis of the agreement between the creditor and the debtor. The credit agreement is the main agreement that is real. Underhand deed and notarial deed are 2 forms of credit agreement in banking. In banking credit activities, generally, there are conditions in the form of debt guarantees from debtors to creditors. The function of the guarantee is to be the basis for repayment of credit if the debtor is deemed to have defaulted. Credit collateral used in banking practices is usually specific collateral, namely collateral in the form of land.[5]

Two hundred and fifty million is the limit for loans secured by land rights. It needs to be notarized as a step or bank strategy to secure collateral.[6] In credit transactions, credit as working capital or consumptive, the debtor has the opportunity to default on their credit due to various reasons; the debtor's business goes bankrupt, or the character of the debtor is not good so that it can't fulfill its obligations to the bank.[7] Therefore, it is deemed necessary to regulate the relationship between the parties with a special regulation regarding guarantees contained in Law Number 4 of 1996 concerning Mortgage Rights. The provisions regarding mortgage rights on land that are guaranteed have exceptions for certain loans in the amount of not more than 250 million. In granting mortgage rights with a maximum credit of 250 million, it is only enough to issue a Power of Attorney to Impose Mortgages (SKMHT) which has a validity period following the principal credit agreement.

The disputes between creditors and debtors will generally be resolved amicably. If in the settlement the debtor is still unable to settle obligations, the creditor will take legal steps with a guarantee auction process. The settlement of bad credit by creditors still has many obstacles and there are also many obstacles because the binding still uses SKMHT. It has not been

[4] Rachmawaty. N. (2014). *The Role of the Bank's Internal Audit in Controlling Legal Risk in the Credit Provisioning Process by the Bank,*Universitas Gadjah Mada. Yogyakarta. Hlm. 83

[5] Poesoko. H. (2008), Parate Executie Mortgage right, Laksbang Pressindo, Yogjakarta, Hlm.4

[6] Munir. F. (1996) *Contemporary Credit Law,* Citra Aditya Bakti. Bandung. hlm. 66

[7] BARa. (2012). Bankir Association for Risk Management, *Banker Association for Risk Management (BaRa).* hlm. II-2

upgraded to APHT binding. This resulted in the settlement of credit through a legal way that can't be conducted by the bank. Alternative settlement of bad credit through a Simple lawsuit can be the solution.

2. Research Method

This type of research was normative legal research. Based on Peter Mahmud Marzuki, normative legal research is a research activity in finding the rule of law, legal principles, and legal doctrines in order to answer the legal issues in question.[8]

This research used a statute approach, which was research that prioritized legal materials in the form of the PERMA No. 4 of 2019 legislation as basic reference material in conducting research.

The characteristics of this research were prescriptive research that studied the purpose of the law, the validity of the rule of law, values of justice, legal concepts, and legal norms.

3. Discussion

3.1 The Procedure for Providing Credit and Settlement of Non-Performing Loans

The origin of the term credit is etymologically Latin creed. It means a belief. The debtor receives a bank loan, which means that the person receives the trust of the bank.

The provisions of the 1998 Banking Law article 1 number 11 concerning the formal meaning of banking credit in Indonesia states: "Credit is the provision of money or claims that can be equated with it, based on an agreement or loan agreement between a bank and another party which requires the borrower to pay off certain debts after a certain period with interest".[9] In terms of credit agreements, bank employees are required to comply with the special provisions contained in Law Number 7 of 1992 articles 6 and 7, and supplemented by Law Number 10 of 1998 Articles 6 and 7. Especially in credit matters, such as SE orders from the Board of Directors of BI, regarding lending policies, banks may not specifically:

1) Credit without a written agreement, meaning that all forms of credit must be accompanied by a Letter of Credit Agreement.
2) Credit to companies that are initially considered unhealthy and cause losses.
3) Facilitate credit beyond the maximum lending limit (BMPK).
4) facilitating share capital credit is not allowed
5) It is not allowed to give credit to individuals or business entities who are not domiciled in Indonesia.
6) Banks must not violate the loan-to-deposit ratio (LDR) when extending credit.
7) Banks are prohibited from providing loans to debtors of more than IDR 50 million without attaching a TIN.
8) Banks are not allowed to provide direct or indirect credit to developers/owners for real estate acquisition and/or management.[10]

The credit agreements are closely related to collateral. As it is required by the bank, the bank can ensure that credit extended to customers can be used as needed and can be returned safely. Therefore, guaranteeing credit in the form of a certain guarantee agreement can reduce the risk that can occur if the debtor defaults or is unable to repay the loan or credit.[11]

[8] Marzuki. PM. (2010). *Penelitian Hukum*, Kencana Prenada. Jakarta. Hlm. 35

[9] Elucidation of Article 1 paragraph (11) of the 1998 Law on Banking

[10] *Widjanarto, (*2007*). Hukum dan Ketentuan Perbankan Di Indonesia*, PT. Pustaka Utama Grafiti, Jakarta, Hlm. 81

[11] Sutedi. A. (2012). *Hukum Hak Tanggungan,* Sinar Grafika, Jakarta. Hlm. 24

Anticipation of non-performing loans can be performed from the start. This can be conducted through analysis of the initial application, the feasibility of the debtor or customer, binding guarantees, until supervision while the financing is paid off.

In the process of resolving non-performing loans, the first step taken by the bank is the non-litigation or kinship. Through non-litigation, it is considered more profitable than litigation. It does not require expensive costs and is more convenient because only creditors and debtors are involved. Thus, confidentiality is confidentiality. Through this non-litigation case settlement, it is expected to obtain a win-win solution. Creditors and debtors are required to play an active and cooperative role in saving this method. Thus, there are opportunities for solving credit problems. If the non-litigation process for resolving non-performing loans fails, creditors can take litigation efforts to create a legal settlement of bad loans. One of them is the Simple lawsuit method.

In the process of resolving non-performing loans through litigation, it is only carried out when non-litigation efforts are no longer able to provide a solution for both parties. This path is an alternative to repaying credit with the execution of guarantees. The execution process of the collateral that has been bound by the Power of Attorney to impose Mortgage Rights (SKMHT) still requires further legal action. This is due to the nature and function of the Power of Attorney for Imposing Mortgage (SKMHT) only as a power of attorney to provide the Deed of Granting Mortgage (APHT) and is not allowed to contain other legal actions other than as described in the Mortgage Law in Article 15 paragraph (1) as follows:

1. Does not contain a power of attorney for legal actions other than imposing mortgage rights.
2. Does not contain substitution power
3. Clearly state the object of mortgage rights, the nominal debt and the identity of the creditor, and the name and identity of the debtor if the debtor is not the giver of mortgage rights.

It is explained in the article that it can't contain the power to sell. The dependent object is rented out, or prolonged. Thus, the Power of Attorney to impose Mortgage Rights (SKMHT) is made specifically only as a power to charge Mortgage Rights.

The absence of an executive function creates further efforts that can increase the position of the Power of Attorney to impose Mortgage Rights (SKMHT) into a Deed of Granting of Mortgage (APHT) which must be registered with the land agency office.[12] The main purpose of increasing the Power of Attorney to impose Mortgage (SKMHT) into the Deed of Mortgage Encumbrance (APHT) in this case is to create mortgage rights that have an executive function as regulated in the Mortgage Law.

3.2 Coping with Non-Performing Loans Through Simple lawsuit

Default or broken promises can be made by the court through the District Court through a Simple lawsuit. This is conducted by the creditor as a solution to saving credit.

A civil dispute occurs when the rights of one party have been eliminated. Thus, the party who feels aggrieved claims their rights through the intermediary of the judiciary or better known as the litigation route.[13] When there is a dispute between the parties, namely the debtor is in default, one of the ways to resolve it is through a Simple lawsuit. One of the goals of the

[12] Undang-undang Hak Tanggungan Atas Tanah Beserta Benda-benda Yang Berkaitan Dengan Tanah, UU No. 4 Tahun 1996, Penjelasan Umum Pasal 13

[13] Karim. Abdillah. K. Abdillah. AR. (2022. Simple Lawsuit In Process. Julia. 10 (II) hlm 119-130

law is the creation of a sense of justice. For the community to obtain a sense of justice, it is necessary to make efforts toward justice or commonly referred to as access to justice.

Erman Rajagukguk stated that the regulations of developing countries regarding investment, trade, and economic services approach developed countries due to legal globalization (convergence of law).[14] Therefore, the influence of the legal system is currently quite strong not only in commercial law but also in common law - procedural law.

Simple lawsuit is a mechanism for resolving cases quickly. It is examined a simple case with a material claim value of at most 500 million which can be resolved by a simple lawsuit following PERMA No. 4 of 2019. Settlement of cases through a Simple lawsuit includes a breach of contract with a material claim value of at most 500 million.

The Civil Procedure Code briefly concludes a collection of legal regulations that regulate the procedures for implementing civil law or the application of civil law regulations in practice.[15] Simple lawsuit is one way to achieve justice in resolving cases quickly and at a fairly low cost. In Simple lawsuit, there are also inefficiencies in the settlement of civil cases, for example in cases with a small number of nominal lawsuits. In the case with a small nominal, the costs and time incurred are not proportional to the nominal in question. Administration, procedural procedures, domicile, and the presence of the parties involved are the reasons for the length of the judicial process. This ultimately makes dispute resolution not based on justice simple, fast and low cost, efficient and effective.[16]

In order to realize access to justice with a fast, simple, and affordable mechanism in Simple lawsuit, the Supreme Court issued PERMA No. 4 of 2019 concerning Procedures for Settlement of Simple lawsuit, which became the basis for a light civil lawsuit quickly. With the presence of a Simple lawsuit settlement, the government can make cases taking place in a Simple lawsuit as a way to identify problems and social phenomena in the community and then formulate further arrangements. If it is felt necessary to make arrangements.[17] The guarantee of a smooth hearing with a fair settlement, and a short, impartial, low-cost process is the benchmark for a good procedural law. This implies the principle of an easy, fast, affordable hearing.

The general court includes the authority and scope of a Simple lawsuit. Civil lawsuits classified a Simple lawsuit under Article 3 and Article 4 of PERMA No. 4 of 2019 are:

1. Cases of lawsuits against the law or default with a maximum nominal of 500 million;
2. Besides cases with the competence category of Special Courts;
3. Besides land rights disputes;
4. The Complainant and the Defendant are only one unless they have the same legal interest;
5. The domicile of the Defendant is known;
6. The Complainant and the Defendant must be domiciled in the same Court Area.

The decision of a Simple lawsuit is given by a judge who has been appointed by the chairman of the court. The judge is a single judge (not a panel of judges), the following are the stages of settling a simple lawsuit:

a. Registration;
b. Administration of Simple lawsuit;
c. Appointment of Judges and appointment of substitute clerks;
d. Initial inspection;

[14] Erman Rajagukguk," The Role of Law in Development in the Era of Globalization" Journal of Business Law", 6 (II) hlm. 114

[15] Kuswandi. & Nasichin. M. (2019). Settlement of simple lawsuits in civil cases in court. V 8(II) hlm. 236-261

[17] Riyanto.B & Sekartaji. H. S. (2019). *Masalah-Masalah Hukum, Jilid 48 No.1. Januari Hlm 98-110*

e. Determination of the hearing day and summons of the parties;
f. Hearing and conciliation examination;
g. proof; and
h. Decision.

The process of settling the Simple lawsuit takes no longer than 25 (twenty-five) days from the first hearing. Registration is carried out by the complainant (Bank) at the court clerk by filling in the blank for the lawsuit provided.

The Clerk checks the registration requirements of a Simple lawsuit. It is classified into 2 (two) namely:

Objective Terms:

1. Default case or unlawful act with a maximum material claim value of 500 million;
2. Apart from cases in special courts
3. Not a dispute over land rights.

Subjective Term:

1. The complainant and the defendant are not more than 1 (one) each unless they have the same legal interest;
2. The domicile of the Defendant (the debtor) must be known;
3. The domicile of the Complainant (Bank) and the Defendant (the debtor) must be in the same jurisdiction of the Court;
4. The direct presence of the parties is mandatory.

3.3 The Legal Effort Against Simple lawsuit Decision in the Case of Non-Performing Loan Bank

In the case of a small court claim that occurred in the case of bad credit in banking, the legal remedy that can be submitted is to file an objection. The objection is submitted to the Chairperson of the Court by signing the deed of objection before the clerk along with the reasons. The application is submitted no later than 7 (seven) days after the verdict is pronounced or after notification of the decision. An application for objection is submitted to the Chairperson of the Court using the objection form provided at the Registrar's Office. The application for objection that is submitted exceeds the limit when the application is declared inadmissible using the head of court's decision according to the clerk's information letter. In the settlement of cases, the judge is passive. Those who are active in each trial are the litigants to prove their interests. The judge fully relies on the evidence submitted by the parties and makes a decision based on the evidence shown, used, and defended (formal truth) by the parties.[18]

The process of making a rebuttal along with a memo of refutation is given to the respondent within 3 (three) days of the application being received by the Court. The counter-memo rebuttal is given to the court no later than 3 (three) days after the notification of the objection. The Chairperson of the Court determines the Panel of Judges to examine and decide on the objection application no later than 1 (one) day after the application is declared complete. The examination of objections is carried out only based on:

a. The decision and document of Simple lawsuit,
b. petition for objection and memorandum of objection; and
c. counter-memory objection.

[18] Purnawati. E. (2020). application of simple lawsuits in the settlement of default cases in district Selong. JURIDICA . V 2 (I) November. Hlm 28

There is no additional examination of objections. The decision on the appeal is pronounced no later than 7 (seven) days after the date of the stipulation of the Panel of Judges. The content of the decision on the appeal is the same as the content of the decision on a simple lawsuit consisting of:

a. the head of the decision with instructions that read "For the sake of Justice Based on Belief in the one and only God ";
b. identity of the parties;
c. a brief description of the matter;
d. legal considerations; and
e. verdict.

4. Conclusion

The provisions of the 1998 Banking Law Article 1 number 11 concerning the formal meaning of bank credit in Indonesia explain: "Credit is the provision of money or an equivalent claim. Based on a loan agreement between a bank and another party, requires the borrower/creditor to pay off certain debts after a certain period with interest.

In terms of credit agreements, bank employees are required to comply with the special provisions contained in Law Number 7 of 1992 articles 6 and 7, and supplemented by Law Number 10 of 1998 Articles 6 and 7. This is required by the bank. Thus, the parties' banks can ensure that loans extended to customers can be used as needed and can be returned safely.

Anticipation of non-performing loans can be carried out from the start. This can be done through analysis of the initial application, the feasibility of the debtor or customer, binding guarantees, until supervision while the financing is paid off.

For the process of resolving non-performing loans, the first step taken by the bank is through non-litigation or amicable ways.

The main purpose of upgrading the Power of Attorney to impose Mortgage (SKMHT) into the Deed of Mortgage Encumbrance (APHT) in this case is to create mortgage rights that have an executive function as regulated in the Mortgage Law.

The Simple lawsuit is a mechanism for resolving cases quickly. It is examined is a simple case with a material claim value of at most 500 million which can be resolved with a simple lawsuit following PERMA No. 4 of 2019. A simple hearing is one way to realize justice in resolving cases quickly and at a fairly low cost.

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