

LEGAL PROTECTION FOR DEBTORS ON THE GUARANTEE OF MOTOR VEHICLE OWNERSHIP BOOK (BPKB) IN COOPERATIVE CREDIT LOANS

Indra Tua Manik¹, Siti br. Ginting²

Universitas Darma Agung^{1,2}

Corresponding Author: indramanik@gmail.com¹, sitiginting@gmail.com²

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Abstract

The abstract should be written concisely and factually using Cambria font, size 10 pt, single spaced, with a maximum length of 200 words. The abstract should be written in both Indonesian and English. Avoid using abbreviations or quotations in the abstract. Results and conclusions should be written accurately and in detail. The abstract should briefly explain the background of the research problem (*gap*), the research objectives, the research methods, the research results (*novelty*), and the conclusions.

Abstrak

Abstrak ditulis secara ringkas dan faktual menggunakan huruf Cambria, ukuran 10 pt spasi tunggal dengan panjang teks tidak melebihi 200 kata. Abstrak terdiri dari bahasa Indonesia dan bahasa Inggris. Hindari penggunaan singkatan atau kutipan pada abstrak. Hasil dan simpulan ditulis secara aktual dan rinci. Abstrak harus menjelaskan secara singkat tentang latar belakang permasalahan penelitian (*gap*), tujuan penelitian, metode penelitian, hasil penelitian (*novelty*) dan simpulan.



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ABSTRAK

Kedudukan hukum antara debitur dan debitur dalam perjanjian obligasi, dimana peminjam berhak mengembalikan bukti kepemilikan barang jaminan setelah pembayaran pinjaman, sedangkan peminjam berhak atas jumlah obligasi yang lebih tinggi, dan jangka waktu tagihan dalam sesuai dengan penjamin yang berhak atas pembayaran ditambah pokok (bunga) dengan angsuran bulanan peminjam termasuk kompensasi dalam hal keterlambatan pembayaran. Penyelesaian sengketa yang berkaitan dengan perjanjian kredit, dimana yang bersangkutan dapat melakukan arbitrase atas perjanjian yang bersangkutan. Pengamatan hukum yang dilakukan oleh hakim dalam hasil putusan Perkara No. 70/Pdt.G/2020/PN.Mdn, dimana hakim berpendapat bahwa penggugat telah menang secara hukum tidak ada tindakan yang dilakukan oleh Tergugat atas nama Mas Arif Fauzan dan verstek. Diterbitkannya putusan ini mengikat kedua belah pihak karena telah mempunyai kekuatan hukum tetap (*incracht*) dan telah menjadi undang-undang baru bagi para pihak. Hakim membuat keputusan berdasarkan pendapat hukum sebelumnya dan keyakinan hakim bahwa menghadirkan tindakan yang sah dan persuasif adalah pelanggaran kontrak.

Kata Kunci : Perlindungan Hukum, Debitur, Kredit.

ABSTRACT

The legal position between the debtor and the creditor in the bond agreement, where the borrower has the right to return proof of ownership of the collateral after the loan payment, while the creditor has the right to a higher bond amount, and the billing period in accordance with the guarantor who is entitled to payment plus principal (interest) with the borrower's monthly installments including compensation in the event of late payment. Settlement of disputes related to credit agreements, where the person concerned can arbitrate the agreement in question. Legal observations made by the judge in the decision of Case No. 70 / Pdt.G / 2020 / PN.Mdn, where the judge is of the opinion that the plaintiff has won legally there is no action taken by the Defendant on behalf of Mas Arif Fauzan and verstek. The issuance of this decision is binding on both parties because it has permanent legal force (*incracht*) and has become a new law for the parties. The judge made the decision based on previous legal opinions and the judge's belief that presenting a legitimate and persuasive action is a breach of contract.

Keywords: Legal Protection, Debtors, Credit .

INTRODUCTION

Insurance law is closely related to substantive law. This principal guarantee is a guarantee that represents an absolute right to a conditional asset, directly related to the debtor's specific assets, and can be held by anyone or attached to the asset itself, and can be transferred to another person.

This guarantee is regulated in Article 1131 of the Civil Code which regulates guarantees which reads: "All movable and immovable assets belonging to the debtor that exist now must be pledged" or 'future or in the future. The lender in issuing bonds will first determine what the guarantee or obligation is for the bonds issued, such as in the case studied, the guarantee of the Car BPKB becomes the guarantor for the loan given by the borrower to the debtor in.

The collateral provided for the issued bonds will facilitate the creditor's enforcement in the event of default due to the certainty of the intended meaning of the obligation. Article 1131 of the Civil Code can be imposed on debtors who default or break promises without the need for notification of the commencement of the contract between the parties. Therefore, in the debt process with the purpose of guaranteeing the BPKB car, if at some point the debtor borrows, then based on Article 1131 of the Civil Code, the debtor's car will be made.

One example of a case is the Medan District Court Decision No. 70/Pdt.G/2020/PN.Mdn, where in the debtor's lawsuit who filed a request at the Medan District Court to require the debtor's obligation to exercise his recovery rights to apply the money owed by the debtor, as well as asking the court to confiscate the debtor's vehicle in accordance with the vehicle BPKB guarantee agreed in the loan agreement between the debtor and the creditor. Therefore, the jury granted the debtor's demands, because the debtor was not a party to the decision that was decided.

If this decision is made, the objective position of the BPKB guarantee between the debtor and the creditor can be immediately obtained by the debtor through a court decision, so that in terms of consumer legal protection, this decision creates legal uncertainty for the debtor regarding what is guaranteed by the BPKB in the loan debt if the debtor defaults.

RESEARCH METHODS

The type of research used is formal research, known as formal pedagogical research. This applied research falls into the descriptive research category. The data source for this study is secondary data. Qualitative data analysis was conducted .

RESULTS AND DISCUSSION

1. Legal Position Between Debtor and Creditor in a Credit Agreement

Credit as a financial activity has provided various opportunities for economic mobility, particularly in development projects. Bond issuance guarantees primarily aim to guarantee the debtor's debt repayment in the event of default or bankruptcy. If a bond is issued with a guarantee, it provides protection, both for the creditor's security and a legal guarantee that the bond will be repaid even if the borrower defaults, through the provision of the relevant guarantee for the bond's execution.

A loan agreement serves as a confirmation for both the lender and the customer, outlining the rights and obligations they must fulfill. The customer has the right to borrow money and is obligated to repay the money and interest within the agreed-upon timeframe. The Pegada owner has the right to pay contributions, both capital and interest, and is obligated to lend money to the customer.

a. Debtor's Rights:

Debtors have the right to receive proof of ownership of collateral after their debt is paid off. Obtaining this proof of ownership is crucial for debtors because the obligation belongs to them.

b. Debtor's Obligations:

- 1) The creditor is required to provide identity information and transfer responsibility to the debtor.
- 2) The debtor is obliged to repay the loan in installments.
- 3) The debtor pays late installments.
- 4) The debtor maintains and protects his obligations from risk or loss.

c. Creditor Rights:

- 1) The creditor has the right to request identity information from the debtor as proof when completing the information form.
- 2) Take the maximum amount, and the loan term according to which the guarantor is entitled to receive the amount plus the principle (tax) with the lender's monthly payments including compensation in case of late payment.
- 3) In a guarantee agreement, the creditor or his legal representative always has the legal right and is permitted to ask the guarantor to check the status of the goods pledged as collateral.
- 4) Fulfill customer obligations, if the customer ignores or is unable to fulfill the terms and obligations of this agreement.

d. Creditor Obligations:

- 1) Payment of capital leases and other costs arising under the contract.
- 2) Handing over the goods used as collateral when the debtor pays.
- 3) Make a payment to pay the bill.
- 4) Late installment payments.
- 5) Delivery of replacement warranty goods to customers in the event of *force majeure*.
- 6) Creditors are required to know the validity period of the loan agreement and comply with it.
- 7) All powers granted to the creditor to execute this agreement cannot be revoked.

2. Settlement of Default Disputes in Credit Agreements

A contract can be valid if both parties fulfill their obligations under the contract without harming anyone. However, there are times when the agreement is not properly implemented due to non-compliance by both parties. The word default comes from Dutch which means negative. What is the situation due to negligence or error, so that the debtor cannot carry out the work specified in the contract and is not in the necessary conditions. If the debtor neglects to fulfill his obligations, whether intentionally or negligently, in this case it is called default or

default of the debtor, but to see if the debtor is not right, but not immediately if the debtor makes a mistake.

Debt operations must go through several stages before declaring debt. The condition in question is the existence of indifference (*ingebrekestelling*) and is communicated by an expression of indifference (*ingebrekestelling*). Negligence is often defined as a contract that must be carried out, but the debtor fails to fulfill its obligations under the contract. To declare negligence, a statement of negligence, namely a notification or warning from the creditor to the creditor, that the debtor is negligent in carrying out the contract, where the warning is located, must be delivered after the feared time has passed. A statement of debt is a notification given by the creditor, to determine when the creditor wants the debtor to fulfill his debt.

A declaration of negligence is a procedural requirement that can determine when no action is taken. A declaration of negligence is necessary if someone is claiming compensation or attempting to void a contract by proving a breach of contract. Debts caused by negligence and breach of contract arise for three reasons:

- a. The debtor did not do right;
- b. The debtor failed to complete the work within the promised timeframe. This is divided into two categories: late completion of the work and no completion at all. The reason why the assessment was not conducted was either because it was impossible or because the debtor explicitly refused to conduct the assessment.
- c. The debtor's actions are no longer beneficial to the debtor, after the agreed period has passed.

The legal consequences for debtors who do not pay are fines or penalties or consequences in the following cases:

- a. Paying the debtor compensation (Article 1243 of the Indonesian Civil Code). This wording applies to all promises. Payment options include:
 - 1) Income;
 - 2) The act of not repeating it;
 - 3) Restoration to the original state; And
 - 4) If b and c are not met, a mandatory payment (swangsong) is required.
- b. Compensation that can be claimed includes damages that can be anticipated and are a direct consequence of inaction. Cancellation or termination of a contract by a judge (Article 1266 of the Civil Code) applies to reciprocal contracts.
- c. The provisions on risk transfer (Article 1237 of the Civil Code) are related to promises to be kept.
- d. Payment of court costs when referred to a judge.
- e. Enforcing a contract if it is still enforceable, or compensation is attached to the cancellation of the contract (Article 1267 of the Civil Code). This is about all promises.

From the Civil Code that determines the consequences of not fulfilling the obligation is contained in Article 1243, Article 1237, and Article 1266 of the Civil Code, the legal consequences that can be determined in the Civil Code. First of all, it must be known whether the debtor is innocent or negligent, and if he denies it, it must be proven in the field. In contract law, there is a term known as risk, namely the obligation to bear losses in an event beyond the fault of the other party.

Overmacht includes absolute and relative *overmacht* :

- a. It is impossible for anyone to avoid such difficulties, to release the debtor from his obligations (for example, goods damaged by fire or flood).
- b. *emergencies* still offer an opportunity to avoid losses due to contingencies, in which case the debtor can still be held accountable. The debtor is prevented from resolving the debt by events experienced by the individual (objective) and when the debtor is prevented by events that are not considered at all (objective).

In addition, regarding *Force Majeure*, the following consequences may occur:

- a. The debtor is released from payment. In this case, the debtor's rights are void and become absolute and permanent.
- b. The debtor is free from the obligation to perform. This is temporary/postponed until the Force Majeure is resolved, otherwise the creditor will no longer benefit.
- c. Risk is not passed on to the borrower, except:
 - 1) If it is agreed that the debtor will continue to bear the risk.
 - 2) If there is a custom that in some contracts, the risk remains with the debtor even if it is not in accordance..
 - 3) The provisions of the Law (Article 1613 of the Civil Code) state that the applicant/creditor remains responsible for the actions of his agent, Article 1803 of the Civil Code: the attorney remains responsible for the representative (*vicarious*).
 - 4) Are creditors able to predict the occurrence of *force majeure*?

One of the basic principles of contract law is the principle of protecting both parties, especially the injured party. Based on the principle of protecting the victim, if the contract is not fulfilled, various rights are granted to the other party, as follows:

- a. Non adimpleti exception contract. Reject performance or reject other performance if the other party fails.
- b. Rejection from the other party. If the other party is not responsible, for example by initiating the delivery of defective goods in a sales and purchase agreement, the other party has the right to refuse to conduct another assessment, for example rejecting the following offer to be presented by the other party in a sample sales and purchase contract.
- c. Request a refund. It can be assumed that if a counterparty fails to perform, the other party will complete or commence performance as promised in the relevant contract. In this case, the party issuing the promissory note has the right to demand repayment from the counterparty, that is, to demand full payment or payment of all proceeds.

If the debtor defaults, the creditor can demand one of the following five things:

- a. Request cancellation/termination of contract.
- b. This may require enforcement of the agreement.
- c. Requesting compensation for losses.
- d. Request cancellation and compensation.
- e. Compliance with requirements and payment.

However, even if one party is not working, the benefits must also be protected to ensure balance. The following legal protections apply to the working party:

- a. And the tools to break the agreement. So that the contract is not terminated informally Even if the other party is subject to the law, he controls many ways to terminate the contract. The ways are as follows:
 - 1) Obligation to summon (Article 1238 of the Civil Code).
 - 2) Obligation to negotiate a contract (Article 1266 of the Civil Code).
 - 3) Prohibition of contract termination. As explained that if one party does not perform, then the other party to the contract has the right to terminate the contract However, regarding the rights of the injured party due to default to terminate the contract.
- b. The default must be substantial. The way to determine whether a breach of contract is serious or trivial is as follows:
 - 1) Determine whether the contract contains provisions that support the performance of the obligation that is deemed to have been breached, or
 - 2) If the contract contains a provision, a judge may determine that the failure to perform an obligation is serious enough to constitute a breach of contract.
- c. The right to come from the agreement has not been removed. The legal consequences of the right to be legally abandoned are as follows: the right to be removed from the

agreement, the right to be lost and not affect world payments. In principle, relying on rights in a component of the agreement can be done in two ways:

- 1) The end of the deal is not too late.
- 2) Default components and errors:
 - a) If a "fault" clause is necessary for compensation, a "fault" clause is also necessary to enforce the injured party's right to terminate the contract.
 - b) Termination of a contract is usually a "decision" by a court.

The party who is harmed due to non-compliance with the terms of the agreement can cancel the agreement in question. However, if the termination of the contract is carried out with the intention that the harmed party can return the goods given to the wrongful party, then the element affected by the breach of contract is obliged to make a recovery, an obligation for the harmed party. injured . party to recover the benefits obtained from the actions of the harmed party.

3. Legal Considerations by the Judge in the Default Result in the Decision of Case Number 70/PDT.G/2020/PN.Mdn

Legal protection for borrowers in loan agreements related to BPKB guarantees is very important, considering that the purpose of the BPKB guarantee depends on the borrower, so that if the borrower does not enter into a loan agreement related to the BPKB guarantee, the borrower's interest can remain safe. with legal protection. Legal protection is provided to creditors in general, namely: determined by articles 1131 and 1132 of the Civil Code and Law of the Republic of Indonesia No. 42 of 1999 concerning Insurance. Article 1131 of the Civil Code states that everything, both existing and new in the future, is responsible for the actions of individuals.

The text above can be interpreted, because someone binds himself to a contract, which starts from all assets, both existing and new, will be fulfilled in the future because of all his promises. Article 1132 of the Civil Code states that the goods become joint collateral for all creditors, the proceeds from the sale of the goods are distributed according to the balance of money, namely according to each person's income according to their income, if any. . reasons between lenders. legal priority. This article explains that the debtor's assets are an obligation for the creditor.

The proceeds of the sale are distributed according to the balance unless there is a priority right. Law of the Republic of Indonesia No. 42 of 1999 in this context regulates the legal protection of interested parties in a secured credit agreement, namely a special law relating to guarantees, Law of the Republic of Indonesia No. 42 of 1999 article 11, article 14, and article 15 which generally regulates that the goods burdened by the deed of trust must be written and then the deed of trust with the rah-irah "Because of Justice and the Almighty God". So the validity of the loyalty guarantee is the same as a court decision that has obtained permanent legal force.

The creditor has the right to use the name of the management company as stipulated in the guarantee if the creditor fails to act. The creditor also has the right to sell the securities through public auction and pay the proceeds or through a secret sale based on an agreement between the creditor and the debtor.

Medan District Court Case No. 70/Pdt.G/2020/Pn.Mdn the judge stated that the Plaintiff won the breach of contract due to the Defendant's fault on behalf of Mas Arif Fauzan and Verstek. The issuance of this decision is binding on both parties because it has permanent legal force (incracht) and has become a new law for the parties. The judge relied on previous legal considerations and made a decision based on the judge's belief that a valid and persuasive motion offer is a breach of contract.

The verdict's petition states that the court ordered the defendant to pay all obligations stipulated in the loan agreement with PT. Ringroad PRS Multi Finance Prefabrikasi Medan. The loan agreement includes terms and conditions that have been determined and agreed upon by the parties. Therefore, according to the law, the defendant must make restitution, even after the verdict is rendered.

Another possible way to make a court decision legally binding so that the party or parties responsible for implementing the decision is to include an element of "crime" by the party or parties, not respecting and implementing it. judicial decisions, because as a judicial power, judicial power is a reflection of government power in addition to two other powers, namely legislative power and executive power. Court decisions apply as a rule for all people involved in the court, so if the court is not implemented, it is an unlawful act. Thus, the defendant's disobedience to a judge's decision that has permanent legal force is contempt of court because of failure to comply with court orders (Failure to comply with court orders). It is certain that this action will have legal consequences in the future.

Medan District Court Decision No. 70/Pdt.G/2020/PN.Mdn is valid and does not conflict with applicable laws and regulations in defining the issue of cancellation of loan agreements.

CONCLUSION

A. Conclusion

1. The legal status of the debtor and the borrower in a loan agreement is that the borrower has the right to return proof of ownership of the bond upon repayment of the debt. It is crucial for the debtor to obtain proof of ownership because this obligation is their right. If the debtor is entitled to the maximum amount and credit term, according to the owner, they have the right to repay the amount plus interest in installments.
2. Settlement of disputes related to loan agreements, which allows the parties concerned to complete the agreement in question. However, if the contract is terminated with the intention of the victim returning the goods given to the absent party, the victim must make restitution, which is the obligation of the injured party to recover the benefits obtained from the actions of the inactive party.
3. Legal analysis by the Judge on the decision of case no. 70/Pdt.G/2020/PN.Mdn, where the judge is of the opinion that the plaintiff won legally but no action was taken by the Defendant on behalf of Mas Arif Fauzan and Verstek. The issuance of this decision is binding on both parties because it has permanent legal force (*incracht*) and has become a new law for the parties. The judge made the decision based on previous legal opinions and the judge's belief that presenting legal and persuasive actions is a breach of contract.

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