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THE VALIDITY OF CREDIT AGREEMENT WITH COLLATERAL LAND AND BUILDING LETTER C

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Abstract

This study aims to determine the legality of credit agreement made with a guarantee of land and building proof of ownership of Letter C without the existence a Power of Attorney Charging Mortgage (SKMHT), Giving Deed Mortgage (APHT), and Mortgage Certificate (SHT). This study used a normative juridical research method with a statutory approach, conceptual and case. The credit agreement that has been made is stated and affects the law with the agreement that among the creditors (PNM) and the debtor (Komsatun) followed by the completion of the investment object, this was only in accordance with the 1320 Civil Servants Court. As for land and building of Letter C which was made as a courtesy agreement credit is displayed nothing happens and canceled as for law because is not following madate paragraph 10 (3) UUHT, that letter C land to be used as a mortgage then the dependent can still be possible while giving it at same time with the process of applying for a land mortgage. Based on the result of the study, it can be concluded that the Credit agreement which made by the ownership of letter C of land and buildings guarantee without any binding for the notarial deed/PPAT in form of SKMHT, APHT, and SHT is official and binding according to law. Because of the credit agreement which already made according by agreement by the creditor (Bank PNM Ulam) and the debtor (Komsatun) followed by submission of money as an agree-ment project.

Keywords: Collateral, Land and Building of Letter C, Validity of Credit

1. INTRODUCTION

Economic development is a part of national development as one of the efforts to embody people's welfare which fair and prosperous based on Pancasila and the 1945 Constitution of the Republic of Indonesia. To embody this goal, the implementation of development must always pay attention to the suitability, harmony and balance from various elements of development, including in the economic and financial sector.

Bank as a business entity that collects funds from the people in the form of deposits, credit and other forms that are always ready to assist the economic development in order to improve the living standard of the people. The banks both national or local scale, State Owned Enterprises or private to foreign companies are now present and opening themselves up to help businesses of people in developing their businesses by offering various types of credit variants. Credit is in the midst of society to become a motivator

and dynamicator of increasing trade and economic activities which is one of the mainstay of creditors in running their main business which channeled in the form of credit agreements.

The Credit agreement named as a principal (main or core) agreements that are real. It could be said as a principal agreement when the expiry (assessor) which depends on the main agreement (credit agreement), the meaning of real that the pledge of a credit agreement is bound by the handover of funds from creditors to debtors (Hermansyah, 2008). The Credit agreement made in writing that is intended as a tool of evidence about what was agreed (Muhammad, 2000). The main thing in giving credit is the bank's confidence as a creditor to the debtor. In order to obtain this belief, banks as lenders must pay attention to the characteristics of debtors using the five C's method which is consists of character elements capacity, capital, character, collateral and condition of economics (Hariyani, 2016).

It is possible for credit to make a credit risk (default risk) that started from the debtor's action which means that the debtor is unable to repay the loan and cannot fulfill the pledge according to what is being agreed. This situation could be said as a non performing loans (NPL) (Mahmoeddin, 2004). But, there are ways to minimize the risk, it was called as the credit agreement with collateral. The guarantee is an object that is given and handed over by the debtor to the creditor to be accepted as collateral for debts in the community (H. Sidik, 2014). That credit agreements made with collateral or guarantees of immovable property can be in the form of land and building evidence of Letter C ownership that still does not have clear legality regarding the status of land rights in accordance with applicable legal rules.

Furthermore, article 8 paragraph 1 of law number 10 of 1998 about amendment of law number 7 of 1992 concerning banking which telling that the uncertified land or the land which belong by custom law like the land or building which have a Letter C proof of ownership can be collateral on credit agreement without land registration first and then tied by authorized official deed (notary/PPAT) in load right charge power of attorney letter, dependent right giving deed, and bail right certificate. Thus if the custom land accepted as collateral, it can reduce it exist and can be register their land to the authorized official to get a valid legality for their land.

Land and building which have Letter C proof of ownership based on article 16 paragraph 1 law number 5 of 1960 about the main base rules about agrarian named as Agrarian main rules, land and building which have letter c proof of ownership doesn't have preference right over the land. land and building which have letter c proof of ownership just use as a basis harvest tax note (H. Sidik, 2014). because of the contents and the load only include about wide, class, number, name of owner and amount of taxes from that land (Soeprapto, 1986). Land and building which have letter c proof of ownership obtained from Village office where the land is exist and as a proof in note which saved by village office (Suparyono, 2008). Moreover *in de facto* land and building which have letter c proof of ownership still exist in society and can be an collateral object for credit agreement between creditor and debtor. The concrete example in verdict of Lumajang state court

number. 41/PDT.G/2015/PN.LMJ between Komsatun (plaintiff) against PT. Permodalan Nasional Madani (PNM) Ulam Lumajang as (defendant 1) and Eko Purnomo (Letter C land and building bail object buyer) (defendant 2).

The case started when under the hand credit relation number 063/ULM-LJKT/PK-MMR/XII/13 Desember 24th 2013 (PK 063) with the amount of loan 50.000.000 rupiah by giving a bail letter C land and building proof of ownership nomor 5318 persil 762 class D I based on grant act number 12/HB/TII/2012, march 13th 2012 which named Komsatu with wide of the land is 540 m2 and located in kraton village, yosowilangun sub-district, lumajang district (as a bail object).

Credit agreements that have been carried out by both parties lead to a relationship between legal debts between debtors (as plaintiffs) and creditors (as defendant's II). credit agreemeent's process do under the hand based on deal without land registration first to the land office on there aproprate rules on chapter 1 paragraph 1 government regulations number 24 of 1997 about land registration and without tied by notarial or PPAT deed as load right charge power of attorney letter (SKMHT), dependent right giving deed, and load right certificate still be legal or not credit agreement if collateral only land and building which have Letter C proof of ownership because there is a rules about land with old rights which ruled in chapter 10 paragraph 3 law number 4 of 1996 about right load of land and the things related with the land (named as law of load right) said:

If the load right's is a land which from old right conversion have been qualify foer being registed but the register not done doing, load right giving regist with the registration of the related land rights.

Rules from chapter 1 paragraph 3 law of load right with old right conversion like girik, pipil, kekitir, petok D, as well as Letter C which be the load right bail qualified the terms and procedure for registred, but the register not doing yet by the owner, for burden and giving have to do together with land register application.

Based on the explanation above, therefore the problem of this study is formulated into is the credit agreement legal when it made with the collateral is a land and building which have letter c proof of ownership without load right power of attorney letter, load right giving deed, and

load right certificate? Thus, this study aims to determine the legality of credit agreement made with a guarantee of land and building proof of ownership of Letter C without the existence a Power of Attorney Charging Mortgage (SKMHT), Giving Deed Mortgage (APHT), and Mortgage Certificate (SHT).

2. METHOD

The research method used in this study is normative juridical research (normative law) that examines and analyzes the application of rules and positive legal norms contained in legislation, jurisprudence (case law), contract. The approach to analyzing this research is used the statute approach carried out by examining all laws and regulations relating to legal issues being addressed. Conceptual Approach departs from views and doctrines that develop in law (Marzuki, 2017) and Case Approach examines cases relating to legal issues taken from the analysis of court decisions that have permanent legal force, namely the Lumajang District Court Decision Number. 41/PDT.G/2015/PN.LMJ.

The legal material in this study uses secondary, primary, and tertiary legal materials (Marzuki, 2016). Primary legal material is an authoritative legal material that has an authority consisting of legal aspects, official records in making laws legislation and judges decisions (jurisprudence) (Marzuki, 2010). Secondary legal materials include books literature that contain either doctrine, personal theory of legal experts and papers as legal journal, also information that can be obtained from the internet as a guide to thinking in compiling an argument in this study (Susanti & Efendi, 2015). For collecting method legal material obtained from books about the doctrines of legal experts, journals, articles or can be obtained from literature and analyze method of legal materials using methods of interpretation in a statutory regulation by gramatikal interpretation and systemic interpretation.

3. RESULT AND DISCUSSION

Credit comes from the latin term credere and Dutch language vertrouwen means trust. A lender believes that a loan recipient is able to fulfill the agreement and trust given. Article 1 paragraph 11 of regulations number 10 of 1998 concerning amendment to regulations number 7 of 1992 concerning banking states that:

"Credit is a provider of money or bills based on an agreement or loan agreement between the bank and another party that requires the borrower to repay the debt after a certain period of time with interest". Whereas in Article 1 number 12 of regulations number 10 of 1998 concerning banking, states:

Financing based on sharia principles is money pro-vider or bills that can be equated with that, based on an agreement between the bank and another party that requires the financed party to return the money or bill after a certain period of time in return (profit sharing).

Every credit that has been approved and agreed between the lender and credit recipient must be stated in the form of an agreement (contract) which is called a credit agreement. Regarding the definition of a credit agreement is a legal action based on an agreement between the creditor and debtor which raises an agreement to give an obligation to the debtor to pay off the debt along with interest or compensation in a certain period. The definition of a credit agreement or termed credit has the following elements a. There are parties (two or more people):

- a. The object is a money or equivalent bills;
- b. In the form of debt;
- c. There is a time certain period;
- d. Get to know bank interest system.

At the Civil Code is not found the meaning of credit agreements and credit terms. The agreement in the Civil Code that is similar to a credit agreement is a loan agreement regulated in Article 1754 of the Civil Code:

Borrowing is an agree-ment by which one party gives to another party a certain amount goods which are used up, provided that the latter party will return the same amount of money with the same type and quality.

The valid requirement credit agreement in the world banking that load elements with certainty legal agreement requirement it is generally known that in 1320 KUH Civil Code, there are agreed, capable, certain things and a reason that is lawful. Because credit legal agreement start with approval between the creditor with the debtor with good reason to binding relation connection with loan law

to the loan without pressure from other party.

Based on agreement that have been made, then the creditors gave a money (in the form of loan) to the debtor as a customer. So that rights and obligations arise between both sides. Also the agreement cannot be withdrawn other than approval from all parties included in the article 1338 paragraph (1) The Civil Code reads: "All the agreement cannot be returned in addition to the agreement between both sides, or for reasons determined by constitution. Approval must be carried out in good faith. Credit is a financial facility that allows a person or business entity borrowed money to buy various needs and will repay them within the agreed period of time. Basis for granting credit by banks to customers (debtors) is trusted. That the bank as creditor believes in the customer being able to pay off his debt.

Generally, bank credit agree-ments are used standard agreements with clauses agreements that have been written in the form. Prospective customers or borrowers of funds can only sign forms and do not provided prospective customers to negotiate the contents of the agreement. So that at this stage the position of prospective customers is very weak, because it only accepts the terms and conditions given by the banks which generally fill in the bank form credit agreements in the form of unilateral agreements. Especially if the prospective debtor denies the contents of credit agreement made by the bank, prospective customer will not get the required credit (Usman, 2001).

Regarding clarity of whether or not the credit agreement made with object of land and building collateral proof of ownership of the letter c is carried out without a notary deed or PPAT in the form of SKMHT, APHT and SHT first discussed concept of the principal agreement and the agreement on accessoir in the legal issue of this study as follows:

That dispute basis analysis obtained from case studies Lumajang district court decisions number. 41/PDT.G/2015/PN.LMJ regarding binding credit agreement between the creditor and the debtor is agreement on the debt. Declared valid and legally binding credit agreement made on the basis of a mutually agreed agreement followed by the submission of a sum of money from creditors to the debtor.

Credit agreement is a principal

agreement (principle) that is real. The real meaning is that the occurrence of a credit agreement is determined submission of money by the bank to customers (Hermansyah, 2008). As a principle agreement, the credit agreement is a preliminary agree-ment (pactum de contra hendo) that follows the loan agreement. While the debt agreement is implementation of the credit agreement (Untung, 2000). Regarding the credit agreement that is carried out is a credit agreement under hand that the loan bank agreement to customers is only made for parties with collateral in form of land and building proof of ownership of letter c without a notary deed or PPAT such as SKMHT, APHT and SHT in the process of imposition of liability.

Also known, the credit agreement deed under hand has several weaknesses in the implementation, as follows:

- a. However, when legal action will be taken through the court process for reasons of defaulting debtor actions, but involved debtor denies or disavows his signature resulting weak legal force of the credit agreement that has been made. Because in article 1887 the Civil Code is mentioed, if someone disavows the writing or signature, the judge ordered that the written or signed truth be examined in court and this involves the bank.
- b. Because of the agreement is made only for certain parties whose forms are provided by the bank in a standard form so there is a possibility there is a lack of data that should be supplemented for an interest in binding credit. Because the agreement validity can still be denied by various reasons possessed by the debtor.
- c. If the credit agreement under the hand is lost for a reason then the bank no longer has the original archive regarding the agreement as evidence, this situation will make the bank's position weak if a dispute occurs. This is very different with credit agreement deed made notary, although missing agreement file but there are still other archives in the notary or PPAT inside binding and imposition.

Land relation whose owner-ship is based on customary law, that is land with proof of ownership in the form of girik, petok d, kekitir, letter c and other similar types legally which have been regulated in the general explanation of article 8 paragraph (1) regulation number 10 of

1998 concerning changes to regulation number 7 of 1992 concerning banking and a general explanation of article 24 paragraph (1) of government regulation number 24 of 1997 concerning land registration can be used as collateral in banks or other financial institutions (Hermansyah, 2008).

Licensing of customary land with old rights used as collateral should be harmonized with provisions for imposition of special mortgages for immovable property in the form of land along with objects land related attached to article 10 paragraph (3) UUHT reads:

If mortgages object is in form of land rights originating from the conversion old rights that have fulfilled requirements for registration but registration has not yet been made, the granting of entitlements is carried out together with applicant for registration of the relevant land rights.

According to the provisions of article 10 paragraph (3) UUHT is an exception to the principle that mortgages object in form of land, is it possible for the right to be held on land originating from old rights conversion to customary land that have fulfilled registration requirements but have not yet been registered. Provisions of article 10 paragraph (3) UUHT clearly provides continuity of land with existing rights (customary land) that have existed such as girik, petok d, kekitir, pipil, letter c and other types of old rights which are actually permitted as collateral in banking. But land with old rights as referred to in this article, to be used as mortgages, then the imposition of mortgages can still be possible provided that granting is done simultaneously with request for registration of land rights for the first time to local land office (BPN), at first making SKMHT with the mandatory conditions followed by making APHT no later than three months after being given.

Giving three months period in making SKMHT along with the APHT to complete the letters needed for registration of land rights certainly requires a long time in issuing the certificate, if SKMHT is making not accompanied by APHT the provisions of SKMHT are not valid and canceled and void by law. This is enclosed in provisions of article 15 paragraph (5) UUHT which states:

The provisions referred in paragraph (3) and paragraph (4) do not apply inside SKMHT letter given to

guarantee certain loans stipulated in the applicable constitution and regulations.

The framework implementation of development and interests consider of weak economic group, certain credit loans determined by the government such as credit programs, small loans, home loans and another credit similar with SKMHT validity deadline referred in paragraph (3) and paragraph (4) namely more from 3 months SKMHT does not apply. The determination SKMHT expiration date for certain types of credit is carried out by the competent minister in the land who coordinates with the finance minister, Indonesian bank governors and other relevant officials. However, that deadline it is possible to make a new SKMHT (Badriyah, 2016). But at least it is appropriate adjust to article 10 paragraph (3) of UUHT where the burden ownership of land rights that have not yet been certified should be carried out simultaneously with application for registration of land rights in question. Thus right thing at time making APHT is by a notary or PPAT and at the same time registering land rights, so there is no need to wait for the certificate to be issued.

This possibility is intended to provide an opportunity for land rights holders that have not been certified to obtain greater credit. Besides that second possibility is intended to encourage land rights certification in general. So this provision shows how to increase the provision of collateral to be a mortgage.

Actually the reason SKMHT made for imposition land customary such as letter c is not appropriate, the making of SKMHT in provisions of UUHT is actually not in the land code that is mortgages object is land that has not been certified, but is still held in the event that giver of entitlement cannot attend mortgage right. Basically, the granting of entitlements must be carried out by the giver rights as an interested party. However, this provision is denied by individuals or legal entities that can empower their legal actions to other parties (Harsono, 2003).

Concerning land and building proof letter c ownership which is used as collateral in credit agreement, to obtain the status guarantee clarity, it is necessary to pay attention categories collateral provisions types in banking that can be used as reference material including:

a. Credit agreements that are made on

the basis of an agreement for accounts payable are legal and binding on the parties. so that this agreement cannot be canceled by either party. Because it has been followed by surrender of some money from creditors to the debtor. That all agreements made legally apply as constitution for those who them made. An agreement cannot be withdrawn other than with the agreement of both parties, the agreement is not only binding on matters expressly stated in it, but also for everything according to agreement character.

- b. The credit agreement binding followed by lands surrender old rights as land and buildings form letter c ownership, in fact be harmonized with classification types provisions and guarantees type themselves in accordance with stipulated rules in the constution. That there are 2 types of collateral, namely public and special. For land and buildings, proof of ownership of letter c is used as collateral bank credit, Notary deed or PPAT such as SKMHT, APHT, and SHT as well as not bieng followed by registration process and application to the BPN, then guarantee and how much evidence possession of letter C which is due to attendance (accessoir) that is born from the procurement of basic contracts (principal), namely the credit agreement becomes invalid and void for the law according to constitution rules that are attached crediting guarantee (Hermansyah, 2008). So that this is included debt credit agreement no guarantee that is classified as a general guarantee. Because the credit agreement payable under guarantee that the status is still a letter c is not classified as an object of land rights that can be burdened with liability in accordance with article 16 paragraph (1) UUPPA and article 4 UUHT. Because the land and building evidence letter c ownership are customary and have not yet been certified (Sutedi, 2012).
- c. Its possible that bank credit agreements such as accounts payable can be based on provision credit agreements under the hand. Moreover, the credit agreement can be carried out without or there is a guarantee or termed the debt agreement between creditor and debtor. This is can be a reference for the analysis of Lumajang state court's decision Number 41 / PDT.G / 2015 / PN.LMJ as a study for

researchers, related to the status of collateral objects form of land and building letter c ownership evidence procuring under hand credit agreements not bound by deeds notariil or PPAT, but still used as collateral for credit including submission evidence letter c to creditors. So that this procedure cannot be justified if it is not followed by mortgages imposition and land registration process to BPN. Because evidence land and building Letter C ownership proof land tax payment that was created at Hollad colonization.

- d. For land and building proof letter c ownership which is used as collateral for loan agreement in banking credit, if it is to be guaranteed as security rights it is permissible to violate the legal order 10 paragraph (3) UUHT which has been attached as a legal basis provision regarded land rights old as a banking credit guarantee. That land with old rights such as Letter C can be used as collateral for mortgages if the granting of such rights is carried out simultaneously with registration process for land rights. As provisions, for land with old rights status to be valid and binding as an agreement accessoir raise from procurement of a principal or principal agreement (credit agreement) that has been made by the parties involved, because the object of guarantee with old rights has been registered to the land office and obtain status of land rights recognized by law so that they can be burdened with mortgage rights. Such as procedures, giving the preferred position creditors or creditors who are prioritized by other creditors to take repayment of their receivables through a public auction process. Because the provisions are classified as material guarantees.

The mandate of Article 10 paragraph (3) UUHT helped the process of reducing land with old rights in Indonesia to certify land rights by registering land with status of old rights (customary land) to local land office (BPN) as a legal certainty form in ownership of legal rights on land. So that the provisions of Article 10 paragraph (3) of UUHT adopt the regulation of article 19 UUPA, article 9 Paragraph (1) letter e that registration object of land rights can be derived from mortgages, which originate from old land that is used as collateral. So that land needed registration to become mortgages object and Article 24 Paragraph (1) Government Regulation Number (24)

of 1997 concerning land registration states:

The purposes of rights registering, land rights originating from old rights conversion evidenced by evidence of existence in the written evidence form, witness statements or statements related to the level of truth by the adjudication committee in systematic land registration or by land head office in sporadic land registration, it is considered sufficient to rights registered, rights holders and rights of other parties who burden him.

That concrete evidence land rights ownership is evidenced by land certificates ownership as proof of rights referred in Article 19 paragraph (2) letter c UUPA for land rights, management rights, waqaf land, apart ownership rights units and each mortgage rights has been recorded in the relevant land book (Article 1 Number 20 PP Number 24 of 1997 concerning registration of land). Because the certificate is a proof of rights that applies as a strong evidentiary tool regarding the physical data and juridical data contained therein, so far as physical data and juridical data are in accordance with the data contained in letter measuring and relevant land book (Article 32 Paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration).

4. CONCLUSION

The Credit agreement which made by the ownership of letter C of land and buildings guarantee without any binding for the notarial deed/ PPAT in form of SKMHT, APHT, and SHT is official and binding according to law. Because of the credit agreement which already made according by agreement by the creditor (Bank PNM Ulam) and the debtor (Komsatun) followed by submission of money as an agreement project. This thing is according to determination of 1320 paragraph of KUHPERdata concerning about the attestation of the agreement. So the credit agreement which on going is a main agreement that couldn't be canceled or taken back from both sides and apply as an act for those who made it. Whereas for the land and buildings, the ownership of letter c which made for the guarantee in the credit agreement declared invalid and canceled for the sake of law because neglected the mandate of 10 paragraph section 3 UUHT, that land with the old rights in the form of girik, petok D, kekitir,

pipil, letter C and the other kinds of the old rights land in order to made as a burden rights, then the loading can still be possible provided the giving is done simultaneously with the process of requesting to the BPN, but first the should make SKMHT with the term must have followed making APHT for at least three months day work. In fact, on 10 paragraph and 3 section UUHT adopted from the settings for paragraph 19 UUPA and paragraph 9 section (1) letters e the regulations of the government Number 24 of 1997 about the land registration. Because the proof for object of land and building collateral ownership of Letter C is an accessoir agreement termed with the follow up agreement or an additional agreement that was born from the procurement of a main agreement (principal agreement or introduction), that is a credit agreement made by the creditor and debtor.

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