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## Implementation of Executorial Title Towards Auctions on Credit Guarantees for House Ownership as Reviewed from Law Number 4 of 1996 Concerning Mortgage Rights on Land and Objects Related to Land

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**Abstract:** The need for housing has now become mandatory. The credit scheme will make it easier for everyone to own a house by guaranteeing the legality of land rights burdened with mortgage rights. However, not everyone who has applied for credit always complies with the terms agreed in the Credit Agreement. One example is a debtor who breaks his promise or defaults by not paying installments so that the bank, as a creditor, confiscates the object of collateral. To pay the debtor's remaining debt until repayment, the bank sells the collateral object belonging to the debtor by auction. The bank carries out this auction based on the executorial power attached to the Mortgage Rights Certificate so that the bank does not need to submit a request or lawsuit to the court because the executorial power of the Mortgage Rights Certificate is the same as a court decision with permanent legal force.

**Keywords:** Mortgage Rights, Auction, Executorial.

### 1. INTRODUCTION

The Indonesian economy continues to change over time. Various needs must be met, from primary to secondary to tertiary. One of the needs that must be met is the need for a house. A house is a residence and a place for everyone to survive and develop their lives. However, not everyone has a house personally. Some have a house from inheritance, live with parents, rent, or credit (Kadarisman et al., 2015). Currently, owning a private home is often done on credit. For most people, credit makes it easier for someone to get a house. Moreover, the tenor or credit period has been extended to 30 years, so the monthly installment costs are lighter. The Home Ownership Credit or KPR process is provided by banks as creditors, ranging from state-owned banks to private banks that provide KPR facilities with various interest rates. In providing these KPR facilities, the bank requires an analysis of prospective debtors according to the policies of each bank. Then, the debtor and the bank enter into a credit agreement, which is carried out in writing in front of and using a notary deed (Agustina & Tarsono, 2018)

Along the way, not all debtors experience smooth credit installment payments. Various factors, such as economic factors, influence and hinder debtors from paying credit installments. If the debtor experiences a breach of promise or default on the agreed credit agreement, then the bank, with its policy, has the right to take collateral for the credit (Pratama, 2022). Collateral for credit from debtors who are in default, the bank has the right to execute using forced seizure. If there is resistance from the debtor, the bank can ask for assistance from state institutions to help in the execution process for the collateral for the credit. After the bank controls the collateral for the credit from the debtor who is in default, the bank can auction the collateral to cover the remaining unpaid debtor installments.



## 2. LITERATURE REVIEW

### 2.1. Home Ownership Credit (KPR)

Home Ownership Credit (KPR) is a credit facility provided to debtors who will buy or renovate a house. KPR facilities are provided by state-owned banks such as Bank BRI, Bank BNI, Bank Mandiri, and Bank BTN, as well as by private banks such as Bank BCA and Bank Danamon, as one of the banking products. The KPR application process is only sufficient by providing a certain amount of money as a down payment (DP), usually ranging from 10-30% of the price of the house, and several fees for the process, including insurance costs. There are several types of KPR, including KPR to buy a house, KPR for home renovation, KPR to buy land, KPR to buy an apartment, and KPR takeover. KPR has several advantages, including long-term investment, the DP money not being too large, and legal guarantees that are legally valid, such as ownership certificates, building permits, and deeds of sale and purchase. In addition to the advantages, there are also disadvantages to KPR. The disadvantages of this mortgage include:

- a. Long-term financial burden: must pay monthly installments for a certain period, usually 10 to 30 years.
- b. The risk of fluctuating interest rates: There are relatively high interest rates in non-subsidized home mortgages, so the installment burden becomes greater.
- c. If unable to pay for the installments, the house will be confiscated.
- d. House prices are much higher.

### 2.2. Auction

In Article 1, number 1 of the Regulation of the Minister of Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions, an auction is a sale of goods that is open to the public with written and/or oral price offers that increase or decrease to reach the highest price, which is preceded by an auction announcement. Auctions have existed since Indonesia was still under Dutch colonial rule, namely the Auction Law or *Vendue Reglement Ordonantie* (*Staatsblad*, 1908, p. 189), which has been in effect since February 28, 1908. In the Indonesian legal system, auctions are a special sales procedure whose procedures differ from general sales. Therefore, the regulations on auctions in the *Vendue Reglement Ordonantie* are *lex specialist*. The specificity of this auction is evident, which is open to the public because an auction announcement must precede it, is objective, optimal price formation, and is authentic because, in its implementation, the auction must be led by an Auction Official. A report or Auction Minutes are made. In its development, the implementation of auctions is divided into three types, namely execution auctions, mandatory non-execution auctions, and voluntary non-execution auctions. The execution auction of mortgage rights usually arises from a credit agreement with an immovable object as collateral. The execution auction of mortgage rights is a way to settle mortgage rights and is the last way creditors take if the debtor does not respond to other settlement methods offered.

### 2.3. Mortgage Rights

Mortgage rights on land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law No. 5 of 1960 concerning Basic Agrarian Principles, including or not including other objects that are an integral part of the land, for the repayment of certain debts, which give a priority position to certain creditors over other creditors. Mortgage Rights are imposed on land rights. However, there are often objects in the form of buildings, plants, and works of art that are permanently an integral part of the land used as collateral. For example, in a house that is to be burdened with Mortgage Rights, there is a mango tree in front of it, so the mango tree is also included in an integral part that is integrated with the land that is pledged.

Mortgage rights arise from a debtor who enters into a credit agreement with a creditor with the object of land rights as collateral. The granting of mortgage rights is made in a deed called the Deed

of Granting of Mortgage Rights (APHT), which the PPAT makes as an authentic deed and is then registered at the Land Office where the land object is located. The APHT contains promises that the debtor and creditor must fulfill. Based on Article 4 of the UUHT, the objects of mortgage rights include land with the status of Ownership Rights, Cultivation Rights, Building Rights, and Use Rights over State Land, which, according to applicable provisions, must be registered and, according to their nature, can be transferred. They can be burdened with mortgage rights. Use Rights in the UUPA are not designated as objects of Mortgage Rights because, at that time, they were not included in land rights that must be registered and, therefore, could not meet the publicity requirements to be used as collateral for debt. However, Use Rights must also be registered in its development: Use Rights granted over State Land. According to their nature and reality, some Registered Use Rights can be transferred, namely those granted to individuals and civil legal entities. At the same time, the subject of the mortgage right is the Mortgage Grantor, an individual or legal entity with the authority to carry out legal acts against the object of the mortgage right in question. Mortgage Rights Subjects consist of debtors and creditors.

#### 2.4. *Executorial Title*

The executorial title of the mortgage is stated in Article 14, paragraph (3) of Law No. 4 of 1996 concerning Mortgage Rights, which states that the Mortgage Certificate, as referred to in paragraph (2), has the same executorial power as a court decision that has obtained permanent legal force and is valid as a substitute for *grosse act Hypotheek* as long as it concerns land rights. With the executorial power of the mortgage certificate, if the debtor defaults on the promise, the collateral object can be executed like a court decision with permanent legal force through procedures and by using the separate executive institution by the Civil Procedure Law. Execution of the mortgage occurs if the debtor defaults on the promise. The mortgage object is sold through a public auction according to the procedures determined in the applicable laws and regulations, and the mortgage holder has the right to take all or part of the proceeds to pay off his receivables, with priority over other creditors.

### 3. RESEARCH AND METHODS

In compiling this research, the author uses a normative legal research method because it examines the internal aspects of positive law, legal principles, and legal rules, which base their analysis on applicable laws and regulations relevant to legal problems. The theoretical basis is laws, norms, and theories on the problems raised. This normative legal research consists of research on legal principles, legal systematics, and the level of legal synchronization.

### 4. RESULT AND DISCUSSION

#### 4.1. *Legal Provisions on Mortgage Rights and Defaulting Debtors on Home Ownership Credit Agreements*

The government is intensively holding a home ownership credit program with affordable prices, light down payments, and relatively small interest rates. This makes it easier for many people to own a home personally. If buying a house in cash or building your own house will take a lot of time and money at once, then a homeownership program on credit can encourage many people to own a home. However, it should be noted that not everyone can own a home, even on credit. Many factors, such as lack of income, unstable work, unstable economic conditions, and others, cause this. In the case of a mortgage credit process between the debtor and the creditor, a Credit Agreement is made by a notary in a notarial deed. An agreement is an act by which one or more people bind themselves to one or more other people. At the same time, credit is the provision of money or bills that can be equated with it based on an agreement or loan agreement between the bank and another party that requires the borrower to pay off his debt after a certain period of interest. Thus, a credit agreement can be interpreted as an agreement or consent between a debtor who makes a loan to a creditor. Before entering a credit agreement, the prospective debtor must meet various terms and conditions. The



creditor makes these terms and conditions. The most important requirements that must be met in agreeing are the agreement that binds themselves, the ability to make a contract, a sure thing, and a lawful cause. The credit agreement contains various rights and obligations that must be fulfilled by the debtor and creditor, including:

- a. Credit facilities the creditor provides to the debtor, in this case, a home ownership loan.
- b. Provisions regarding interest rates: Usually, each bank is different in determining its interest rate depending on the terms and value of the credit.
- c. Provisions regarding provision and administration fees that the debtor must pay at the beginning of the credit agreement.
- d. Insurance payments: Insurance institutions usually collaborate with banks, and the bank itself determines these.
- e. Payment period, in KPR, ranging from 5 to 25 years.
- f. Monthly installments and payment procedures.
- g. Late fees if the debtor pays installments from the due date.
- h. Selection of legal domicile in case of a dispute or the debtor defaults.
- i. Other provisions the debtor must fulfill during the credit period until the debt is repaid based on the agreed credit period.

Debtors pledge land title certificates to banks to guarantee the repayment of their debts. Land title objects that can be used as credit collateral include:

- a. Ownership Rights
- b. Cultivation Rights
- c. Building Rights
- d. Use Rights of State Land

The land title used as collateral will then be subject to Mortgage Rights. Mortgage rights are made in a deed by the PPAT, namely the Deed of Granting of Mortgage Rights (APHT). The holder of the mortgage right is the owner of the land rights (the debtor), and the grantor of the mortgage right is the bank (the creditor).

The APHT must include the name and identity of the holder and grantor of the mortgage right, the domicile of the parties, a clear designation of the debt being guaranteed, the value of the mortgage, and a description of the object of the mortgage right. If the grantor of the Mortgage Right is a bank, the bank must clearly explain its identity and position at the bank. The debtor must guarantee that the object of the land rights to be burdened with the Mortgage Right is his property, not involved in a dispute, free from encumbrance, and free from any unrecorded burdens. Suppose it turns out that the debtor is dishonest; for example, the land object is involved in a dispute. In that case, this will still be seen because before the installation of the Mortgage Rights, a Certificate Check will be carried out, namely a process carried out by the PPAT by matching all data or information contained in the land rights certificate with the Land Book at the Land Office. In the case of home ownership credit originating from the sale and purchase from the developer or housing developer, the land object is free from legal problems such as disputes or encumbrances. This is because the developer has taken care of various permits and land legality until completion before the sale occurs. When the debtor wants to buy a house from the developer with a KPR scheme, the legality of the land object to be used as collateral is free from legal problems.

Purchasing a house with a KPR scheme begins with signing the Sale and Purchase Deed and the Credit Agreement with the bank. Then, PPAT will first carry out the Transfer of Name process from the seller to the debtor. After completing the certificate of title to the land, ownership is transferred to the debtor, then PPAT will register the Mortgage Rights. The granting of mortgage rights is preceded by promises to provide mortgage rights as collateral, which are contained in the APHT. These promises include:



- a. A promise that limits the authority of the Mortgage Right grantor to rent the Mortgage Right object and/or determine or change the rental period and/or receive rent in advance, except with prior written consent from the Mortgage Right holder.
- b. A promise that limits the authority of the Mortgage Right grantor to change the form or arrangement of the Mortgage Right object, except with prior written consent from the Mortgage Right holder.
- c. A promise that gives the Mortgage Right holder the authority to manage the Mortgage Right object based on the determination of the Head of the District Court, whose jurisdiction covers the location of the Mortgage Right object if the debtor is genuinely in default.
- d. A promise that gives the Mortgage Right holder the authority to save the Mortgage Right object if this is necessary for the implementation of execution or to prevent the deletion or cancellation of the rights that are the object of the Mortgage Right due to non-fulfillment or violation of statutory provisions.
- e. A promise that the first Mortgage Right holder has the right to sell the Mortgage Right object under his power if the debtor is in default.
- f. A promise given by the first Mortgage Right holder that the object of the Mortgage Right will not be cleared of the Mortgage Right.
- g. A promise that the Mortgage Right provider will not release its rights to the object of the Mortgage Right without prior written consent from the holder.
- h. A promise that the Mortgage Right holder will receive all or part of the compensation received by the Mortgage Right provider for the expansion of its receivables if the object of the Mortgage Right is released by the Mortgage Right provider or its rights are revoked for the public interest.
- i. A promise that the Mortgage Right holder will receive all or part of the provider's insurance money to settle its receivables if the object of the Mortgage Right is insured.
- j. A promise that the Mortgage Right provider will empty the object of the Mortgage Right at the time of execution of the Mortgage Right.

In granting mortgage rights, the grantor must be present before the PPAT. If, for some reason, he cannot present himself, then he must appoint another party as his attorney by signing a Power of Attorney to Charge Mortgage Rights (SKMHT), which is in the form of an authentic deed. The making of SKMHT is not only assigned to a notary but also to a PPAT whose presence reaches the sub-district level to facilitate providing services to parties in need. The granting of mortgage rights is then registered at the Land Office or the National Land Agency, according to the location of the land object, no later than seven working days after signing the APHT. Furthermore, the Land Office will process the granting of the mortgage rights. As proof of mortgage rights, the Land Office issues a Mortgage Rights Certificate (SHT) according to applicable laws and regulations. After the Land Office has finished processing the granting of mortgage rights, the PPAT will submit the land title certificate to the bank as collateral for the debtor's debt. The debtor is usually given a photocopy of the land title certificate with the mortgage rights. The bank will keep the collateral certificate until the debtor's debt is paid off according to the agreed period. However, not all debtors keep their promise to pay installments every month. When a debtor is late in paying installments, the bank will impose a late fine as stated in the credit agreement. The late fine will increase if the debtor has not paid the installments within several months, along with additional interest.

Based on Article 6 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, which states that if the debtor defaults on his promise, the first Mortgage Right holder has the right to sell the Mortgage Right object under his authority through a public auction and take payment of his receivables from the proceeds of the sale. According to the rules in this article, if the debtor defaults or defaults on the contents of the signed credit agreement, such as being late in paying monthly installments, the debtor transfers or rents out the land or house object that is pledged without first confirming to the bank, the debtor is uncooperative, and other reasons, then the bank will first give a warning verbally or in writing to the debtor. If the debtor ignores the warning from the bank and still does not pay his debt, then the bank has the authority to seize the collateralized land object. For example, in a credit agreement made by Bank BCA, if the debtor is negligent, breaks a promise, or defaults, the debtor must carry out an obligation based on the credit agreement within



a specified time. The debtor is negligent in carrying it out. The passage of time alone is valid and sufficient evidence for the debtor's negligence so that no notification (summons) or other similar letters are needed, as well as a warning letter from the bailiff. If the debt becomes due, Bank BCA has the right to exercise its rights against the debtor and/or his assets, including but not limited to the implementation of BCA's rights to collateral based on the Collateral Document; the bank has the right to seize collateral against the object pledged by the debtor.

#### 4.2. *Implementation of Executorial Title for Auction of Mortgage Guarantee reviewed from the Mortgage Law*

If the bank confiscates the debtor's collateral object, the debtor is obliged to vacate the collateral object. However, the debtor will usually resist when the bank executes. This is reasonable because the debtor objects to the confiscation. The bank can request assistance from related parties, such as security forces, to prevent anarchic actions. The confiscation is first done by sealing and putting up a banner stating that the object has been confiscated. Suppose the bank confiscates the debtor's collateral object. In that case, the bank bases it on the provisions of Article 14 paragraph (3) of the Mortgage Law, which expressly states that the mortgage certificate has the same executorial power as a court decision that has permanent legal force and is valid as a substitute for *grosse act hypothec* if it concerns land rights.

The Mortgage Certificate has the same legal force as a court decision that has permanent legal force (*inch*) and has executorial power, where the Mortgage Certificate has included the words "For Justice Based on the Almighty God," which aims if the burden of the Mortgage Right on the collateral object from the debtor turns out that the debtor has committed a breach of promise or default. As the creditor, the bank does not need to file a lawsuit with the District Court but only needs to apply to an execution auction of the Mortgage Right to the District Court. In this case, the bank has the right to sell the Mortgage Right object under its authority through the Auction Office using a public auction and take payment of the receivables from the auction proceeds. In Article 224 HIR / 258 RBg, the procedure that the bank must carry out as the holder of the Mortgage Right must first apply for the Head of the District Court so that the Head of the District Court issues a decision to order the seizure of the execution of the Mortgage Right object so that the execution can be carried out by force, even with the assistance of security forces.

The Mortgage Right Certificate is attached to the land object certificate that is guaranteed based on the APHT made by the PPAT signed by the debtor and creditor. The bank keeps the collateral document so it can quickly execute it. In addition, execution of the Mortgage Right object can also be done using private sale execution. This is as regulated in Article 20 paragraph (2) of the Mortgage Right Law, that upon agreement of the grantor and holder of the Mortgage Right, the sale of the Mortgage Right object can be carried out privately if, in this way, the highest price can be obtained that benefits all parties. The private auction sale can only be implemented after one month has passed since being notified in writing by the buyer and/or holder of the Mortgage Right to the interested parties, which is announced in the newspaper, and no party has stated any objections.

Creditors or banks executing the Mortgage Right collateral object must comply with the provisions of the Mortgage Right Law and other related regulations. After the execution of the Mortgage Right object is carried out, the sale is carried out by public auction. The proceeds from the public auction will be used to pay off the remaining debts, including interest and late fines that have not been paid. If the proceeds from the auction turn out to be excess, the bank must provide the remainder of the sale of the Mortgage Right collateral object to the debtor, regardless of the amount. In this case, the bank can sell the Mortgage Right object under its authority through the Auction Office using a public auction and take the receivables from the auction proceeds. When the debtor defaults. Based on the power of the executorial title on the Mortgage Certificate so that the execution is carried out without a court order, the creditor applies to the Auction Office (in this case, the State Assets and Auction Service Office) or uses the services of a Private Auction Office. The auction office will check the completeness of the auction documents, including:



- a. Copy/photocopy of the Credit Agreement.
- b. Copy/photocopy the Mortgage Certificate and Deed of Grant of Mortgage.
- c. Photocopy of the certificate of land rights burdened with the Mortgage.
- d. Copy/photocopy the debt details or the amount of the debtor's obligations that must be fulfilled.
- e. Copy/photocopy of evidence that the debtor is in default (warning letters).

After the auction of the land burdened with Mortgage Rights and the proceeds of the auction are handed over to the creditor, the Mortgage Rights burdening the land will be forfeited, and the land will be handed over cleanly and freely to the auction buyer. In the provisions of Article 200 paragraph (11) HIR, which regulates the legal protection of the winner of the mortgage auction, if the auction winner does not want to vacate the auction object, the auction execution can be submitted to the Head of the District Court without going through a lawsuit. The auction winner can request a Grosse Auction Minutes to the State Assets and Auction Service Office (KPKNL) as an agency of the Directorate General of State Assets, which is under and directly responsible to the Head of the Regional Office. The Grosse Auction Minutes has the same executorial power as a decision with permanent legal force. After obtaining the Grosse Auction Minutes, the auction winner can submit a request for a vacancy to the Head of the local District Court. Suppose the auction proceeds are insufficient to pay all the Mortgage Rights burdening the land in question. In that case, the unpaid Mortgage Rights will continue to burden the plot in question, even though the buyer has purchased it from a legitimate auction. So, the auction buyer will obtain the land with unpaid mortgage burdens.

## 5. CONCLUSION

The process of owning a house by purchasing on credit is getting easier. With low down payments, low interest rates, and extended payment terms so that monthly payments are more affordable, it has made most people buy a house. Many people who already own a house are buying several new houses with a credit scheme. Developers or housing developers have emerged in almost all regions, and banks as creditors almost all provide KPR facilities as banking products. When the KPR facility provision process is complete, and the debtor has paid the installments every month, after some time or even almost paid off, the debtor experiences a breach of promise or default. This is common and common, considering the different economic capabilities of each person. The bank or creditor who adheres to the Credit Agreement that the debtor has approved and signed will ask the debtor to be accountable for his broken promises. The bank will try first through a warning. If the debtor ignores the warning until a specific time, the bank will confiscate the collateral object. In this case, the bank will execute itself by holding on to the executorial power of the mortgage certificate, which is in the same position as a court decision with permanent legal force. Then, the bank will conduct a sale auction to cover the remaining debtor's debt until repayment. If there is excess money from the sale of the collateral object, the bank must return it to the debtor.

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