



CREDITOR UNLAWFUL ACTS IN THE PROCESS OF IMPLEMENTING THE AUCTION FOR THE EXECUTION OF MORTGAGE RIGHTS (CASE STUDY OF RULING NUMBER 95/PDT.G/2021/PN SBY)

Yosua Simon Suganda¹, Ariawan Gunadi²

Universitas Tarumanagara, Jakarta, Indonesia

Simon.yosuaa@gmail.com¹, Ariwangun@gmail.com²

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ABSTRACT

Mortgage is one of the collateral institutions used as collateral for immovable objects, such as land or buildings. Collateral for mortgage rights is a requirement if a debtor wants to get a loan from a bank. The mortgage right will be executed by the creditor if the debtor cannot repay the loan. However, creditors can also be sued for committing unlawful acts in executing mortgage guarantees. In this case, it will be examined whether the creditor in Decision Number 95/Pdt.G/2021/PN SBY committed an unlawful act in executing the mortgage right. This research is normative legal research carried out descriptively analytically and using a statutory approach. From the results of this research, it can be seen that creditors cannot be said to have taken legal action because all the arguments for the debtor's lawsuit cannot be proven, starting from providing credit restructuring, violating standard clauses, and irregularities by creditors in granting credit. Apart from that, the lawsuit filed by the creditor does not meet the formal requirements.

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Corresponding Author: Yosua Simon Suganda

Email: Simon.yosuaa@gmail.com

INTRODUCTION

Economic development is one part that is related to national development, which is an effort to realize just and prosperous people's welfare as the ultimate goal (Ridlwan, 2014). In order to maintain the continuity of development, the actors include both the Government and the community as individuals and legal entities, resulting in an increase in the amount of funds needed by the community. With increasing development activities, the need for available funds also increases, most of which are obtained through credit activities (Anwar, 2021). The increasing need for credit is caused by the increasing need for funds to meet community needs such as housing, education costs, the need to have a private vehicle, the need for funds to start a business, and so on. Banking institutions mostly provide credit activities for owning a residence in the form of home ownership credit for purchasing a house or apartment ownership credit for purchasing an apartment. Vehicle credit is usually provided by financing companies so that people can own a vehicle by paying installments, which are cheaper than having to pay the entire price of the vehicle directly.

The definition of credit based on the Banking Law is the provision of money or bills with an agreement or agreement between the credit provider and the borrower to pay off the debt based on a certain period of time with interest (Amelia & Marlius, 2018). Based on this understanding, it can be understood that credit is carried out by making a debt and receivables agreement between the debtor and the creditor, the contents of which regulate the transfer of money by the creditor to the debtor, which stipulates the repayment period and the interest on the loan that must be paid by the debtor to the creditor. Debt and receivable agreements are made with the aim of protecting both parties if a dispute arises in the future; with a loan and borrowing agreement the rights and obligations of each party

become clear. A debt and receivable agreement cannot be separated from the existence of a guarantee which is useful as protection for the creditor if, in the future, the debtor is unable to pay off his debt (Mayulu et al., 2023). Therefore, in providing credit funds, givers and recipients, as well as other related parties, must receive protection through a strong guarantee rights institution in order to provide legal certainty for all interested parties in anticipating the emergence of unwanted risks in the future. The existence of a guarantee institution is very necessary because it can provide certainty and legal protection for funders/creditors and loan recipients/debtors (Ismail, 2018).

In general, guarantees are divided into two parts: material guarantees and personal guarantees. The collateral used by banks is material collateral because it has economic value, which is considered good by the bank as protection for itself if the debtor defaults (Setiono, 2018). Material collateral is collateral in the form of absolute rights over an object, which has the characteristics of, among other things, having a direct relationship to a particular object of the debtor, can be retained by anyone, always following the object, and can be transferred (Herryani, 2023). Collateral for movable objects can be cars, motorbikes, machines and so on. Collateral for immovable objects can be land or buildings (Ginting, 2022; Saifurrahman & Kassim, 2022). The imposition or binding of credit collateral is based on the object, if the collateral is a movable object, then the imposition or binding is carried out using a pledge, fiduciary, and cession, according to the provisions of the Mortgage Rights Law, intended by Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or not including other objects which are an integral part of the land, for the repayment of certain debts, which gives certain creditors a preferred position over other creditors. So, mortgage rights are basically only imposed on land rights and often also on objects on it, whether in the form of buildings, plants, or other products that are permanently part of the land used as collateral.

The Mortgage Rights Law regulates that if the debtor defaults in the future, the mortgage guarantee given by the debtor to the creditor will be executed by selling the mortgage rights through a public auction (Sitompul et al., 2022). Execution of Mortgage Rights is a guarantee institution execution process where if the debtor breaks his promise, then the Mortgage Rights object is sold through a public auction according to the procedures specified in the applicable laws and regulations, and the Mortgage Rights holder has the right to take all or part of the proceeds to pay off his receivables, with ahead of other creditors. The Mortgage Rights Law regulates three ways of executing Mortgage Rights, namely: 1) selling the object of the Mortgage Right through a public auction on the authority of the holder of the first Mortgage Right, 2) selling the object of the Mortgage Right object through a public auction based on the executorial title, and 3) selling the Mortgage Right privately based on an agreement between the giver and recipient of mortgage rights (Dianawati & Purnawan, 2017; Destriana, 2021).

Apart from several choices of ways to carry out the execution of the Mortgage Rights, various kinds of problems often occur in the process of executing the Mortgage Rights, including lawsuits from parties who feel disadvantaged by the execution of the Mortgage Rights, including, among others, the debtor as the owner of the related Mortgage Rights object. Disagreements regarding the amount of debt and objections to the execution of the Mortgage Rights, third parties who are not related to the borrower's loan agreement and the Mortgage Agreement between the debtor and the creditor but are later discovered to be the owner of the Mortgage Rights object, a lawsuit from a third party against the Ministry of Agrarian Affairs and Spatial Planning or Head of the National Land Agency as the institution that issues land certificates regarding the validity of the land certificates it issues, third party lawsuits against police institutions regarding alleged criminal acts against the validity of land

certificates, the process of transferring related land certificates. There are several examples of things that prevent the execution of mortgage rights from being carried out quickly and easily.

Regarding the execution of mortgage rights, the author takes a case example from Decision Number 95/Pdt.G /2021/PN Sby. The author wants to analyze the unlawful acts related to the process of executing mortgage rights in Decision Number 95/Pdt.G /2021/PN SBY because in Decision Number 95/Pdt.G /2021/PN Sby there is a lawsuit against the law in the process The implementation of the execution of Mortgage Rights is worth researching, considering current developments, auction lawsuits related to unlawful acts or PMH have experienced a more complex expansion of meaning.

METHOD

The type of research used in writing this thesis is normative legal research, namely research carried out by examining norms, statutory regulations and legal theory. In this research, we will examine several statutory regulations such as the Civil Code, Consumer Protection Law, Banking Law, and Mortgage Rights Law to dig deeper into whether banks as debtors can be said to have committed unlawful acts in the process. Implementation of the execution of Mortgage Rights in Decision Number: 95/Pdt.G/2021/PN Sby. The technique for collecting legal materials that support and are related to the presentation of this research is document study (library study). The analysis technique used in this research is a qualitative analysis technique because this research emphasizes legal materials obtained from various sources, such as books, articles, journals, and laws and regulations related to research, which are based on data. - from this data, the researcher will gain the researcher's own understanding, which will be used to answer the existing problem formulation.

RESULTS AND DISCUSSION

In this research, an in-depth discussion will be carried out regarding the points of the lawsuit filed by the debtor regarding unlawful acts committed by the creditor.

First problem

Regarding credit restructuring rights that are not granted by creditors to debtors. The meaning of credit restructuring is regulated in Article 1 paragraph (4) of the Financial Services Authority Regulation Number 11/POJK.03/2015 concerning Prudential Provisions in the Context of National Economic Stimulus for Commercial Banks, namely: improvement efforts made by banks in credit activities towards debtors who experience difficulties in fulfilling their obligations, which is done, among other things, through:

1. reduction in credit interest rates;
2. extension of credit term;
3. reduction of credit interest arrears;
4. reduction of credit principal arrears;
5. additional credit facilities and/or
6. conversion of credit into temporary capital participation (Financial Services Authority, 2015)

Credit restructuring is an effort to delay the collateral execution process because this basically causes losses to both parties, both debtors and creditors. Debtors are disadvantaged by losing the assets used as collateral, while creditors are also disadvantaged because the process of finalizing the execution of the collateral also takes a lot of money and takes a long time. Bank Indonesia Regulation Number 14/15/PBI/2012 concerning Assessment of Commercial Bank Asset Quality specifically regulates the

provisions on criteria for granting credit restructuring, which basically consists of 2 (two) points, namely:

1. The debtor is experiencing difficulties in making principal and interest payments on the credit he has taken and
2. The debtor's business prospects are considered to be still good and are stated to be able to meet its achievements if restructuring is granted (Syukriana & Nurdin, 2021).

Credit quality is determined based on several aspects, namely business prospects, debtor performance and ability to pay. Based on these three aspects, credit quality can be determined, namely current, special attention, substandard, doubtful and non-performing (Sugiarto, 2021). The quality of credit that has undergone restructuring is divided into two categories, namely:

1. The highest is substandard credit quality, for credit that was previously doubtful or bad credit quality.
2. Credit quality remains or does not change for credit that was prior to restructuring, including credit quality as current, under special mention, or substandard.

This credit quality can become current credit quality provided that after the restructuring, there are no arrears of 3 (three) consecutive principal and/or interest installments. In the event that the debtor violates the provisions in the credit restructuring agreement, the credit quality assessment of the debtor will be carried out in the following manner:

1. Restructured credit with a value of up to Rp. 5,000,000,000.00 (five billion) will be made by observing the accuracy of principal and/or interest payments.
2. Restructured credit with a value of more than Rp. 5,000,000,000.00 (five billion) will be made by looking at the business prospects, performance and ability to pay the debtor.

In credit restructuring, banks also have an obligation to have policies and procedures created by the bank itself regarding credit restructuring provisions. Restructuring policies must be approved and supervised by the Board of Commissioners while restructuring procedures must be approved and supervised by the Board of Directors (Wahyuni et al., 2022). Furthermore, in providing credit restructuring, there must be a party who has the authority to make decisions. The party that makes the decision must be in a higher position than the party that makes the decision to grant credit and has no involvement with the decision to grant credit. If the party making the restructuring decision is the party that has the highest authority within a bank, then the relevant decision will be made through a board of directors meeting. This is done so that the decisions taken are correct and fair without biasing the interests of certain parties. If the provisions mentioned above are not fulfilled, the bank will be subject to administrative sanctions with a written warning. If the written warning that has been given is still ignored, the bank will be given administrative sanctions, namely:

1. Suspension of business and/or
2. Prohibition from being the main party of a financial services institution.

In this case, the plaintiff has submitted one of the credit restructuring efforts, namely in the form of a request to reduce the installments that must be paid. The plaintiff submitted this request on June 2, 2020, via letter to the defendant to make a minimum payment of Rp. 2,000,000.00 (two million rupiah), which is adjusted to the plaintiff's capabilities. This request to reduce the installments that must be paid is submitted with the aim that the plaintiff can still have the opportunity to complete his obligations to the defendant, which means the credit agreement is still ongoing. Based on the previous explanation, it is explained that the criteria for granting credit restructuring in Bank Indonesia Regulation Number 14/15/PBI/2012 concerning Assessment of Commercial Bank Asset Quality are specifically regulated regarding the provisions on the criteria for granting credit restructuring, namely, the debtor has

experienced difficulties in making principal payments and/or the interest on the credit he took and the debtor's business prospects are considered to be still good and are declared capable of meeting its achievements if restructuring is granted (Syahputra & Suwadi, 2022).

1. *The first criterion*, in this case, has been met, namely that the plaintiff is experiencing difficulties in making principal and interest payments on the credit, which can be seen from the warning letters given by the defendant to the plaintiffs, which basically remind the plaintiffs to complete their obligations. The first warning letter to plaintiff I was given on 27 July 2020, the second warning letter was given on 11 August 2020, and the third warning letter was given on 26 August 2020. Meanwhile, the first warning letter to plaintiff II was given on 27 July 2020 warning letter The second was given on 11 August 2020, and the third warning letter was given on 26 August 2020. The defendant also gave a summons to the first plaintiff on 24 November 2020 and a second summons on 25 November 2020. Based on the warning letters and subpoenas that the defendant gave to the plaintiffs can be used as evidence that the plaintiff, in this case, has experienced difficulties in making principal and interest payments on his credit.
2. *The second criterion* is what hinders the plaintiff from obtaining credit restructuring, namely good business prospects and being deemed capable of meeting its achievements. Assess this can be seen based on the table of criteria for determining credit quality as regulated in Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Asset Quality Assessment for Commercial Banks. In the table of criteria for determining credit quality, there are several main components, namely, business prospects, debtor performance, and ability to pay. (1) Business prospects consist of business growth potential, market conditions and debtors in competition, quality of management and workforce, and affiliate support. (2) Debtor performance consists of profitability, capital structure, cash flow, and sensitivity to market risk. (3) The ability to pay consists of the accuracy of principal and interest payments, accuracy of financial information, completeness of credit documentation, compliance with credit agreements, appropriateness of use of funds, and reasonableness of sources of payment of obligations.

In the position case, it is explained that the plaintiffs are still trying to continue making payments according to their ability, namely an amount of at least Rp. 2,000,000.00 (two million rupiah) towards plaintiff I's debt amounting to approximately Rp. 3,300,000,000.00 (three billion three hundred million rupiah), and the debt of plaintiff II is approximately Rp. 4,300,000,00.00 (four billion three hundred million rupiah). Based on the previous table of criteria for determining credit quality, this shows that the plaintiffs' business growth, profitability and cash flow are in poor condition, so their ability to make payments is very small and does not correspond to the remaining amount of their debt, although it does not rule out the possibility that the plaintiffs also do not meet other criteria. As previously explained, the analysis of the ability of the plaintiffs as debtors to carry out their obligations was carried out by a professional and independent party so that it would actually be a question for the defendant if the plaintiff's credit condition was no longer healthy, but the defendant was still given credit restructuring.

Then enter into the credit agreement made by the parties, in Article 5 of the Deed of Debt Term Extension Number 21 dated 5 April 2019, which was made between plaintiff II and the defendant and Article 13 of the Deed of Credit Agreement Number 20 dated 5 April 2019 which was made between the plaintiff I and the defendant stipulate that the defendant has the right to terminate the credit prematurely if the debtor does not fulfill its obligations on time in accordance with the provisions agreed in the credit agreement. Basically, just by being late in paying the plaintiff's debt to the defendant, it shows that the plaintiff has not fulfilled their obligations as agreed in the credit agreement so that the

defendant can terminate the credit prematurely. This shows that one aspect in the table of criteria for determining credit quality was not fulfilled by the plaintiffs, namely compliance with the credit agreement. The actions of the plaintiffs in not fulfilling their obligations in a timely manner constitute a violation of a very basic part of the credit agreement, so it can be categorized as bad credit.

Second problem

Regarding the standard clauses in the credit agreement between the plaintiff and the defendant. First of all, it is necessary to understand what a standard clause is. The definition of a standard clause based on Law Number 8 of 1999 concerning Consumer Protection is basically a provision in an agreement that has been determined unilaterally by the business actor and must be fulfilled by the consumer. An agreement that contains standard clauses will become a standard agreement, so it can be said that standard clauses give rise to standard agreements. Standard agreements are basically often used in B2C (business-to-customer) agreements (Loo, 2020; Feng & Krishnan, 2022). Standard agreements are created to shorten time and reduce costs because you only need to design an agreement once to apply to each consumer. It also needs to be understood that the definition of consumer in Law Number 8 of 1999 concerning Consumer Protection is the final consumer, meaning the party who uses the goods or services themselves, not for resale.

The Standard Agreement has several main characteristics, namely:

1. Standard agreements are made unilaterally by parties who have a stronger position, namely business actors;
2. Consumers are not involved at all in the process of creating the contents of a standard agreement;
3. New agreements are made en masse, meaning one form of agreement to be applied to all consumers, And
4. Consumers can be forced to agree to standard agreements because of greater consumer needs.

Standard agreements are not something that is prohibited by law, but there are provisions in Article 18 of Law Number 8 of 1999 concerning Consumer Protection that regulate the contents of standard clauses that are prohibited from being made in agreements (Syafri & Hartati, 2021), in essence, namely:

1. related to the transfer of responsibility of business actors;
2. regarding the right of business actors to refuse to return goods purchased by consumers;
3. regarding the right of business actors to refuse to hand back money paid by consumers;
4. related to the granting of authority from consumers to business actors to take all actions unilaterally for goods purchased by consumers in installments;
5. related to regulations regarding proof of loss of use of goods or services purchased by consumers;
6. related to granting rights to business actors to reduce the benefits of services, which are the object of buying and selling services;
7. related states that consumers are subject to new, additional, continued regulations made unilaterally;
8. regarding the statement that the consumer authorizes the business actor to impose mortgage rights, liens or security rights on goods purchased by the consumer in installments, And
9. Regarding the writing format of standard clauses, it is also regulated, namely that it is prohibited to be made in a position or form that is difficult to read clearly.

Law Number 8 of 1999 concerning Consumer Protection states that agreements containing several standard clauses that are prohibited above are declared null and void, and business actors are obliged to make adjustments to these standard clauses.

In the arguments of the plaintiff's lawsuit, it is stated that there are 3 (three) articles in the credit agreement that apply standard clauses that violate the law, namely:

1. Article 5: The Bank has the right at any time to change and determine the interest rate for the Current Account Loan (PRK) credit facility provided to the debtor, one or another, based solely on the bank's consideration. First of all, we need to find out more about what is meant by bank interest. The definition of bank interest is basically the compensation determined by the bank as a creditor to the debtor for the credit they receive. Meanwhile, the meaning of the sentence in Article 5, which states that banks can set their own interest rates, is floating interest rates, namely interest rates whose value is not fixed but can change. Floating interest rates are often applied to long-term credit, while fixed interest rates tend to be applied to short-term credit.

In general, this clause in Article 5 can be said to violate the provisions regarding standard clauses which are prohibited in Article 18 paragraph (1) letter g of Law Number 8 of 1999 concerning Consumer Protection, namely stating that consumers are subject to new, additional, continued and amended regulations. Continuation is made unilaterally by business actors while consumers are using the services they have purchased. Based on this regulation, it is clear that Article 5 of the credit agreement in this study fulfills the main elements that are prohibited, namely,

- a. Debtors' compliance with new regulations in the form of changes in interest rates given by creditors;
- b. The new regulations were made unilaterally by the bank as the creditor, And
- c. The new regulations were made when the debtor was still in a debt and receivable agreement, meaning changes in interest rates occurred while the debt and receivable agreement was still in progress and had not been completed.

However, it is also necessary to pay attention to the conditions of banking practices in the field so that all parties, both creditors and debtors, receive balanced protection. A bank's move to implement a floating interest rate is an effort to protect the interests of the bank itself because changes in the floating interest rate are not just a decision of the bank itself but follow changes in the Bank Indonesia interest rate or what is usually called the BI Rate (Catalán et al., 2020; Soedarmono et al., 2023). Changes in Bank Indonesia's interest rates are one of Bank Indonesia's monetary policies, which aim to control the inflation rate so that it is hoped that the economy in this country can run stably. Based on the Bank Indonesia interest rate, the bank then determines the basic credit interest rate or what can be called the prime lending rate. In Bank Indonesia Circular Letter Number 13/5/DPNP concerning Transparency of Information on Basic Credit Interest Rates (SBDK), 3 (three) components are regulated for calculating basic credit interest rates, namely:

- a. Cost of funds for credit;
- b. Overhead costs incurred by banks in the process of providing credit And
- c. The profit margin is set for credit activities.

Then, there is one more thing that needs to be considered to determine the basic interest rate for individual loans, namely the individual customer risk premium. This is determined based on the debtor's current financial condition, future business prospects, and the debtor's remaining credit period. The bank will provide the latest information regarding the basic credit

interest rate for each type of credit it has. However, the final basic credit interest rate for each customer may not be in accordance with the information provided by the bank because this does not include the calculation of individual customer risk premiums, which are different for each customer. These are some of the reasons why banks inevitably have to provide floating interest rates to their customers because it would be unfair if the bank were to bear the changes in interest rates.

2. Article 19: The grant of power contained in the in-casu agreement is absolute power that cannot be revoked. The Civil Code only regulates power and does not specifically regulate absolute power. In general, practice, if the power of attorney wishes to grant absolute power, a clause will be included that states that the power of attorney will be given to the recipient of the power of attorney by ignoring the provisions of Articles 1813 and 1814 of the Civil Code which regulate the termination and withdrawal of the power of attorney. Article 1813 of the Civil Code regulates that the granting of power of attorney ends for several reasons, namely:

- a. Withdrawal of power of attorney by the power of attorney.
- b. Notification of termination of power of attorney by the power of attorney.
- c. The grantor or recipient of the proxy dies, is under guardianship, or goes bankrupt.
- d. A woman who acts as the giver or recipient of power of attorney is married.

Apart from general regulations in the Civil Code, rules relating to absolute power are also specifically regulated in statutory regulations. The rules regarding the prohibition on the use of absolute power of attorney are regulated in the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power of Attorney as a Transfer of Land Rights, especially in the Second Dictum which regulates prohibited absolute powers, namely powers that cannot be withdrawn by the person giving the power of attorney. Its contents relate to the transfer of land rights, which gives the recipient of the power of attorney the authority to control, use, and carry out all legal actions regarding land rights. Rules regarding the prohibition on the use of absolute power of attorney are also regulated in Article 39 paragraph (1) letter d of Government Regulation Number 24 of 1997 concerning Land Registration which is basically the same as the prohibition in the Second Dictum of the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning Prohibition of the Use of Absolute Power of Attorney As a transfer of land rights, the PPAT refuses to do a deed carried out by a party acting on the basis of absolute power of attorney regarding the legal act of transferring rights. However, the only regulations relating to the prohibition on the use of absolute power of attorney that are still in force at this time are Government Regulation Number 24 of 1997 concerning Land Registration because the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power of Attorney as a Transfer of Land Rights has been revoked and declared no longer valid. Based on Attachment Number 80 to Regulation of the Head of the Land Agency of the Republic of Indonesia Number 10 of 2014 concerning Revocation of Legislation Regarding Land. Based on the above, it can be understood that absolute power is prohibited as long as it concerns the transfer of land rights.

Apart from specific regulations regarding the prohibition of the use of absolute power, there are also special regulations that actually allow the use of absolute power. This is regulated in Article 15 paragraph (2) of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, which basically states that a power of attorney to impose Mortgage Rights or what is usually called SKMHT cannot be withdrawn. Returned by the person giving

the power of attorney or expires unless the power of attorney has been completed or the term has expired. SKMHT has been completed, meaning that the related land rights object has completed the imposition of mortgage rights. Then regarding the SKMHT period there are 2 (two) provisions, namely:

- a. SKMHT that has been registered must be followed by making a Deed of Granting Mortgage Rights, commonly called APHT, no later than 1 (one) month after it is given.
- b. SKMHT that has not been registered must be followed up by making an APHT no later than 3 (three) months after it is given.

Making SKMHT also has 4 (four) conditions, namely:

- c. Made by a notary or land deed official (PPAT);
- d. Only contains the power to impose mortgage rights;
- e. Does not contain any substitution power, And
- f. Clearly state the object of the mortgage right, the amount of debt, and the identity of the debtor and creditor.

Apart from the use of absolute power of attorney, which is permitted in Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, there are also exceptions that allow the use of irrevocable power of attorney, namely the existence of an irrevocable power of sale, which is an integral part of the sales and purchase binding agreement commonly called PPJB. In practice, PPJB is made because the sale and purchase deed or what is usually called an AJB cannot be made due to the lack of several things that are conditions for making an AJB, including because the certificate is still in the process of being made or the payment has not been paid in full. This irrevocable power of sale is an additional agreement to the main agreement, namely the PPJB, so it is something that cannot be separated from one another and continues to be valid as long as the relevant PPJB is still in effect. This power of sale does not violate legal provisions because the nature of the PPJB itself requires a power of sale in its implementation, as long as the provisions relating to the irrevocable power of sale are expressly stated in the PPJB and the applicable PPJB in this case, must be a paid PPJB.

Regarding the problem in this case, it is necessary to first know what absolute powers exist in the credit agreement between the plaintiff and the defendant. The absolute power given by the plaintiff to the defendant is:

- a. The power to disburse all assets of the debtor (plaintiff) in whatever form they are administered by the creditor or bank (defendant) for the purposes of paying off the plaintiff's debt to the defendant;
- b. Power of attorney to extend insurance for buildings pledged as collateral to a bank, business license, and/or other documents related to the credit agreement; And
- c. Power to debit the debtor's account or another account which currently or in the future will be with the bank with the entire amount of debt, interest, fines, and other costs, including but not limited to insurance premiums, attorney's fees, and notary fees which must be paid by the debtor to the bank.

Based on some of the contents of the absolute power of attorney contained in the credit agreement between the plaintiff and the defendant above, it can be understood that all of these things are the basic and main points of a credit agreement so that the agreement can run as it should. The absolute powers given by the plaintiff to the defendant are made to guarantee the implementation of the plaintiff's basic and main obligations to the defendant, as well as so that

the defendant's rights in the credit agreement in question can be fulfilled fairly. Therefore, the absolute power contained in this credit agreement was made with the aim of expediting the implementation of the agreement in question and not with the aim of harming the plaintiff. Apart from that, the absolute power created in this credit agreement basically does not violate any legal rules because based on the previous explanation above, the absolute power that is prohibited under Article 39 paragraph (1) letter d of Government Regulation Number 24 of 1997 concerning Land Registration is as long as An absolute power of attorney is made with the aim of transferring land rights, whereas in this case there is no transfer of land rights at all, but only so that the rights and obligations of each party in the credit agreement can be fulfilled as they should. Therefore, the use of a standard clause in the form of absolute power in this credit agreement is not an unlawful act because it violates the provisions regarding the use of standard clauses in Law Number 8 of 1999 concerning Consumer Protection.

3. Article 21: The bank has the right, without needing to obtain any form of approval from the debtor, to assign, transfer or transfer all or part of the bank's rights and obligations based on the credit agreement to another party determined by the bank. There are several main elements that need to be considered in this article, namely:
- a. The bank does not require consent from the debtor;
 - b. There is a transfer of all or part of the bank's rights and obligations;
 - c. The transfer is carried out based on a credit agreement, And
 - d. The transfer is made to a third party determined by the bank itself.

The plaintiff, in this case, states that the standard clause made by the defendant is an unlawful act because it violates the provisions of Article 18 Paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection, which prohibits standard clauses that state that there is a transfer of responsibility to the perpetrator business. If we look at the main elements of Article 21 of the relevant credit agreement, there is indeed a clause relating to the transfer of the bank's rights and obligations there, either in whole or in part.

The Consumer Protection Law only prohibits standard clauses that contain the transfer of obligations of business actors, while it does not regulate the transfer of rights of business actors. Therefore, only part of Article 21 of the Credit Agreement basically violates the provisions of Article 18, paragraph (1) of the Consumer Protection Law. However, this case needs to be looked at more deeply, casuistically. In this case, the defendant has carried out all his obligations towards the plaintiff, namely disbursing the loan as stated in the credit agreement in question. In this case, the defendant's obligations are not transferred, in fact, all obligations have been carried out in accordance with the credit agreement. Meanwhile, the aspect of the defendant's rights, which in this case has not been fully fulfilled by the plaintiff, is the payment of his debt to the defendant in accordance with the credit agreement in question.

Apart from the act of transferring rights by the defendant, which is not a violation of Article 18 paragraph (1) of the Consumer Protection Law, transferring rights is also a legal act regulated in Article 613 of the Civil Code, which reads: Delivery of receivables names and other items without a body, carried out by making an authentic or private deed which delegates the rights to those items to another person. This handover has no consequences for the debtor until the handover is notified to him, approved in writing, or acknowledged (Erlina & Gunawan, 2022).

Based on the contents of this article, it can be understood that the transfer of receivables is something that is legally permitted. The transfer of receivables must be carried out by making a cession deed, either in the form of an authentic deed or a private deed. In addition, in order for the transfer of receivables to have a legal effect on the debtor, notification, approval, or acknowledgment must be received from the debtor. When a transfer of receivables begins to have legal effects, it can also be seen in the contents of the terms of the credit agreement between the parties. Based on this, it can be understood that there is indeed a standard clause included in the credit agreement, some of whose provisions violate the provisions of Article 18 paragraph (1) of the Consumer Protection Law, namely regarding the transfer of responsibility to the defendant. However, in practice there is no transfer of responsibility by the defendant and all the defendant's responsibility towards the plaintiff has been carried out. On the other hand, the defendant's right, which in this case has not been received from the plaintiff in accordance with the credit agreement, is in the form of payment of all its receivables.

Third problem

Regarding allegations from the plaintiff that the defendant made irregularities in providing credit to the plaintiff. The plaintiff stated that the defendant did not apply the prudential principle concerning banking as regulated in Article 8 of Law Number 10 of 1998. The precautionary principle arises from the importance of understanding and applying credit analysis in a credit agreement. Credit analysis is carried out to determine the risks that can occur in providing credit.

The meaning of the principle of prudence can be generally understood based on Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, namely as a bank belief that is based on a sharp analysis of the debtor's good faith and ability to repay loans. In accordance with the credit agreement (Camelia et al., 2022). The general principle of prudence above is translated into a conceptual matter by the bank. These conceptual matters are used by banks as a reference for applying the principle of prudence in providing credit to customers, which is known as the 5C principle (character, capacity, capital, collateral, condition of economy) (Sinaga et al., 2023). Apart from the 5C principle, in implementing the banking principle of prudence, it is also known as the 4P principle (purpose, payment, protection, perspective).

Then, there are other principles that are used in order to further implement the precautionary principle in banking, namely the Know Your Customer principle. To understand this, it can be seen from the definition of the principle of prudence in the Banking Law, which mentions the belief in faith, which in this case, of course, means good faith. Meanwhile, the definition of the know your customer principle is a principle used to find out in-depth about the customer's identity, as well as to monitor and report suspected suspicious transactions from customer account activities (Ostern & Riedel, 2021; Schlatt et al., 2022). Based on the two definitions above, it can be understood that the know your customer principle is basically an application of the precautionary principle because customers who have unclear identities and have suspicious account transaction activities can be suspected of having bad intentions.

The following is a brief description of the precautionary principle, which was used as one of the issues presented by the plaintiff to the defendant. To find out whether the defendant can be said to have committed an unlawful act in the form of violating the application of the prudential principle as regulated in the Banking Law, one must look at it casuistically by examining what actions the defendant has taken before approving and distributing credit to the plaintiff. Some of the things the defendant has done are:

1. Analyze the plaintiff's financial statements and accounts before granting credit. From the financial reports, we can see the performance of the business carried out by the plaintiff in a certain time period. Based on financial reports, it can be seen whether the business carried out experienced a profit or loss. Financial reports generally consist of profit and loss statements, cash flow reports, and balance sheets. By analyzing the financial statements, the defendant has carried out a form of application of the precautionary principle, namely assessing aspects of the plaintiff's capacity and capital as a debtor. Capacity is related to the financial condition of the business carried out by the plaintiff, while capital is related to the total amount of net worth owned by the plaintiff, namely assets minus debts.
2. Make a direct visit to the plaintiff's place of business before granting credit. A visit in this case means that the plaintiff comes to see and inspect the plaintiff's place of business directly to gain confidence that the business mentioned by the plaintiff is real. This needs to be done so that the defendant avoids the plaintiff claiming to have a certain business, but it turns out it is not true. This visit was carried out to obtain a general and brief overview regarding the capacity and capital aspects of the debtor, which are used to provide an assessment when granting credit.
3. Carry out the claimant's credit capabilities and history through BI Checking before providing a loan. BI Checking is a method to see whether or not the history of debtor credit use is smooth or not. This information is obtained from the Financial Services Information System (SLIK), which is supervised by the Financial Services Authority (OJK). This Financial Services Information System can be mutually accessed between banks or non-bank financial institutions as long as the institution is registered with the Credit Information Bureau (BIK). The information contained in the Financial Services Information System (SLIK) includes, among other things, the identity of individual debtors or owners or managers of legal entity debtors, the amount of credit provided, credit repayment history, and collateral. In this Financial Information Services System (SLIK), each debtor will be given a credit score assessment of compliance with the return of the credit they have taken, starting from the results of assessing current credit to bad credit. The application of BI Checking to debtors is one of the processes of implementing the precautionary principle, which is seen from the aspect of the debtor's character.
4. Carry out an assessment of the assets used as collateral for the plaintiff's credit repayment. This collateral asset assessment is carried out so that we can find out the estimated value of the collateral asset. This is important to know so that the amount of credit granted can be determined correctly, so that it can provide legal protection to creditors. Proper assessment of collateral assets can provide legal protection to creditors because if the debtor is no longer able to carry out his obligations, namely returning his debt, then the collateral assets will be sold to be given to the creditor. In general, the valuation of collateral assets can be seen using three methods, namely book value, market value and liquidity value. This effort to assess collateral assets is a form of application of the defendant's precautionary principle, namely the guarantee aspect and the protection aspect.

Based on several of the actions above that were carried out by the defendant before providing credit to the plaintiff, it can be said that the plaintiff had implemented the principle of prudence in banking. Therefore, the defendant cannot be said to have committed irregularities in providing credit to the plaintiff because he did not apply the precautionary principle concerning banking regulated in Article 8 of Law Number 10 of 1998 concerning Banking.

Fourth Problem.

This discussion is slightly different from the three previous issues which discussed the material terms of the lawsuit, this fourth issue will be discussed in relation to the formal terms of the plaintiff's claim. Material and formal requirements are two different things, but in a complete lawsuit, both must be fulfilled properly. Material requirements are related to the substance, content, or main material of the lawsuit itself, for example, what is the basis of the lawsuit or demand. Meanwhile, formal requirements are related to the procedural provisions in carrying out a lawsuit, for example, the party entitled to represent the plaintiff or the time period for carrying out the lawsuit. A lawsuit that does not meet the formal requirements will be declared inadmissible or NO (*niet ontvankelijke verklaard*), whereas if the plaintiff cannot prove the contents of the lawsuit in court, then the lawsuit will be declared rejected.

The formal requirements for a lawsuit are:

1. In accordance with adjudicatory competence, this means that the lawsuit is addressed to a court that has the competence to adjudicate the related dispute. Competency is divided into two, namely relative competence and absolute competence. Relative competence concerns the court's authority to adjudicate a dispute based on its legal area, while absolute competence concerns the court's authority to adjudicate a dispute viewed based on the material of the case.
2. There is no error in person in making the lawsuit, meaning that there is an error in the subject elements related to the lawsuit, both the plaintiff and the defendant. Errors in person are divided into parts: namely the plaintiff is a party who is not authorized to file a lawsuit, the plaintiff incorrectly determines the defendant, and the lawsuit lacks parties, meaning that the plaintiff or party drawn as the defendant is incomplete.
3. A lawsuit cannot be obscured libel, meaning that the lawsuit is not clear and unequivocal. A lawsuit that is not clear and firm can occur due to several reasons, including the plaintiff formulating the petitum in a non-specific manner, the statements in the lawsuit contradicting each other, the posita contradicting the petitum, differences in information regarding the object of the dispute written in the lawsuit and the facts. in the field.
4. The lawsuit does not violate the principle of *ne bis in idem*, meaning that a lawsuit cannot be filed twice regarding a case that has already been decided by the court. More fully, the elements of *ne bis in idem* are divided into four things, namely:
 - a. The subject matter being sued has already been sued before;
 2. The object of the case being sued has been sued before;
 3. The subject matter is the same as the previous lawsuit;
 4. The previous case had received a positive decision (refusing to grant), which had permanent legal force.
5. The lawsuit is not premature, meaning that you do not file a lawsuit before the time allowed for filing a lawsuit. Examples of premature lawsuits include lawsuits for payment of debts that are not yet due, lawsuits for distribution of inheritance even though the heir is still alive, lawsuits for debt payment even though there has been an agreement to postpone debt payments, lawsuits for industrial relations disputes where bipartite negotiations have not been carried out first.

Apart from the formal requirements above, the lawsuit must also meet the material requirements, namely:

1. Having the identity of the parties means that the plaintiff in his lawsuit must be able to provide complete information regarding the identity of the parties involved in the case, both for himself as the plaintiff and for the defendant. This identity consists of, among other things, full name,

place and date of birth, occupation, religion, place of residence, religion, age, nationality, and capacity and position in the case in question.

2. The basis of the lawsuit or *posita (fundamentum petendi)*, which can be briefly understood as the basis for the lawsuit. Facts in the field and legal sources that form the basis for preparing a lawsuit. The basis of the lawsuit is divided into two, namely a description of the incident (*fetelijke gronden*) and a description of the legal basis (*rechts gronden*).
3. Claims or *petitum*, namely a description of the claims submitted by the plaintiff to be decided in court. Claims are divided into three, namely basic claims (primary), additional claims (*accessoir*), and substitute claims (subsidiary). Examples of additional demands are demands that the decision be carried out first, even though there are legal appeals or demands to pay forced money if the defendant does not carry out the decision. Meanwhile, a substitute claim is basically intended to replace the main claim if the court does not grant it.

In this case, the plaintiff filed a lawsuit represented by the Kalimantan Consumer Protection Foundation (YLPKK) which is located on Jl. Bumi Mas Raya, Ruko No. 5, Fl. 2, Banjarmasin, South Kalimantan. The Kalimantan Consumer Protection Foundation (YLPKK) represents the plaintiffs based on a special power of attorney dated December 16 2020.

The Kalimantan Consumer Protection Foundation (YLPKK) filed a lawsuit for unlawful acts with lawsuit number 001.IX.G/YLPKK.BJM/I/2021 dated January 26 2021 and has been registered with case register number 95/Pdt.G/2021/PN Sby dated January 27 2021. The Kalimantan Consumer Protection Institute Foundation (YLPKK) is represented by Sehatno Samidoen who serves as director, Tutik Ani Rahmawati who serves as division law, Suradi who serves as the institutional division, Sudarmadi who serves as the complaints division, Didik Aryadi who serves as the legal division.

Therefore, first, we need to find out more about what a foundation is. A foundation is a form of legal entity. The general definition of a business entity is an organization created with the aim of making a profit. Types of business entities can be divided into three, namely based on capital ownership, based on activities, and based on country territory. Business entities consist of legal entity business entities and non-legal entity business entities. The most fundamental difference between legal entity business entities and non-legal entity business entities is their position as legal subjects. A legal entity business entity is a legal subject itself, so that the person carrying the rights and obligations is the legal entity business entity itself. This is different from unincorporated business entities, which are not legal subjects, so those who bear the rights and obligations are the founders. The legal subject of a legal entity is the business entity itself, while the legal subject of an unincorporated business entity is the founder of the business entity concerned.

Legal entity business entities consist of limited liability companies (PT), foundations, cooperatives, state-owned enterprises (BUMN), and regional-owned enterprises (BUMD). Meanwhile, unincorporated business entities consist of individual companies and partnership companies in the form of civil partnerships, firms and limited partnerships (*commanditaire vennootschaap*). More specifically, in this case, we will discuss foundations in more depth because the plaintiff's legal representative here is a legal entity in the form of a foundation.

Meanwhile, based on Law Number 18 of 2003 concerning Advocates, the definition of legal services is explained, namely services provided by advocates in the form of providing legal consultations, legal assistance, exercising power of attorney, representing, assisting, defending and carrying out other legal actions for the client's legal interests. Since the birth of the Law on Advocates in 2013, it has been understood that only an advocate can represent a person's legal interests. However,

there are several exceptions, namely prosecutors as state attorneys, government agency law firms, trade union officials, and parties who receive incidental powers from the head of the court.

Based on the definition of foundations and legal services above, it can be understood that only advocates and parties who have special rights can provide legal services, while foundations are not parties or institutions that can provide legal services to represent clients in court. Based on this, the lawsuit filed by the plaintiffs with Number 001.IX.G/YLPKK.BJM/I/2021 dated 26 January 2021 and which has been registered with case register number 95/Pdt.G/2021/PN Sby dated 27 January 2021 is a lawsuit that contains formal defects and is declared unacceptable or *onvankelijke verklaard* (NO).

CONCLUSION

Based on the problem analysis in chapter III, several important points can be concluded from the lawsuit submitted in Decision Number 95/Pdt.G/2021/PN Sby. The plaintiff is not entitled to credit restructuring because the plaintiff's economic condition is no longer good, related to the criteria for determining credit quality which does not meet. In addition, the plaintiff cannot apply standard clauses that violate the law, especially in changing interest rates by banks and granting absolute power of attorney. Regarding this, the plaintiff cannot be said to have committed irregularities in providing credit facilities to the defendant. Several actions taken by the defendant before providing credit to the plaintiff, such as analysis of financial reports and account transactions, direct inspection of the place of business, examination of credit history, and assessment of the plaintiff's collateral, did not violate the provisions of the standard clause. Apart from that, the plaintiff also did not fulfill the formal requirements in his lawsuit, because the attorney representing the plaintiff was not an advocate, but was the management organ of a foundation. From the results of this analysis, it can be concluded that the plaintiff does not fulfill the material and formal requirements required in his lawsuit, making it impossible for the plaintiff to obtain credit restructuring.

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