

JURIDICAL ANALYSIS OF DEBT COLLECTIONS TOWARDS DEFAULT DEBTOR WHICH DEBT HAS MATURED AS THE TIME WHEN THE DEBT ACKNOWLEDGMENT LETTER HAS NOT ENDED

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ABSTRACT

One of the forms of trust between one individual with the others is by making a mutual agreement that is outlined in a written agreement. In the process of it, there are certain conditions that might result in the termination of the agreement as there is default in the written agreement. One of the forms of written agreement that has been stated is debenture note. As if the case of Supreme Court Decision No. 3051/K/Pdt./2017 pertaining to creditor collect debt towards debtor in which the debtor has been negligent and not able to settle the debt throughout 3 (three) months successively as the debt acknowledgment letter has not ended with the result that creditor accuse the debtor to be seized its collateral. Research Methodology that is being used is, juridical normative law research methodology. Inasmuch as juridical normative law research methodology therefore sources and types of data focused on secondary data. Through this research it can be concluded that, debt acknowledgement letter that is made under consideration of Supreme Court Judge is not based on when is the end of the acknowledgement letter, but it is more to the substance of the contents of the debt acknowledgement letter which is the primary essence of the birth of its debt recognition, where both sides agreed the debt shall be collected immediately for 3 (three) months successively.

Keywords: Agreement, Debts, Default.

INTRODUCTION

In the debenture note, indubitable both parties had agreed with its rights and obligations. If in the practice of the debt agreement can lead to a legal problem to the one of the default parties, as a result of those default parties. Because of that default party, the debtor will file a civil lawsuit to the court. In this case, it started when persons with name initial, HE, which is the creditor, made a debt agreement with SG and FS, which are the debtors. In the agreement, HE lent IDR 1,182,150,746 (one billion one hundred eighty-two million one hundred fifty thousand seven hundred forty-six Indonesian Rupiahs) amount of money to SG and FS. At the same time, debt acknowledgement letter was made on 15 July 2014 with monthly installment of IDR 41,717,485 (forty-one million seven hundred seventeen thousand four hundred eighty-five Indonesian Rupiahs) amount of money needed to be paid by SG and FS. The debt must be paid in full by no later than 15 July 2017 (Mahkamah Agung RI, 2015).

In the debt acknowledgement letter, it is stated that if SG and FS as debtors fail to pay the installment for 3 months in a row, then the debt that made by SG and FS can be collected right away with compensation of 3 percent of the remaining debt every month. The payment of the installment must be made by transferring the money to HE's BCA (Bank Central Asia) bank account. A few months later, it is found out that SG and FS failed to pay the monthly installment for 3 months in a row, therefore, HE started to file a lawsuit to confiscate the collateral which are houses belong to both SG and FS which was agreed in the debt acknowledgment letter (Mahkamah Agung RI, 2015).

In the consideration of the Supreme Court decision No.54/Pdt.G/2015/PN. Mdn, the judge stated that the debt acknowledgement letter that was made by both parties on 15 July 2014 was not yet due and yet HE which is the debtor had already filed the lawsuit on 15 July 2017. Therefore, the judge assumed that the lawsuit made by HE is premature since the letter was due on 15 July 2017. From the fact that the debt agreement was made on 15 July 2014 and due on 15 July 2017, the judge confirmed that both SG and FS as the debtors was not yet become a default in this case. Moreover, from the clause contained in the agreement, which is "If SG and FS failed to pay the monthly installment for 3 months in a row, then the debt that made by SG and FS can be collected right away with compensation of 3 percent of the remaining debt every month", the judge consider that the clause is contradicting with the principle of proprietary and sense of justice. Therefore, the judge didn't see the case was made by default. Thus, the lawsuit made by HE was refused by the judge of State Court of Medan. Then, HE as the creditor appealed to the High Court level under Sentence No. 124/PDT/2016/PT Mdn to affirm the sentence from State Court of Medan and finally the judge granted his appeal and canceled the sentence made by State Court and High Court of Medan (Farida Tan, 2016).

This research is based on this case which is interesting to be discussed and thus report with title "JURIDICAL ANALYSIS OF DEBT COLLECTIONS TOWARDS DEFAULT DEBTOR WHICH DEBT HAS MATURED AS THE TIME WHEN THE DEBT ACKNOWLEDGEMENT LETTER HAS NOT ENDED (CASE STUDY OF SUPREME COURT DECISION No. 3051/K/Pdt/2017)." was made. There are several problem statements in this report which are stated as follows: 1. What is the procedure for implementation of a debenture agreement and debt acknowledgement letter using under table deed; 2. How valid is the debt collecting law from a debt acknowledgement letter when it is now past the due but the debtor has already become a default; 3. Analyzing the appeal made by the judge from the perspective of legal certainty of the Supreme Court Sentence No. 3051/K/Pdt/2017.

METHODOLOGY

The method that is used in this research is juridical normative method. Law normative method or literary law method is a method that is used in law research that is done by analyzing any reference available. The way of using this method for this research is analytical descriptive. Descriptive meaning to identify the overview as a whole systematically about the rules that are used, and they are related to the studied problem. Analytical meaning using the object's characteristic by unravelling and interpreting the facts about the main problem that is being studied. The data used in this research is using secondary data that can support the primary data.

DISCUSSION

A. The Procedure of Practice in Using Debt Acknowledgement Letter and Debenture Agreement

The use of debt acknowledgement letter and debenture agreement discussion in this research focus in banking using notary deed or authentic deed that are made directly from notary because basically both debt acknowledgement letter and debenture agreement are two things that are inseparable in some certain banks. Moreover, debt acknowledgement letter is a part of the derivation of debenture agreement which is usually also called a credit agreement.

In some banks, there are some standard operational policies in terms of marketing and legality procedure of credit binding. Credit binding, in this case, starts when a customer or prospective debtor files a loan fund to the concerned bank. In addition, there is general consideration or selection of the customer that has been explained from previous sub chapters related to the essential elements in credit and one of them is collateral.

A collateral burden done by the collateral giver to get the credit facility from the bank or non-banking financial institute. Fund giving is based on trust, meaning a bank or non-banking financial institute believes that the debtor is adequate to return the debt with interest. Likewise, the debtor also believes that the bank and institute is adequate to lend fund to him/her (Winarsasi, 2020).

The collateral given are usually things that are immovable like land, land with housing above or movable like a vehicle. In common practice, collateral that is chosen is usually land. This land collateral will be bonded in accordance with the applicable law.

The details about the collateral rights of land contained in Constitution No.4 Year 1996. The requirement for the liability rights must fulfill three cumulative elements and are states as follows (Santoso, 2015):

- a. There must be a debenture agreement as the primary agreement.
An agreement between right holders of the land as the collateral giver or debtor with bank as the creditor or collateral holder made with notarial deed or under table deed.
- b. There must be a deed of granting mortgage rights as the following agreement
The rights handover of the land as the debt collateral from debtor to creditor must be proven by the Deed of Granting Mortgage Rights done by the concerned Land Deed Officials.
- c. There must be a registration for the Deed of Granting Mortgage Rights.
- d. Deeds of Granting Mortgage Rights done by Land Deed Officials need to be registered to the District/City Land Office where the land is located to be noted into the book of land and published as a mortgage certificate.

The practice of using debenture and debt acknowledgement in baking is done with notary involvement to legalize and produce notarial deeds. It is a policy procedure that is set by the bank because at the same time, the binding of the land collateral that is given is also bind with the mortgage deed done by the Land Deed Officials. In practice, the Land Deed Official and notary are one unit concurrently by one official so that when legalizing the debenture agreement, debt acknowledgement and mortgage deed done by the Land Deed

Official can be done at once which provide time efficiency in the credit process (Authors, 2020c).

In the making of debenture agreement, debt acknowledgement letter/ or so-called debt acknowledgement deed as it is on a form of notarial deeds and the mortgage deed started from (Authors, 2020c):

- 1) Bank confirmation with the notary/ land deed officials to prepare the time of the signing plan.
At first, the bank confirmation can be done verbally, thereafter it will be continued in the written form, where from the bank side will send the order letter to the notary/ land deed officials which will be stated the bank request for the debt acknowledgement deed in the form of notarial deeds, as well as the credit agreement will be legalize by the notary at the time of the signing.
- 2) Notary/land deed official will immediately reply and confirm to the bank side, as well as immediately drafting or started to undertake the order of the bank. The order letter is very crucial as it will be the primary-will that is needed by the bank. Thus, this will also become the primary and the order proof in the formal form. With the result that the implementation of the credit agreement/debenture can be carry out smoothly.

Associated with the contents of the credit agreement and debt acknowledgement, basically credit agreements are the concept that is prepared by the bank which later the notary will legalize at the day of the signation. Meanwhile the debt acknowledgement deeds are the specific transcription of the bank credit agreement.

The content of the credit agreement usually includes, among others, at the beginning of the deed which includes the identity of the parties and the comparison of the deed and the premise of the deed, then followed by the agreements contained in the clause. In the form of credit facility clauses, term, interest, provisions and other fees, repayments and installments, late fees and Timely Payment Incentives, expedited repayment, place of payment, warning letters and collateral security, credit collateral, borrowers' obligations, power of attorney, termination of agreement, others, adjustment, domicile (Authors, 2020a).

Meanwhile, inside the debt acknowledgement deed letter will be same with credit agreement that contain the beginning of the deed related with the identity of the applicant, later on it will be continued by the deed premise. At the header of the deed of the debt acknowledgement deed, there is title that written "For The Sake of Justice Based on God Almighty". Thereafter in the content of the deeds described base on the debtor request, which bank agreed to give the credit facility base on the credit agreement dated today that is made in front of the notary, later on will be sent back to the bank. In connection with the granting of the credit facility, debtor will admit that it is true that he/she is in debt and will bonded to pay off to the bank an amount of money that is consist of principal debt, interest, fines, and other fees and obligations. Therefore, in the content of the debt acknowledgement deed will refer to credit agreement which stated the debtor acknowledge the debt to the bank based on the credit agreement deed that is made (Authors, 2020b).

After all of the deeds are made include with the mortgage deed, then at the specified time, implementation is carried out and the signing of the whole deed/acknowledgement will be

done by bank creditor as well as the disbursement of funds to the debtor's account which previously the account is opened by the bank side and at the moment collateral certificate will be given to the bank and bank will give it to the notary/land deed which later on it will be process installation of mortgage on collateral certificate and after it finishes it will be given back to the bank as a guide and proof of collateral from the debtor to the bank (Authors, 2020c).

In the practice of the bank, the use of debt acknowledgement deed usually is not used, as it basically on the whole of the credit agreement has been stated clearly and the detail of the debt amount, interest rate, time period, and so on and the most important thing is the collateral. Inside the credit agreement also included regarding collateral clause. The provision of collateral as previously mentioned in the form of certificates of property rights by the debtor to the creditor will also be tied or installed mortgage. With the issuance of a mortgage certificate issued by the local Land Agency Office, it has given a special right that must take precedence, because basically the purpose of installing a mortgage right on a debtor's certificate is to guarantee the repayment of the debts that have been lent by the creditor to the debtor. So that when a debtor defaults, based on a mortgage certificate, the bank creditor is given the right to execute the collateral.

The use of a debt acknowledgement deed in practice is basically a separate policy for each bank, this policy of course must be respected by every prospective debtor, because after all the bargaining power position is with the creditor, as a result of the law and the legal impact arising from the use of a debt acknowledgement deed also not in there, because after all a creditor has the right and tries his best to secure his rights after the creditor loan money is distributed to the debtor.

B. Debt Collection with Execution Using Debt Acknowledgement Letter

An acknowledgement of debt can be useful as a grosse deed when it fulfills the principle of specialty in the sense of (Pittaloka & Pranoto, 2016):

- a) Must confirm the debt collateral, without mentioning the collateral goods are considered unqualified, thus the grosse of the deed fails into an ordinary debt bond and the fulfillment cannot be done through Article 224 HIR, but must go through an ordinary lawsuit.
- b) Collateral must be certain goods in this case can be in the form of movable or immovable objects.
- c) Grosse deed of acknowledgement of debt that can be executed based on Article 224 HIR, only collateral goods in accordance with the principle of specialty, if the executorial verification of the collateral goods is not sufficient to meet the repayment of debts, then it may not be transferred to other people and the shortage must be prosecuted through a civil lawsuit against court.

Debt collection on the debt acknowledgment deed will of course end in execution. The execution of the grosse deed of recognition of debt, at the time of the execution process must go through the submission of a request for the execution of the grosse deed, then an examination will be carried out on the grosse deed and the head of the court will summon the debtor for a reprimand which is the initial stage of execution when the debtor defaults and if the amount of the debt is certain and it is agreed, then the chairman of the court through his stipulation, order the Registrar and the Bailiff to carry out the grosse

execution of the deed of recognition of debt by confiscate and auction towards the debtor's property (Pittaloka & Pranoto, 2016).

All requests for execution of grosse deed of recognition of debt will not be accepted even though it has been carried out "For Justice Based on God Almighty" which has the same executorial power as court decisions with permanent legal force (*inkracht*). There is one statement that a grosse deed of debt obligation cannot be accepted if the debtor does not recognize a valid amount of debt. If the debtor does not acknowledge the request for grosse execution, the deed of recognition of debt is not accepted by the Chief Justice of the Court and Minutes are made and the Head of the Court orders to file a new lawsuit, namely a civil lawsuit (Pittaloka & Pranoto, 2016).

The practice that occurs in the field is different, for example, the deed of recognition of debt is in accordance with Article 224 HIR, but its content is not about the issue of debt recognition, but a debt agreement, and that is still added with the promise of collateral. With such content, what appears in it is a loan agreement and collateral agreement, deviating from what is meant by Article 224 HIR, due to the creditor's desire to be directly bound by what the debtor wants. In this regard, in the case between Nyonta Trisnawati Soedarto and the Jakarta Branch of the Bank of America National Trust and Savings Association, which was decided by the Supreme Court No. 3992 K/Pdt./1986, it was considered that the Notary Deed No. 148 dated 15 May 1982 contained an agreement to recognize money owed with a guarantee, is considered not as grosse deed so that it cannot be requested for execution. In this case, it shows that the grosse deed of acknowledgment of debt is not an agreement between the creditor and the debtor and cannot be mixed with legal issues related to the debt (Supramono, 2013).

C. Analysis of Judge's Decision Consideration from the Side of Legal Certainty

As is known justice, legal certainty and legal benefits are the basic values of law or in other words are legal ideas or legal ideals which are ideas, intentions, creativity, and thoughts regarding the perception of the meaning of law (Kholis, 2008). Legal certainty is an inseparable feature of law, especially for written legal norms. Law without the value of certainty will lose its meaning because it can no longer be used as a behavioral guide for everyone. *Ubi jus incertum, ibi jus nullum* (where there is no legal certainty, there is no law) (Ali, 2012).

A good law must fulfill several principles, according to Lon Fuller's opinion in the theory used and has been described in the sub-chapter on the theory of this research, regarding the principles that must be met by law and if it is not fulfilled then the law is considered a failure as law. One of the principles he put forward is that a law must have conformity between regulations and daily implementation and must not demand an action that exceeds what can be done (Widjajanti, 2016). Legal certainty can also be seen from the law based on facts that are not a formulation of the judge's judgment such as good will or decency (Ali, 2012).

In the case described in the previous sub-chapter that the judge in the Supreme Court's decision believed the Medan District Court's decision had misapplied the law, with the consideration that the District Court upheld the Medan High Court's opinion that the Plaintiff's claim was premature because it had not passed the time as agreed in the Letter of Intent. Acknowledgment of Debt dated July 15, 2014, which is due on July 15, 2017.

The judge considered that the District Court which was strengthened by the Medan Court did not see and understand the Letter of Acknowledgment of Debt dated July 15, 2014 as a whole, where in the contents of the agreement, besides having recognized the amount of debt that must be paid, to be paid in installments which must be repaid until July 15, 2017, it is also agreed that "with the condition that if the first party fails to pay installments for 3 (three) consecutive months, the remaining amount of debt can be collected immediately and at once with additional compensation fine by 3% (three percent) every month. So, until the lawsuit is registered, the defendant in the cassation has never made installments on the debt in accordance with the agreement, therefore the lawsuit is not premature.

The judge's consideration took into account separately the debt acknowledgement letter that is made have due and could be billed immediately for 3 (three) consecutive months as it was related to the theory of legal certainty namely about law must have conformity between regulations and daily implementation and should not demand an action that exceeds what can be done and it can be seen that have created certainty law on those debt acknowledgement letter that has been made, as in any case debt acknowledgment letter is an agreement that is created under the counter based on mutual agreement, therefore this become a bond between both parties as it act as constitution for those who make it.

Meanwhile, if it relates to a lawsuit that considered premature by the judge's decision at the district court and court level, in this case, it is not something that becomes the concentration of the judge's consideration in the cassation decision. If we review it briefly a trait or state of being premature attached to:

- 1) The time limit for filing a lawsuit is accordance with the time period that agreed in the agreement that has not yet arrived; or
- 2) The deadline for filing a lawsuit has not yet arrived, because there has been a delay of the payment by the creditor or based on an agreement between the creditor and the debtor (Harahap, 2016).

Anyone can be sued over a default action as it is set on Article 1238 civil KUH as it state Debtor declare negligent with a warrant, or with a similar deeds, or based on the strength of the engagement itself, if this engagement causes the debtor to be deemed negligent by the lapse of the specified time.

Based on those Articles, then debtor will not be able to sue to the court over default if the debtor has not declared negligent based on clause on Article 1238 civil KUH. If creditor sue without the debtor negligent, either by warrant or based on agreement deadline, therefore law court will not able to accept lawsuit that considered premature.

Based on HE case as plaintiff from the beginning has collect and submit lawsuit to the court as an act of the defendant both SG and FS which are not carrying out obligations to pay debts to HE in the amount of IDR 1.182.150.746,00 (one billion one hundred eighty-two million one hundred fifty thousand seven hundred forty-six Indonesian Rupiahs), Certainly it shown that HE as a creditor has collect and declare that debtor SG and FS negligent to paid its debt included with the proof of debt acknowledgement letter that is made by both parties. Under judge consideration in the District Court and High Court consider an act that is consider premature is linked to debt acknowledgement period agreement that has not due, as it is not appropriate, because premature essence or there is no lawsuit to the court that is stated both SG and FS defaults are negligent with their responsibilities to the deal that is stated on the agreement, not to the interpretation that is

stated on the content of the agreement, furthermore in the other side between HE as a creditor and both SG and FS as a debtor there is no mutual agreement about the delay of payment between the two so that this is according to the nature or condition of being premature cannot be attached to HE legal action as a creditor and both SG and FS as a debtors.

CONCLUSIONS

The conclusions that can be drawn from the discussion above:

1. First, the procedure for implementing the use of the debt agreements and debt acknowledgments is basically mostly carried out in the banking sector but can also be carried out by individuals, in debenture banking sector also called as credit agreement where its implementation begins first from an order or request from the bank as a creditor to ask a notary to make debt acknowledgement deed in the form of a notarial deed and the credit agreement is legalize by made it in front of the notary, meanwhile in the scope of individuals the implementation is made is simpler way by ignoring the provisions regarding the making of debenture agreement and debt acknowledgement, where the content of debt acknowledgment as well as included with debenture agreement that is made under table and then legalized or recorded or made in the form of a notarial deed seen by the notary.
2. Second, the use of debt acknowledgement letter serves as the basis for collecting debt that has matured as the time when the debt acknowledgement letter has not ended this is legal and can be done especially in collecting and then executing a collateral that was agreed upon in the debt acknowledgment provided that the debt acknowledgment letter is grosse deed. The definition of a debt that has matured according to the bankruptcy constitution is a debt that has matured and is collectible which is not paid in full by the debtor because it has been agreed upon, so that it is clear that the creditor can collect the debt that is matured based on agreement referred in Article 1338 civil KUH is an agreement that binds both parties and applies as constitution between both that has been made although in the agreement also stated the time period of the agreement.
3. Third, the judge's consideration by considering separately based on the debt acknowledgement letter that is made has matured and can be collect within 3 (three) consecutive months if it is associated with the theory of law of certainty which about a law that there must be conformity between regulations and day-to-day implementation that may not demand on action that exceeds what can be done, it can be seen as it have created a certainty law upon those the debt acknowledgment letter, as the views of the Supreme Court judge on the previous District Court and High Court decisions which stated that the plaintiff's claim was unacceptable because it was deemed premature where the Judge of the Supreme Court considers not based on when the acknowledgement letter is ended, but rather on the substance of the content of the debt acknowledgment agreement which is the basic essence of the emersion of those debt acknowledgment where both parties agree if there is debt that can be collected instantly for 3 (three) consecutive months.

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