

Creditor's Legal Remedy Against The Ruling Of Cancellation Of Credit Agreements

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Abstract. The present study departs from the Decision of the Supreme Court No. 3784 K/PDT/2016 stating that the credit agreement is canceled considering that the creditor did not apply the prudential principle, making it being declared as committed an act against the law. Therefore, the purpose of the present study is to analyze the appropriateness of the ruling of the judges who decided the cancellation of the credit agreement and the creditors' legal remedies against the ruling. The present study is a normative legal one using the case-study and statutory approaches. The legal materials used consist of primary and secondary legal materials. The legal materials are analyzed using the prescriptive analysis. Results show that the dictum of the Supreme Court's ruling No. 3784 K/PDT/2016 stating the cancellation of the credit agreement are not appropriate since the lender has implemented the prudential principle and the credit agreement was lawfully made. The creditor's legal remedy against the cancellation of the credit agreement is to sue the debtor using the legal basis of Article 1359 paragraph (1) of the Civil Code concerning undue payments.

Keywords: Creditors, Cancellation, Credit Agreements, Legal Remedies

1. Introduction

Among the issues that occur in banking practice is credit agreements with mortgage right as collateral, but the collaterals do not belong to the debtor. A bank will extend credit on condition that the debtor is obliged to transfer his property, especially such immovable objects as land as collateral for the credit requested to the bank. Collateral in the form of land is called a collateralized mortgage right. Collateral serves in a credit agreement to repay the debtor's debt in case of the debtor's default. If the debtor is unable to repay his debt and being declared default, the creditor will sell the debtor's collateral as repayment of the debtor's debt.

The issue is that the object which is used as the credit collateral does not always belong to the debtor himself, but it belongs to another person. This other person or third party is evidently unaware that his property is used as credit collateral by the debtor. As a result, the third party is injured and files a lawsuit with the court claiming that the debtor committed an unlawful act and demands that the credit agreement with mortgage right as collateral be canceled.

Certainly, this would be detrimental to the bank as the creditor if the suit is granted by the judges. The dictum of the Supreme Court's ruling Number 3784 K/PDT/2016 states that the credit agreement is canceled considering that the creditor did not apply the prudential principle, making it being declared as committed an act against the law. The cancellation of the credit agreement by the judge has the effect on debt payments or repayment by the debtor. The bank as the creditor is certainly injured by this cancellation; thus, legal protection for the bank is indispensable.

The ruling of the Supreme Court Number: 3784/K/Pdt/2016 states that Jayadi and Sumiyati are the debtors of PT Bank BTPN of Pandeglang Branch with a credit amounting to IDR 30,000,000.00 using Sumiyati's land as the collateral which was then transferred to PT CIMB of Pandeglang Branch with a credit amounting to IDR 120,000,000.00 with the above-mentioned Sumiyati's land as collateral. The problem occurred in March 2012 when the land used as collateral for the credit would be auctioned by the Nobel Auction House, in which Sumiyati (the owner of the land) objected to the use of Land Title Certificate Number 00041 as collateral for the credit since such collateralization is without her approval and knowledge.

The Supreme Court decided to reject the petition for cassation from PT CIMB of Pandeglang Branch as the creditor who objected to the Banten High Court Judge's ruling that states the cancel the credit agreement between the creditor and the debtor. The rejection of the petition for cassation means that the Supreme Court strengthens the ruling of Pandeglang District Court to cancel the credit agreement. On the contrary, the creditor is injured since the credit is considered never existed; thus, the credit extended to the debtor would not be repaid.

Against this background, the present study examines the appropriateness of the Supreme Court's ruling Number: 3784 K/Pdt/2016 that cancels the credit agreement and analyzes the legal remedies that can be taken by the creditor against the ruling..

2. Methods

The present study is a normative legal one aimed at seeking the truth based on the legal logic from the normative side.[1] It does not recognize the field research since the objects of study are legal materials.[1] The case-study and statutory approaches are used to examine the ruling of the Supreme Court No. 3784 K/PDT/2016.

The present study uses primary and secondary legal materials. It starts with identifying legal facts to establish legal issues and collecting relevant legal materials. Upon completion of examination of the legal issues based on the relevant legal materials, in particular legal rules concerning credit agreements with mortgage right as the collateral, a prescriptive analysis is performed in order to draw conclusions in the form of argumentation to be given a prescription based on the arguments constructed in the conclusions.[1].

3. Result

The Supreme Court in its ruling No. 3784 K/Pdt/2016 rejects the petition for cassation of Bank CIMB Niaga of Pandeglang Branch, but states that the petitioner (creditor) committed an act against the law. The rejection implies that the judges at the cassation level concur with the dictum of the ruling of the Pandeglang District Court which states the cancellation of the credit agreement between the lender (Bank BTPN and Bank CIMB Niaga Bank of Pandeglang Branch) and the debtor (Jayadi and Sumiyati). The judges at the cassation level in the ruling concur with the *Judex Facti* consideration of the Banten High Court that strengthens the ruling of the Pandeglang District Court whose dictum cancels the credit agreement between the debtor (Jayadi and Sumiyati) and the creditor (Bank BTPN and Bank CIMB Niaga of Pandeglang Branch) considering that the creditor did not fully apply the prudential principle when extending the credit to the debtor. In fact, there are differences in the spelling of the debtor's name between that listed on several personal documents (family card, identity card, marriage certificate) and that listed on the Land Title Certificate. Accordingly, the bank is declared to have committed an act against the law since it received collateral of land from the debtor based solely on the village head's statement. In addition, the judges state in their considerations that the credit agreement with mortgage right as collateral in the form of a land title certificate the legal land owner of which did not give his consent or did not authorize the use of his land as collateral for a credit is declared null.[2]

However, the creditor pleaded that it believes that the landowner is the debtor since, even if there are differences in the spelling, it is only a typing error on the land title certificate. The creditor's belief is based on the proof in the form of a certificate issued by the Koranji village head explaining that there is a misspelling of the name on the land title certificate and that the certificate's holder is the debtor.

Article 1 paragraph 11 of Law No. 7 of 1992 as amended by Law No. 10 of 1998 concerning Banking sets out that a credit is the provision of money or equivalent claim to money based on a loan agreement

between a Bank and another party, obligating the borrowing party to repay his debt after a certain period with interest. To extend credits, banks shall apply the prudential principle, in which in the course of their business, banks shall be prudent in both the collection and distribution of funds.

In principle, a bank is to decide to extend a credit if it believes in the customer based on the results of an in-depth analysis of the customer's good faith and ability and commitment to repay its debt to the bank. The information of the customer's good faith is obtained by the bank from the data submitted by the customer in his credit application.[3] The bank's belief derives from evaluating the character, capacity, capital, collateral and economic condition of the prospective debtor.

In connection with the Supreme Court's ruling No. 3784 K/PDT/2016, this case arises related to the use of collateral belonging to another person. The judges argue that the lender did not fully apply the prudential principle in the course of its banking activities with regard to lending since it trusted the certificate stating the difference in name on the land title certificate and several other identification cards issued by the Koranji Village Head. The certificate was given by the debtor to convince the bank that, even though the identity card has the name Sumyati written and on the land title certificate the name Sumiyati is written, the debtor said that the two names are the same person and the error only lies in the name writing.

The author is of the opinion that the judges' considerations, particularly those related to the application of the prudential principle by the bank, it is not appropriate since, based on an analysis of the available proof, the fact is that the creditor has implemented the prudential principle when extending the credit to debtor by means of the analysis of collateral. According to Hasanah, although the bank had conducted an analysis carefully, the risk of non-performing loans still occurs.[4] Han stated that the activities of lending as an implementation of the principle of bank profitability must consider aspects of bank liquidity.[5]. The bank has clarified the differences in names stated on the land title certificate from those stated on other identity cards. Furthermore, the debtor provided an explanation by providing a certificate issued by the Koranji Village Head stating that the difference in the name is merely a typing error, but the persons are the same. Hence, the bank believed in the validity of the certificate since it is issued by the Village Head who controls the area. Moreover, it turns out that the land as stated on the certificate is factually in the village head's territory.

It is based on the certificate that the creditor believes that the land collateralized belongs to the debtor. Accordingly, the creditor has implemented the prudential principle. Despite the lawsuit by the legitimate land owner for the collateral object, the creditor cannot be blamed. The mistake with regard to the collateral object shall be solely the responsibility of the debtor since he is the one who intentionally misled the name of the owner of the land title by utilizing the similarity of his wife's name to the name of the legal land owner and is not appropriate for the judges to impose that responsibility on the creditor. In the dictum of their ruling, the judges also state that the creditor committed an act against the law since it did not apply the prudential principle by using another person's land title certificate as the credit collateral without consent from the legal owner (Sumiyati). The author is of the opinion that the creditor applied the prudential principle in lending, especially with regard to collateral. To prove whether or not the creditor committed an act against the law, the following will describe the creditor's act based on the elements of Act against the Law as stated in Article 1365 of Civil Code:

- Presence of an act; in this case, there is a credit agreement on behalf of Jayadi and Sumyati, with mortgage right as collateral in the form of land title in the name of Sumiyati;
- The act is against the law; In this case, the act must be against the law, but the creditor did not perform an act that qualifies as unlawful. The credit agreement between the creditor and the debtor was made in accordance with the existing laws and did not violate the rights of others. The issue of a collateral agreement using a third party's land title certificate without consent and knowledge is the responsibility of the debtor since the debtor has arranged lies in such a way that the credit application was approved by the bank. The bank as the lender applied the prudential principle by asking for clarification to the debtor, in which the village head issued a certificate stating that the difference is caused by an error in writing, while the persons are the same;
- Presence of the perpetrator's mistake. Article 1365 of the Civil Code requires an element of mistake in order for an act to be categorized as an act against the law. Presence of mistake

in an act must meet the requirements that the act must be avoidable and can be blamed on the perpetrator, that is, he can expect the consequences.[6] In this case, the creditor did not commit an act indicative of an error, that is, the creditor could not expect the consequences harmful to other parties, since the debtor has from the beginning convinced the creditor that the land belongs to him. There were no intentions made by the creditor and the creditor was imprudent with regard to credit disbursement since the creditor was unaware of any consequences that could injure other parties. Furthermore, the lender (the bank) even asked for clarification for the difference in the name on the land title certificate from that on other identity cards and the debtor also provided a certificate from the village head to ensure that the collateral belonged to the debtor. If the bank was aware that the collateral did not belong to the debtor, it would not extend the credit since it would pose a risk of bad credit for the bank

- There are losses suffered. In this case, there are losses suffered by the plaintiff (the owner of collateral) with regard to the auction of the credit collateral, namely Land Title Certificate No. 00041/Koranji. The creditor, as the holder of the collateralized mortgage right object, is prioritized in case of the debtor's default. In fact, the losses arise due to the debtor's act, rather than that of the creditor
- There is a causal relationship between acts and losses. In this case, the losses are caused by the act of the debtor (Jayadi and Sumyati) who applied for credit using the Land Title Certificate belonging to Sumiyati without her knowledge and consent. Thus, in case of the debtor's default, the bank shall reserve the right to conduct an auction of the collateral since the bank is prioritized as the holder of the collateralized mortgage right object. In this case, the losses of the other party are due to the act of the debtor, rather than the creditor

The ruling of the Supreme Court that strengthens the ruling of the High Court stating that the bank committed an act against the law is not appropriate due to the fact that the creditor (Bank BTPN or Bank CIM B Niaga of Pandeglang Branch) has a good faith to extend the credit to the debtor by applying the prudential principle. The ruling of an act against the law is more appropriate to be applied to the debtor for committing an act against the law with regard to the legal owner of the land since the debtor claimed other person's land and used it as collateral for the credit.

The sanction for an act against the law should be the party causing the losses must pay compensation in accordance with the provisions of Article 1365 of the Civil Code that read: whoever commits an act against the law that causes harm to others must compensate for the losses. Thus, with regard to the ruling of the act against the law, the judges should impose a sanction of requiring the party that has caused losses, in this case the debtor, to pay compensation, rather than canceling the credit agreement between the creditor and the debtor.

The judges of the district court up to the cassation level consider that the credit agreement is void since the object used as collateral for the credit is collateralized without the consent of the legitimate owner of the collateral object, making the credit agreement void. Consequently, the credit agreement is canceled and is considered never existed by law.

With regard to the conditions of validity of agreements as stated in Article 1320 of the Civil Code, the cancellation of the credit agreement is associated with the non-fulfillment of the provisions of the object of the agreement, namely the object is certain and the owner has the entitlement authority to the object. In relation to the certain object, in a credit agreement, the object of a credit agreement is the provision of funds (rather than collateral); thus, the cancellation of the credit agreement is not appropriate. With regard to the owner's entitlement authority to the object, the bank also has the entitlement authority to the money. Hence, the cancellation by the judges of the credit agreement cannot be justified since it is not in accordance with the provisions of Article 1320 of the Civil Code.

As we know, the banking practice of credit agreements consists of two (2) agreements: a credit agreement and a mortgaging agreement (collateral agreement). The object of a credit agreement is different from that of mortgaging agreement. In a credit agreement, the object is the provision of funds, while the object of a collateral agreement is the transfer of objects collateralized for debts. Thus, the cancellation of the credit agreement does not have a legal basis since the object of the credit agreement is the provision of funds, and at the same time the bank also has the entitlement authority to the disbursed

funds; thus, there is no violation of objective conditions. Therefore, the credit agreement is legal by law. Hence, the ruling of cancellation of the credit agreement is not appropriate since the credit agreement has fulfilled the conditions of validity of an agreement, both the subjective and objective provisions. This is in contrast to the collateral agreement in which the object is collateral objects. The condition of the debtor's having the entitlement authority to transfer the land as collateral for mortgaging must be fulfilled; thus, in the event that the debtor is proven to collateralize an object not belonging to him and there is no consent from the legal owner, the mortgaging agreement shall be null and void. In addition, a credit agreement and mortgaging agreement can also be divided into a main agreement and an additional agreement. Cancellation of the credit agreement as the main agreement results in the cancellation of the additional agreement. On the contrary, cancellation of the additional agreement (collateral agreement) does not necessarily cancel the main agreement (credit agreement). Hence, cancellation by the judges of the credit agreement implies that the creditor does not have a basis to demand the repayment of the credit extended to the debtor, since the credit agreement is considered never existed and a legal relationship between the creditor and the debtor is considered never existed. This is not the case when it is the mortgaging agreement as an additional agreement that is canceled; in this case, the creditor remains having the legal basis and legal relationship to collect the credit extended to the debtor. This is because the cancellation of the mortgaging agreement as an additional agreement does not necessarily cancel the credit agreement as the main agreement. The legal remedy that can be taken by the creditor related to the money extended to the debtor or Defendant I (Jayadi and Sumyati) is to file a lawsuit against the debtor via the district court on the basis of Article 1359 paragraph (1) of the Civil Code regarding undue payments. The lawsuit is aimed at ensuring the return of money already extended since there is no payment agreement by means of the credit agreement or the mortgaging agreement that can force the debtor to pay off the credit. Prior to the ruling of cancellation by the Supreme Court, in case of the debtor's default, it is the creditor who is prioritized and authorized to auction the object of collateralized mortgage. However, subsequent to the ruling, the creditor suffers losses since there is no longer certainty with regard to the repayment of the money the debtor has received. Thus, the creditor (the bank) can file a lawsuit on the legal basis of Article 1359 paragraph (1) of the Civil Code to obtain repayment for the credit.

4. Conclusion

A The author is of the opinion that the ruling of the Supreme Court Number 3784 K/PDT/2016 which states that the credit agreement is canceled and that the creditor has committed an act against the law is not appropriate since the creditor has implemented the prudential principle by analyzing the principles of credit extension, specifically those related to collateral, and that the creditor is not proven to have committed an act against the law. On the basis of the conditions of validity of the agreement, the credit agreement has fulfilled all the legal conditions of an agreement, both the subjective and objective conditions; thus, the credit agreement is valid by law. In addition, pursuant to Article 1365 of the Civil Code, the sanction for those committed an act against the law is obliging those who caused losses, in this case the debtor, to compensate for the losses. The judges should sanction those who caused losses by paying compensation, rather than canceling the agreement credit. The legal remedy that can be taken by the bank that suffers losses due to the ruling to cancel the credit agreement is to sue the debtor using Article 1359 paragraph (1) of the Civil Code concerning undue payments. In a sense, the money already extended is qualified as an undue payment and must be returned. The debtor must return any payment he has received.

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