



Legal Protection Against Debiturs In Syariah Economic Cases Decision Skmht Number 723/Pdt.G/Pa Gtlo

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Abstract: This journal discusses the legal issues related to the disbursement of financing facilities amounting to Rp. 80,000,000,- by DEFENDANT I without any valid Mortgage Rights binding on SHM No. 34/Buladu, which resulted in the disbursement being considered invalid. Decision Number 723/PDT.G/2021/PA.Gtlo confirms that the deeds made do not meet the formal requirements and must be declared null and void by law. This study also highlights legal protection for debtors in the context of sharia economics, with a focus on fiduciary guarantees regulated in Law No. 42 of 1999. The case discussed involves the confiscation of fiduciary guarantee objects due to the debtor's default, as well as the importance of SKMHT (Power of Attorney to Charge Mortgage Rights) as a legal instrument to secure the creditor's position. This study uses normative legal methods and identifies the factors causing the debtor's default, as well as the correct procedures in issuing APHT (Deed of Granting Mortgage Rights). The results of the study indicate that there is abuse of conditions in the agreement and breach of promise by the debtor, and emphasize the importance of understanding the rights and obligations of debtors and creditors in debt agreements.

Keywords: Protection, Debiturs, Syariah Economics

Introduction

Law becomes an inseparable part of people's lives, this results in the existence of a legal system and norms in society itself. The purpose of the legal system and legal norms is to uphold and regulate the balance between personal interests and common interests to avoid conflict. Based on Article 15 paragraph 1 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT). "A Power of Attorney to Encumber Mortgage Rights must be made with a Notary deed or PPAT deed". Collateral has a very important function in economic activities in general because in providing capital loans, financial institutions require a guarantee. For the debtor, a good form of collateral is a form of collateral that will not paralyze daily business activities, while for creditors, a good guarantee is a guarantee that can provide a sense of security, and legal certainty that the credit given can be returned on time. One of the forms of collateral recognized in Indonesia is fiduciary collateral. The emergence of fiduciary is due to the need for legal practice in the business world. Fiduciary is often used especially in MSMEs that are run by shops, retailers, agriculture or the community in general.

Fiduciary Guarantee itself is regulated in Law No. 42 of 1999 concerning Fiduciary Guarantee. According to number 1 article 1 states that Fiduciary is the Transfer of Ownership Rights of an object based on trust with the provision that the object whose ownership rights are transferred remains in the control of the owner of the object. In other words, Fiduciary Guarantee is given in *Constitutum possessorium*, namely the object whose ownership has been transferred to the creditor but is still physically controlled by the fiduciary giver for the benefit of the fiduciary recipient.

Fiduciary is very popular because it can meet the needs of the community for credit and control of the collateral object that is still in the hands of the debtor so that it can be used to carry out business. Economic growth in the business world often triggers an increase in demand and credit facilities. However, to protect the interests of creditors and manage risk, credit provision always requires collateral. This guarantee is a crucial issue in the operations of Banks and Financing Institutions. One of the cases regarding the confiscation of fiduciary collateral objects due to the debtor's default after the verdict Case Number: 723/Pdt.G/2021//PA.Gtlo.can be seen in the Decision of the Gorontalo District Court and registered with Register Number: 43/Pdt.G/2016/PN.Gto The Panel of Judges has considered and is of the opinion that based on Article 55 paragraph (1), paragraph (2), and paragraph (3) of Law Number 21 of 2008, Article 49 letter (i) of Law Number (3) of 2006, and the Decision of the Constitutional Court of the Republic of Indonesia Number 93/PUU-X/2012, the Aquo Case falls within the realm of the Religious Court and not the realm of the District Court. Therefore, the Panel of Judges of the Gorontalo District Court in its Decision does not have the authority to try this case.

Which Plaintiff as the heir of SHM Number 34/Buladu in the name of Darno Walinelo, for approximately 3 years from 2012 to March 2015, apparently was not submitted by Defendant II to the Gorontalo City Land Office, as has been determined in Article 103 paragraph (1) above. Therefore, as a consequence, SHM Number 34/Buladu cannot be bound by Mortgage Rights because the holder of the rights to SHM Number 34/Buladu has not been transferred to the Plaintiff. And that the Plaintiff has signed the Financing Principle Approval Letter (SP3) No.001/MRB-30307/04/2012 and the Murabaha Financing Agreement under hand No.001/MRB-30307/04/2012 dated April 5, 2012.

Methodology

This type of research is directed at the type of Normative Law research, in normative legal research it cannot be separated from normative regulatory rules or decision research rules. In obtaining data collection for research, this research uses the collection and literature method, this method is used by finding answers to problem formulations that come from primary, secondary and tertiary legal materials. This research was conducted by looking for data sources in the form of books, magazines, journals, the internet, laws and other materials. This type of research is a normative research type, so the type of data used is secondary data. The normative research type only recognizes secondary data types which consist of:

Primary Legal Materials, namely:

- Civil Code
- Law No. 42 of 1999 concerning Fiduciary Guarantees
- Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment.

Secondary Legal Materials

Secondary data is material that provides an explanation of Primary Legal data and can assist the research process such as draft laws, journals, scientific papers and so on. Which consists of book literature, scientific writings and the internet.

Tertiary Legal Materials

Tertiary legal materials are materials that help explain primary legal materials and secondary legal materials, for example: The Big Indonesian Dictionary (KBBI) Data analysis in this study uses Qualitative data analysis is an analysis that attempts to be done by working with data, organizing data, selecting it into manageable units, synthesizing it, searching for and finding patterns based on data sourced from legal materials based on concepts or theories, laws and regulations, doctrines, legal principles. Expert opinions and the author's own views.

Result and Discussion**Form Of Breach Of Contract In Sharia Economic Cases Decision Of Skmht Number 723/Pdt.G/Pa Gtlo**

In the case of Sharia economics, the decision of SKMHT Number 723/PDT.G/PA.Gtlo found that DEFENDANT I and DEFENDANT II had abused the situation. DEFENDANT I as the party who has a higher bargaining position than the PLAINTIFF in the Murabaha agreement, made the PLAINTIFF moved to take legal action in the form of closing the Murabaha agreement with a promise to provide a mortgage right on the guarantee of SHM Number 34/Buladu. However, DEFENDANT II made a Deed of Grant and APHT without a signature, without SKMHT, and without the presence of the PLAINTIFF, which indicates an abuse of circumstances and a violation of the provisions that should have been followed in the agreement. In the case of Sharia economics, the decision of SKMHT Number 723/PDT.G/PA.Gtlo also found that the activities of Making Grant Deeds and binding Mortgage Rights were carried out in a manner that deviated from existing provisions, such as the absence of the parties carrying out legal acts and the absence of qualified witnesses. This has deviated from Article 101 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning the provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, which states that:

1. The making of a PPAT deed must be attended by the parties carrying out the legal act in question or a person authorized by them with a written power of attorney in accordance with applicable laws and regulations.

2. The making of a PPAT deed must be witnessed by at least 2 witnesses who, according to the provisions of applicable laws and regulations, meet the requirements to act as witnesses in a legal act, who provide testimony regarding, among other things, the presence of the parties or their attorneys, the existence of documents shown in the making of the deed, and the implementation of the legal act by the parties concerned.
3. The PPAT is obliged to read the deed to the relevant parties and provide an explanation regarding the contents and purpose of making the deed, and the registration procedures that must be carried out subsequently in accordance with applicable provisions.

In addition, in the Sharia economic case, the decision of SKMHT Number 723/PDT.G/PA.Gtlo found that in its implementation the Plaintiff had breached his promise to Defendant I as acknowledged by the Plaintiff, which in essence the Plaintiff had been in arrears for approximately 2 years, and as agreed by the Plaintiff in Article 8.1 Concerning breach of promise in the Murabahah Financing Agreement No. 001 which states that *"The Customer's negligence to carry out the obligation according to this agreement to pay the installments of the Murabahah receivables on time, in this case the passing of time alone has provided sufficient evidence that the Customer has neglected his obligations, without the need for a prior statement that he has not fulfilled his obligations on time. For this reason, the Bank and the Customer agree to set aside Article 1238 of the Civil Code"*; And even though Defendant I has attempted to resolve the matter through deliberation, including by providing a warning letter to the Plaintiff, it appears that the Plaintiff still does not have the good faith to fulfill his obligations to Defendant I.

General Regulations Regarding SKMHT in Indonesia

Legal Basis for SKMHT

Power of Attorney to Charge Mortgage Rights (SKMHT) is an important legal instrument in the collateral system in Indonesia, especially in relation to mortgage rights on land. SKMHT is a power of attorney given by the landowner to another party (usually a creditor or recipient of collateral) to charge mortgage rights on land used as collateral or debt security. This instrument plays a very important role in providing convenience for creditors in securing their rights to the collateral object, without requiring the transfer of asset ownership from the debtor to the creditor. The Power of Attorney to Charge Mortgage Rights (SKMHT) is specifically regulated in Article 15 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT).

This article stipulates that SKMHT is a special form of power of attorney granted by the party providing the guarantee, or debtor, to another party, which is generally a creditor or bank to charge a mortgage right on the land used as collateral. (Cahyono, 2021)) Article 15 of the UUHT stipulates that this power of attorney must meet several requirements, including its form which must be made in the form of a notary deed or a land deed official (PPAT) and meet legal validity so that the mortgage can be legally charged. In addition, the SKMHT must also be adjusted to a certain time limit, especially to ensure that the mortgage is immediately processed further into a Deed of Granting of Mortgage Rights (APHT) which has executorial power. Thus, SKMHT provides flexibility to creditors to immediately secure

their position against the collateral object without having to wait for a long administrative process. However, the use of SKMHT has a clear time limit, where the issuance of APHT must be carried out immediately after the creation of SKMHT, in order to avoid potential legal problems in the future. This is an effort to protect creditors' rights while ensuring legal certainty for all parties involved in the debt agreement. (Naimah, K. (2017)).

Factors Causing Default

Default is a legal term that refers to the failure of one party to fulfill obligations agreed upon in an agreement. Factors that cause default include:

a. Financial inability

The financial inability of the debtor is often the main cause of default in a financing agreement. The factors underlying this inability are diverse, including deteriorating economic conditions, which can have a direct impact on the debtor's income and ability to pay his debt obligations. This situation is further complicated if the debtor experiences bankruptcy or a liquidity crisis resulting in the loss of resources to meet debt payments on time. (Pratama, 2022)

b. Errors or omissions

Mistakes in the implementation of obligations, whether intentional or unintentional, often lead to a breach of contract between the parties involved. A breach of contract occurs when one party fails to fulfill its obligations according to the provisions agreed in the contract. A common example is a delay in the delivery of goods or the provision of services that do not comply with the specifications agreed at the beginning of the agreement. This delay can be caused by various factors, such as disruptions in the supply chain, lack of coordination, or errors in time planning. In addition, the provision of inappropriate services, such as the quality of goods or services that do not meet the agreed standards, can also be considered a breach of contract, because the recipient of the service does not receive the benefits as expected. (Ihsan, 2023)

c. Lack of Understanding of the Contract:

Lack of understanding of the contents of the contract or applicable legal provisions is often the root of the problem of default in an agreement. When the parties involved in the agreement do not fully understand the clauses, rights, and obligations stated in the contract, the risk of misunderstanding or non-compliance in the implementation of obligations becomes higher. This can be caused by various factors, such as difficult to understand legal terminology, complex contract provisions, or lack of consultation with legal experts when signing the agreement. (Rahmi Febriani et al., 2023)

d. Legal and Regulatory Conditions

Sudden changes in regulations or legal policies can have a significant impact on the implementation of a contract, especially when the new policy directly limits or even prohibits the business activity that is the core of the agreement. When the government issues new regulations that prohibit a business activity or impose additional

requirements that are not included in the initial contract, the parties bound by the agreement may no longer be able to fulfill their agreed obligations. (Samsidar, 2024)

SKMHT Installation Implementation Procedure

The procedure for implementing the Power of Attorney to Encumber Mortgage Rights (SKMHT) includes important steps aimed at ensuring that the mortgage rights are can be legally and effectively charged in accordance with the legal provisions in Indonesia (Mohammad Syukron, 2007) . The procedures for implementing the installation of SKMHT, including:

1. Document Preparation

The guarantor (usually the debtor) must prepare a number of important documents as a requirement to execute the Power of Attorney to Charge Mortgage Rights (SKMHT) which is needed to secure the creditor's rights to land or property collateral. Preparation of these documents aims to ensure the legality and validity of the assets to be subject to mortgage rights and the identity of the guarantor.

2. Preparation of SKMHT

The Power of Attorney to Charge Mortgage Rights (SKMHT) is prepared in the form of an authentic deed made by a notary or Land Deed Making Officer (PPAT), in accordance with the applicable legal provisions in Indonesia. This form of authentic deed provides higher legal force, ensures that the SKMHT is recognized as a valid document in the eyes of the law and protects the interests of the parties involved, especially creditors.

3. Signatures of the Related Parties

After the Power of Attorney to Charge Mortgage Rights (SKMHT) document has been completed by a notary or Land Deed Making Officer (PPAT), all parties involved in the agreement, especially the principal (debtor) and the principal (creditor), must sign the document. This signing is done before a notary or PPAT, who serves as an official witness and as a party that guarantees the validity of the document.

4. SKMHT Registration

After the Power of Attorney to Charge Mortgage Rights (SKMHT) is signed by all parties involved, the next step is to register the SKMHT document at the local Land Office. This registration is a very important stage because it provides legal certainty for the imposition of mortgage rights on the assets used as collateral, and ensures that the mortgage rights are officially recognized by the state.

5. Issuance of Mortgage Certificate

After registering the Power of Attorney to Charge Mortgage Rights (SKMHT) at the Land Office, the next step is the issuance of the Mortgage Certificate (SHT) as legal evidence that the mortgage has been charged to the relevant asset. This certificate is a very important document and has high legal force, because it functions as official evidence stating that the land or property used as collateral has been burdened with mortgage rights in accordance with the agreed agreement.

6. Asset Monitoring and Maintenance

The guarantor (debtor) and the recipient of the guarantee (creditor) need to supervise the maintenance of the assets used as collateral to ensure that the assets remain in good condition during the validity period of the guarantee. This supervision is very important to maintain the value and suitability of the assets used as collateral, because poor physical or legal conditions of the assets can affect the creditor's ability to execute the collateral if there is a default by the debtor.

Protection of Debtors and Creditors in Indonesia

Rights of Debtors and Creditors

In the context of a debt agreement, both debtors and creditors have certain rights regulated by law to ensure that the agreement is implemented fairly, transparently, and provides protection for both parties. These rights regulate the obligations, authorities, and protections that must be provided in a debt relationship, which often involves collateral in the form of mortgages or collateral (YOGISWARA et al., 2023) .

The debtor's rights include:

- Debtors have the right to receive clear and transparent information regarding loan terms, including interest, fees and payment terms.
- Debtors have the right to apply for a suspension of payment if they experience financial difficulties. This is regulated by law to provide protection to debtors in certain situations.
- The debtor has the right to fair guarantees against the assets used as collateral. If the debtor fulfills his obligations, the assets must be returned to him after the debt is paid off.
- The debtor has the right to file a lawsuit if he feels aggrieved by the creditor's actions, such as execution of collateral that does not comply with legal provisions.

Creditor's rights, including:

- Creditors have the right to receive payment in accordance with the provisions agreed upon in the debt agreement. If the debtor defaults, the creditor can demand fulfillment of the obligation.
- The creditor has the right to execute the guarantee if the debtor fails to fulfill his obligations. This includes the right to auction the collateral object in accordance with applicable legal procedures.
- Creditors have the right to transfer receivables to a third party (cession) without requiring the consent of the debtor, as long as there are no provisions in the agreement that prohibit this.
- Creditors can take legal action against debtors who are in default, including asking the court to execute the collateral object.

Debtor and Creditor Protection Instruments

Debtor Protection Instrument

- Legal Protection Based on Law

Debtors are protected by the Consumer Protection Act which gives debtors the right to receive clear and transparent information regarding the terms of the loan. This includes the right to receive advocacy and fair dispute resolution.

- **Suspension of Payment Clause**

In certain situations, debtors have the right to request a suspension of payments if they are experiencing financial difficulties. This is a form of protection regulated in the credit agreement and applicable law.

- **Collateral on Assets**

The debtor has the right to a guarantee that the assets used as collateral will not be executed arbitrarily without following the correct legal procedures. This provides a sense of security for the debtor in fulfilling his obligations.

Creditor Protection Instrument

- **Right to Guarantee**

Creditors have the right to obtain collateral for loans given, such as Mortgage Rights or fiduciary guarantees. This provides security for creditors if the debtor defaults.

- **Guarantee Registration**

To ensure legal protection, creditors are advised to register fiduciary guarantees or mortgage rights. This registration provides additional legal force and protects creditors from the risk of losing rights to collateral.

- **Execution of Guarantee**

The creditor has the right to execute the collateral if the debtor fails to fulfill its obligations. This execution process must follow the applicable legal provisions so as not to violate the debtor's rights.

- **Legal Protection in Cases of Default**

In the event of a debtor's default, the creditor has the right to file a lawsuit in court to recover their receivables, and can execute the collateral object in accordance with established legal procedures.

Debtor and Creditor Violation Cases

Examples of cases of debtor and creditor violations include:

- **Embezzlement of Fiduciary Guarantee**

Fiduciary embezzlement cases occur when debtors give or transfer fiduciary collateral to other parties without the creditor's consent. Law enforcement related to this violation shows the challenges in implementing the Fiduciary Guarantee Law in Indonesia.

- **Violations in Online Loans**

Many debtors experience violations of consumer rights by creditors in online lending cases. When debtors default, the collection process is often not in accordance with the provisions of consumer protection laws, which can be detrimental to debtors. This study shows the need for better legal protection for debtors in the context of digital-based lending.

Legal Protection For Debtors In The Skmht Decision In Case Number 723/Pdt.G/2021/Pa Gtlo

Chronology of Case Decision Number 723/PDT.G/2021/PA Gtlo

It is known that the PLAINTIFF is a customer of DEFENDANT I as well as a recipient of a grant or a plot of land, SHM Number. 34/buladu in the name of Darma Wulilelo (PLAINTIFF'S parent). In 2012, the PLAINTIFF has submitted an application for a financing facility using the SHM as additional collateral. In response to the application for the financing facility, DEFENDANT I recommended that SHM no. 34/buladu in the name of Darna Wolilelo must first be transferred to the plaintiff. To fulfill the recommendation of DEFENDANT I, DARNAWOLINELO in 2012, met with DEFENDANT II to sign the Deed of Grant for SHM Number 34/Buladu to the PLAINTIFF. After that, the PLAINTIFF's financing application was processed with the issuance of Financing Principle Approval (SP3) Number 001/MRB-30307/04/2012.

Furthermore, it was followed up with the closing of the Murabahah Financing agreement/contract under hand Number 001/MRB-30307/04/2012 dated April 5, 2012. within a period of ± 7 days after meeting with DEFENDANT II, in April 2012 the financing facility was immediately disbursed by DEFENDANT I in the amount of Rp. 80,000,000,- (eighty million rupiah), without first waiting for the legal completion of the transfer of SHM No. 34/Buladu from the name of DARNA WOLINELO to the PLAINTIFF, and without also ensuring whether the transfer had been registered or not in the land book of the BPN of Gorontalo City. based on the provisions of Article 103 paragraph (1) of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning the provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, DEFENDANT II as the Land Deed Making Officer (PPAT); must submit the PPAT Deed and other documents required for the purposes of registering the transfer of the relevant rights to the Land Office, no later than 7 (seven) working days from the signing of the relevant deed .

However, the PPAT Deed in the form of a deed of gift signed by DARNA WOLINELO in 2012, and SHM Number 34/Buladu in the name of DARNA WOLINELO, for ± 3 (three) years from 2012 to March 2015, was apparently not submitted by DEFENDANT II to the Gorontalo City Land Office, as stipulated in Article 103 paragraph (1) above. As a consequence, SHM Number 34/Buladu cannot be bound by Mortgage Rights because the rights holder of SHM Number 34/Buladu has not been transferred to the PLAINTIFF; thus, it is clear that the disbursement of the financing facility is a disbursement of financing facilities without binding/signing the Deed of Granting Mortgage Rights (APHT) or without a Power of Attorney to Encumber Mortgage Rights (SKMHT) signed by the PLAINTIFF legally before DEFENDANT II as PPAT. This means that the disbursement of the financing facility in question was carried out by DEFENDANT I solely based on the financing principle approval letter (SP3) No. 001/MRB - 30307/04/2012 and the private Murabaha financing agreement No. 001/MRB-30307/04/2012 dated April 5, 2012. Then the financing facility disbursed by DEFENDANT I was in arrears for ± 2 years.

However, in the arrears position, and even though the PLAINTIFF never signed the APHT and/or SKMHT, the PLAINTIFF always coordinated and communicated continuously with DEFENDANT I. Even as a form of good faith from the PLAINTIFF, on April 15, 2015, the PLAINTIFF attempted to deposit the financing debt in the amount of Rp. 10,000,000,- (ten million rupiah) through account 200477110-5 in the name of the PLAINTIFF; Considering that since 2012 until March 2015 SHM Number 34/Buladu has not been bound by mortgage rights, then DEFENDANT II, in addition to protecting himself from sanctions for violating the obligations under Article 103 above, and in order to fulfill DEFENDANT I's desire to conduct an auction but the APHT is not yet available, DEFENDANT II immediately made a deed of gift and issued an APHT. That thus the making of the Deed of Gift and binding of Mortgage Rights on SHM Number 34/Buladu which was carried out in such ways, of course, in terms of normative juridical terms deviates from the provisions: Article 101 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning the provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

Author's Analysis of Decision Number 723/PDT.G/2021/PA Gtlo

In the decision of case Number 723/PDT.G/2021/PA.Gtlo, it was found that in 2012 the implementation of the administration of the name change of the grant of SHM No.34/Buladu should have been in the name of the PLAINTIFF, so that the SHM became the absolute and main basis for the authority to carry out legal acts to sign or when registering the APHT. However, it turned out that the Deed of Grant Number: 91/Year 2015 was only realized on April 14, 2015, which was \pm 3 years after the financing was disbursed. This means that it turns out that the authority to carry out legal acts against the object of Mortgage Rights/SHM No. 34/Buladu was only in the PLAINTIFF's possession in April 2015. However, even in April or throughout 2015, the PLAINTIFF still never signed the APHT or SKMHT in front of DEFENDANT II or DEFENDANT 1. Therefore, it can be concluded that the deeds do not meet the formal requirements, so they are invalid and contrary to the law and are legally flawed and therefore the Deed of Grant and APHT must also be declared null and void by law.

Conclusion

This paper discusses the importance of legal protection for debtors in the context of Islamic economics, focusing on the SKMHT decision Number 723/Pdt.G/2021/PA.Gtlo. The study shows that fiduciary guarantees, as regulated in Law No. 42 of 1999, play an important role in providing credit, especially for MSMEs. The case discussed reveals the abuse of circumstances and breach of promise by the debtor, and emphasizes the importance of SKMHT as a legal instrument to secure the creditor's position. In addition, this paper also identifies factors that cause debtor default and emphasizes the need for proper procedures in issuing APHT after SKMHT to avoid legal problems. Overall, this

study emphasizes the need for a better understanding of the rights and obligations of debtors and creditors in debt agreements and the legal protection available to both parties.

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