

Legal Protection for Creditors Regarding Working Capital Loan with Expired Hgb Certificate Collateral

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Abstract:

The present study aims to find out the legal protection for creditors regarding debtors' collateral with expired right to build (hgb) certificate. It was done to find out the attempts can be made by the creditor regarding the debt repayment of debtors with expired hgb certificate. Taking place in bri solo baru office, the present study employed normative study. The data were collected through literature review. The data were analyzed through data reduction, data display, and drawing of conclusion. The result of the study showed that: based on article 1 number 11 of law no. 10 of 1998 on the amendment of law no. 7 of 1992 on loan, working capital loan refers to the provision of money or equivalent claim to money based on a loan agreement, when hgb expires, the encumbrance right attached to the land is also annulled. Accordingly, the creditor needs to carry out some actions to obtain legal protection. There are two attempts can be done by the creditor regarding the debt repayment of debtors with expired hgb certificates, namely making apht before the ppat, preceded by loan agreement, and renewing hgb certificate, which can be done by the bank or the debtor. Auction can be done to maintain the creditor's assets.

Keywords: Legal Protection, Working Capital Loan, Exhausted Shgb Collateral.

Introduction :

Working Capital Loan refers to a capital loan for business actors to finance their current assets in one year and can be extended. Working capital loan is not used for long-term investment or consumption. It is generally used for one year. It is given in the form of credit platform 1 and in one year, the funds may go in-and-out according to the debtor's need. In banking practices, there is a situation where the HGB expires while the term loan is still ongoing, leading to debtor's default; or debtor's default due to problem repayment process, thus both parties do not realize that the HGB expires. The Annulment of HGB that is used as a collateral will lead to a legal problem because according to article 18 paragraph (1) of Law on Encumbrance Right (UUHT), an The possibility of debtor's default. The issue discussed in this paper is related to the form of legal protection for creditors in the case of the debtor's default. It motivates the author to conduct a study to analyze the legal protection for creditors on working capital loan debtors regarding collateral with expired hgb certificate."The present study was

categorized as a descriptive study with normative approach. Hillway states that It is "an empirical/sociological legal study whose results are used to solve legal problems."

Data analysis:

A.Data reduction:

In this phase, codes, themes, limitation of problems, and memos are made.

B.Data display:

In this phase, information was organized to allow researchers to draw conclusions.

C.Data Conclusion:

When collecting data, a researcher should understand the meaning of their findings by writing down the patterns, statements, possible configurations, causality, and Propositions of competent researchers.

Theoretical Foundation:

1. Working Capital Loan Agreement:

An agreement serves as a pivotal source that establishes a bond because it is commonly used by the

community.¹ Loan, according to Law no. 10 of 1998 on the Amendment of Law no. 7 of 1992 on Banking, is defined as “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“.In a loan activity, a number of elements are present:²

- 1) Trust, it refers to the creditor's belief that his/her lended money will be repaid in certain period of time in the future.
- 2) Grace period, it is a period that separates the giving of object of credit from the rewards to be received in the future. This period also contains agio, meaning that the current money possesses higher value than that received in the future.
- 3) Potential risk, which emerges as the consequence of the due date. The longer term loan
- 4) The object of loan is not only given in the form of money but also products or services.

In principle, working capital loan is the use of capital in one business cycle, which starts from obtaining bank loan, using the money for purchasing the materials and production, and selling the product to gain income. In its operation, a company needs sufficient amount of fund to ensure the sustainability of its operation³ According to Bastian and Suhardjono, the repayment period of working capital loan is one year (can be extended as necessary), which can be used to fund product stock, trading loan, material purchasing, or other company's need on working capital. Regarding working capital, banks provide working capital loan for small-scale businesses (credit limit up to Rp.500 million) and medium-scale businesses (credit limit between Rp 500 million up to Rp. 5 billion). Working Capital Loan is given to improve the production both quantitatively and qualitatively.⁴ Based on article 21 of Governmental Regulation no. 40 of 1996, the lands that can be given HGB are : the state land, land with Right to Manage, and land with freehold title. HGB over the state lands is granted based on the decision issued by the minister or an appointed

¹ Sutarno , Aspek-Aspek Hukum Perkreditasi Pada Bank, (Bandung: Alfabeta, 2004), hal. 71

² Thomas Suyatno, Dasar-dasar perkreditasi, cetakan ketiga, Gramedia, Jakarta, 1990, hal.12-13

³ Dendawijaya (2001) Manajemen Perbankan. Jakarta : Ghalia Indonesia.hal. 27

⁴ Bastian, Indra dan Suhardjono. Akuntansi Perbankan. Edisi 1. Jakarta: Salemba Empat 2006. hal. 251

official (article 22 paragraph (1) of government regulation no. 4 of 1996). HGB over the land with Right to Manage is granted based on the decision issued by the minister or an appointed official based on the holder of the Right to Manage (article 33 paragraph (2) of government regulation no. 4 of 1996). HGB over a land with HM is granted by the HM holder using deed made by PPAT, Which should be registered to the Land Affairs Office (Article 24 of Government Regulation no. 40 of 1996).According to article 40 of Law on Basic Agrarian Law (BAL) and article 35 of government regulation no. 40 of 1996, HGB is annulled because:

- 1) The expiration of times determined in the granting decree.
- 2) It is annulled by the authorized official, the HPL holders, or the HM holders before the expiration time because:
 - a) Failure in fulfilling right holders' obligation or violation of right holder's condition; or
 - b) Failure in fulfilling the requirements or obligations stated in the HGB Grant Agreement between the HGB holder and the HM holders or the Agreement of the use of HPL land, or
 - c) Court's ruling with permanent legal force.
- 3) It is voluntarily released by the right holder before the right expires.
- 4) It is revoked for public interest,
- 5) The land is abandoned,
- 6) The land is gone, and
- 7) It is no longer meet the requirement to obtain HGB.

Result and discussion:

Working capital loan can be given until a certain limit according to debtor's need, where the interest is calculated based on the credit exposure (in bank perspective, known as debit / outstanding) on daily basis..working capital loan is not used for long-term investment or consumption. It is generally used for one year. It is given in the form of credit platform 1 and in one year, the fund may go in-and-out according to the debtor's need. The interest is calculated on daily basis based on the use. Credit stop is impossible due to fluctuating nature of the loan. Invoices can be held to recover the loan. Building or assets auction can be done to minimize risks of loan problem. It is possible to lower credit limit based on the regulations the debtor should meet. If it ends less than two years, it can be renewed based on the loan agreement. With regard to expired HGB, based on Circular Letter of

Minister of Land Affairs/ Head of National Land Agency no. 500-3460 on Advanced Guideline on the Implementation of Granting Hak Milik to Land for Residence, some issues need to be taken into account:

- 1) In this process, hgb extension or renewal is not necessary, the field observation is also not necessary. The land is possessed by the right holder if he/she can show that still hold the land certificate.
- 2) For the registration, it is not necessary to pay acquisition duty of right on land and building (bphtb) according to law no. 21 of 1997 because the right is granted before 1 July 1998.
- 3) He land possession during the transition period from hgb to hm is free from sanction.
- 4) The service of registration of hm on former expired hgb land should not differ from that of on former hgb that does not expire. All services should be based on 'first come first serve' principle. The head of land affairs office should not reject the registration of hak milik on former hgb land without any prioritized reason.

Accordingly, with regard to the application made by debtors who will change its land status into HM, the bank should consult the Notary/ Land Deed Official (PPAT) to make sure the requirements of the debtor's loan application. Substituting collateral is asked by the bank since the debtor's collateral cannot be accepted as collateral. The bank can also ask for substituting collateral when the HGB of the collateral is near the due date because there is a possibility of land dispute, which prevents the renewal process.

Conclusion And Suggestion:

Based on the discussion above, it could be concluded that:

1. Based on article 1 number 11 of Law no. 10 of 1998 on the Amendment of Law no. 7 of 1998, Working capital is categorized as 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." The loan agreement stated in the article should be made in a written form. A creditor who holds HT of land with HGB that ends before the loan maturity date does not obtain legal protection based on UUHT. The expiration of HGB of land results in the annulment of its HT. Accordingly, the creditor needs to carry out the following actions to obtain legal protection:

- a. Giving shorter term loan that ends before the due date of HGB.
- b. Renewing the HGB at the beginning of loan encumbrance or when credit renewal. In this case, the debtors give the authority to the bank to renew the right and bears the cost of the process.
- c. Changing the right, from HGB to HM.
- d. Asking the substituting collateral or additional collateral, or authority to renew the HGB.
- e. Carrying out the HGB certificate auction
2. There are two attempts that can be done by the creditor regarding the debt repayment of debtors with expired HGB certificates :
 - a. Granting HT by making Encumbrance Right Granting Deed (APHT) before a PPAT, preceded by loan agreement.
 - b. Its registration by Land Affairs Office which determines the time of issuance of the HT.

Suggestions:

Based on the result of the study and analysis on problems emerging in loan collateral with expired HGB in PT Bank BRI, the following suggestions are made:

1. In order to protect the bank's and the community's fund distributed through working capital loan, the bank should not only consider the collateral aspect but also the following matters:
 - a. Prudential principle must be applied.
 - b. There should be a belief in debtor's ability to repay his/her debt.
 - c. Attempts that do not harm the bank and the community whose fund is stored in bank should be made.
 - d. A sound working capital loan principle should be applied.
2. The bank, as the creditor, should be prudent in receiving collateral with HGB that expires before the loan maturity date, considering that the annulment of HGB results in the annulment of HT. In order to anticipate problems, the bank as the creditor should:
 - a. Ask an authority from the collateral holders to renew the right of the land used as collateral.
 - b. It should be renewed long before the due date.
 - c. When the HGB cannot be renewed and the debtors cannot repay their debt, the bank should immediately ask substituting collateral and expect that the renewal and upgrading process can be done faster, and ask for lower cost. Asking lower cost is important because the practice shows that the debtors mind about

the SKMHT fees or HGB renewal fees they should pay.

It is necessary to have a regulation that does not require new APHT for collateral with expired HGB and to be upgraded to HM, which results in lower cost for debtors

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