

EFFECTIVENESS OF FORECLOSURE GUARANTEES DUE TO DEFAULT ON CREDIT AGREEMENTS

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ABSTRACT

The purpose of this study is to understand the basic provisions regarding the seizure of collateral goods and procedures or procedures for the seizure of property of the defendant. By using normative juridical research methods. The purpose of the seizure of collateral is to have a certain item that can be executed at a later date as payment of the defendant's debt. The conservatoir beslaag is a guarantee to enforce a civil judgment by freezing the defendant's property. Frozen cargo can later be used to enforce a court decision. The implementation of beslag protection begins with the determination of beslag protection by the District Court judges. The final stage of the implementation of sita jaminan is the preparation of a report of sita jaminan in accordance with the provisions of Article 197 (5) HIR, without the minutes of sita jaminan, the sita is considered void.

Keywords: legal studies, confiscation of guarantees, property of the defendant

INTRODUCTION

One of these banking products is credit, and in Islamic banking terminology is called financing. Credit or financing provided by banks carries risks and therefore any loan or financing is based on sound Shariah principles and prudence. The guarantee from the bank to the customer in the form of a credit agreement in the form of commercial capital is carried out with the guarantee provided by the customer. This security is important in the loan, not the main one. If the creditor analysis believes that the debtor is untrustworthy or defaults in good faith, collateral can be used instead.

There is a case related to a credit agreement between the debtor and the bank, the debtor is the owner of a flat unit located in the Kedoya Elok apartment Rusunawa, North Tower, Jalan Jakarta Merak No. North Tower. 1.16.04 block A, 16th Floor, South Kedoya, West Jakarta, with Deed of ownership of flats No. 4. 415 / XVI/A Kedoya Selatan village, on behalf of Jullya Feronica (plaintiff). The ownership of the aforementioned units has been pledged to Defendant 1 by the plaintiff as a credit guarantee in accordance with the deed of agreement. Foreclosure insurance agents have a very important advantage in civil cases involving problems, including debt/compensation claims.

Guaranteed confiscation is the first seizure of the defendant's property, including movable and immovable goods in progress, in order to guarantee the execution of the judgment at a later date, or in other words, the goods cannot be transferred, traded or sold subsequently. If not, transfer it to someone else. The seizure of collateral does not only apply to the defendant's goods, but also to the plaintiff's movable goods that are in the defendant's possession, such a seizure is called a revindicatoir beslaag.

The bail seizure institution can also keep the disputed goods from the actions of the plaintiff who wants to sell or transfer rights to the goods, so that when the time comes for the court decision to be implemented, it can guarantee the interests of the plaintiff. In fact, the bail claim granted by the judge and declared valid and valuable will automatically become an executorial seizure in order to support the decision. However, not all decisions of judges can be implemented in truth, namely forcibly by the court. Only decisions that are Condemnatoir can be implemented, while decisions that are declaratory and consitutive do not require coercive means to carry them out.

Regarding the conditions to be placed bail has been regulated in Article 227 HIR. In the provisions of Article 227 of the HIR, it means that to apply for bail there must be a reasonable allegation that a creditor as long as it has not been given a decision by a judge or as long as the decision has not been carried out to find a way to embezzle or flee the goods. If the plaintiff does not have strong evidence that the defendant's concern will alienate his belongings, then the bail seizure is not carried out.

From the background of the question above, the author is interested to explore the provisions of bail due to default on credit agreements with the title "**Effectiveness Of Bail Due To Default On Credit Agreements**"

Problem

1. What are the basic provisions on bail and its legal basis?
2. What is the purpose and procedure or process of implementing the confiscation of collateral against the defendant's property?

Research Methods

The method used in this study is the library research method (library research), which is a study used by studying literature books, legislation used to facilitate the authors in preparing this study.

Discussion

1. Basic provisions on bail and its legal basis.

In the code of civil procedure, there are two types of security seizures that are generally filed (Article 227, 226 HIR. Article 261, 260 RBg.) namely:

1. Confiscation of collateral against the plaintiff's own property (Revindicatoir Beslag) the parties entitled to apply for confiscation are:
 - a. the owner of a movable property whose property is in the hands of another person.

- b. advertising rights holders.
- c. creditors, for applicants sita conservatoir.
- d. wife of the applicant for marital confiscation.

This seizure is divided into two parts, namely seizure revindicatoir (Article 226 HIR, 260 Rbg) and Sita marital (article 823-824Rv). Revindicatoir means to get, and the word sita revindicatoir implies confiscating to get back (goods that are indeed his). Who can apply for confiscation revindicatoir is any owner of movable property whose goods are controlled by others.

2. Confiscation Of Collateral Against The Debtor's Property

Or defendant (Conservatoir Beslag) this confiscation is carried out against the debtor's property. The word conservatoir comes from conserveren which means to save, and conservatoir beslag means to save one's rights.

3. Foreclosure on movable property

Confiscation of collateral for movable property can occur when the credit agreement is not secured by collateral for certain goods or the guarantee is in the form of a fiduciary. Some things that contain about confiscation of collateral for moving goods are:

- a. Confiscated goods are placed in place again.
- b. Custody and control passed to the defendant.
- c. No bail can be placed at the request of other claimants.
- d. Casuistically can be charged bail to the plaintiff.
- e. Seized has the right to file a rebuttal.

4. Confiscation of immovable goods

There are special provisions on the seizure of the most important immovable goods such as the following:

- a. Custody of confiscated goods

Expressly stipulated in Article 508 Rv and implicitly in Article 197 paragraph (9) HIR, that in the case of custody of the guarantee of immovable goods:

- Tersita became his guardian.
 - Its nature by law.
- b. Wearable confiscated
- This is also regulated in Article 508 Rv and can be used as guidelines for the use of confiscated goods, along with the condition.
 - Use should not result in a decrease in the price of confiscated goods or the expiration of confiscated goods in use.
 - When the price drops, the defendant is threatened with compensation and interest.
- c. After the seizure often arises the problem of confiscated goods. In order for there to be legal certainty as to the proceeds arising from the object of the security seizure attached to it and to be paid to the plaintiff together with the proceeds from the sale of the security seizure item, the court must consider and affirm in the determination of the seizure. As long as it is not affirmed in the determination, the defendant is considered entitled to use and enjoy the results.
- d. The application of adjustment confiscation is not absolute as described, in the seizure of movable property applies absolutely the principle of *saisie sup saisie ne vaut* outlined in Article 463 Rv, which prohibits duplicate confiscation of movable goods at the same time. What can be burdened is the adaptive seizure.
- e. Failure to register and announce the minutes of the sita if the collateral sita held by the first applicant is not registered and announced, it may give the right and opportunity for the later applicant to register and announce the sita carried out at his request. Therefore, the nature of the first registered and announced can be a reason to get rid of the first security seizure.
- f. The court may order the plaintiff to give bail on this matter has been explained on the bail seizure of immovable property.

Guidelines provisions are the same, namely in Article 722 Rv

1. The chairman of the PN or the assembly may order the plaintiff as a claimant for confiscation to provide security deposit for foreclosure.
 2. The security deposit includes the cost of losses and interest incurred as a result of foreclosure.
 3. The security deposit is issued together with the bail order.
 4. As long as the security deposit has not been submitted by the plaintiff, the bail cannot be executed.
- g. Right to object or challenge
- h. Seized has the right to give substitute goods confiscated objects regarding it can be guided.

About The Rv. The defendant has the right to offer or apply to the court:

- Substitute goods for confiscated objects.
 - Provide sufficient guarantees on the amount of the plaintiff's claim.
- i. Statement of valid and valuable security seizure as has been explained, insofar as the seizure procedure, the procedure for confiscation of revindicated seizure is fully applicable in the security seizure both for movable or immovable goods.

Accordingly, without prejudice to the provisions of Article 727 Rv, the delineation of valid and valuable statements applied in the revindication seizure, is fully applicable in the guarantee seizure.

Legal Basis :

1. As the legal basis of Conservatoir Beslag contained in HIR Article 227 paragraph (1) jo RBG article 261 paragraph (1).
2. The provisions on Accounts Payable are regulated in Article 1754 of Article 1773 of the Civil Code.
3. The terms of default are regulated in Article 1238 of the Civil Code.

4. Article 1131 of the Civil Code reads “ ” All the material that is owed, both movable and immovable, both existing, and new will be in the future, become dependents for all individual engagements”
5. Article 1238 of the Civil Code, the debtor is declared negligent by a warrant, or by a similar deed, or by the force of the engagement itself, that is, if this engagement results in the debtor to be considered negligent by the lapse of the specified time.

2. The Purpose And Procedure Or Process Of Implementing The Confiscation Of Collateral Against The Defendant's Property.

According to M Yahya Harahap purpose of foreclosure is :

1. So that the suit is not illusoir

The purpose of foreclosure is that the defendant's assets are not transferred to others through sale and purchase, gifts, or not burdened with rent or pledged to third parties. So that the integrity and existence of the defendant's assets remain as before so that when the verdict acquires permanent legal force, the disputed goods can be handed over perfectly to the plaintiff. Therefore, the plaintiff's lawsuit is not illusory or hollow.

2. The object of execution is certain

When the seizure application is submitted, the plaintiff is obliged to explain and show the identity of the goods to be seized, for example, the location, type, size, and boundaries. On the application, the court through the bailiff examines and examines the correctness of the identity of the goods at the time when the seizure was carried out. This directly gives certainty over the object of execution if the verdict has permanent legal force.

The principal purpose of foreclosure, Harun Yahya stated that: "the principal purpose of foreclosure. First, in order to protect the interests of the plaintiff from the defendant's bad faith, so that at the time of the decision the legal force remains, the lawsuit is not hollow (illusoir). And at the same time provide certainty for the plaintiff, the object of execution if the decision has permanent legal force”.

Judging from the main purpose, it can be said that the bail has the essence of legal certainty and protection from the defendant's bad faith to be able to guarantee the fulfillment of the plaintiff's rights when he is able to prove the truth of the arguments of his claim.

Execution Of Bail Against Objects Belonging To The Debtor

With the status of the debtor, the debtor in the case is the defendant where the implementation of the security seizure with objects that are in the hands of the defendant include:

1. Submission of the laying of the security deposit submitted together with the letter of claim.
2. Submission of a claim for Security filed separately/separately from the lawsuit.

Submission of the guarantee must pass through several processes consisting of:

- a. The process of filing an application for the laying of the security deposit filed together with the lawsuit, the standard operational procedure (SOP) is the same as the filing of the lawsuit/ application.
 - b. The applicant or his attorney submits an application for the placement of the security seizure addressed to the chairman of the District Court.
 - c. Standard Operational Procedure (SOP) regarding the payment of subpoenas for the laying of collateral and administration fees is the same as the related SOP.
1. Examination Process In The Trial

Examination in this trial is called an incidental trial in which the trial consists of:

- a. The conference is open and open to the public.
- b. Read out the application letter for the placement of bail.
- c. Provide an opportunity for the respondent to provide an answer/response to the request.
- d. Checking the evidence of the applicant.

- e. Make a determination about accepting or rejecting the application for the placement of the security deposit.

2. Execution

The execution of the execution of the court decision is the purpose for which the lawsuit is filed. Basically, a judge's decision that already has definite legal force that can be carried out. So that the implementation of the judge's decision must have a fixed power first and then can be implemented and carried out the emptying execution. The decision was carried out under the leadership of the chairman of the District Court who initially decided the case.

Execution begins by reprimanding the losing party for eight days of voluntarily fulfilling the verdict. If the defeated party does not want to carry out the verdict voluntarily, then the actual execution begins.

Conclusion

Confiscation or *beslaag* is a legal action by a judge that is exceptional, at the request of one of the parties to the dispute, to secure the disputed goods or which is a guarantee of the possibility of being transferred, burdened, something as security, damaged or destroyed by the holder or party who controls the goods to ensure that the judge's decision can later be implemented properly and preparatory actions to ensure the implementation of civil decisions.

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