

The Function of The Debt Recognition Deed Grosse Due to An Effort to Provide Bank Protection as The Credit Provider (Research in Medan City)

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Abstract. Executorial title is performed to protect a creditor from a debtor's poor performance. Executorial title form deciding that debtor must pay certain amount of money or certain achievement, or based on the act of guarantee agreement with mortgage (guarantee right) and the notarial document in the form of grosse act of loan acknowledgment. Yet, mistake frequently occurs in the making of grosse act document because of less understanding the form of the grosse, that is frequently mistaken for the grosse act of mortgage or the act of guarantee right and there is also a difference in the final total amount found in the main agreement from that found in the grosse act or that found in the bank account statement. Therefore, the problems looked at in this study are what legal principle and how the grosse act of loan acknowledgement protects the interest of the credit-giving bank in Medan.

Keywords: Grosse; Act of Loan; Acknowledgement

1 Introduction

In everyday human life [1] can not be separated from various needs[2]. In order to fulfill the needs, human have to achieve by working. Working can be done by themselves nor have to work for other people, such as entrepreneurship [3]. Entrepreneurship requires capital [4]. work, to obtain working capital in various ways can be taken, including borrowing from other parties. The existence of a loan relationship begins with an agreement between the debtor and the creditor that is set forth in the form of an agreement, in the form of an oral or written agreement.

Receivables agreements in written agreements are made with deed under hand, some by notarial deed. From the agreement emerge a legal relationship [5] which is a relationship where the obligations/achievements of the debtor and the right to obtain achievements from creditors. The legal relationship will run smoothly if each party fulfills its obligations according to the specified time. However, in the loan agreement there are times when one of the parties does not fulfill the agreement as agreed before.

In order to prove the rights and obligations of the parties, creditors and debtors, if one of the parties does not fulfill the obligations as promised, then the agreement is set forth in a written agreement. Written agreements are easier to use as evidence if in the future there are

undesirables. Written evidence is a primary evidence [6]. When the agreement is written, each party will get legal certainty over the agreement. If in a loan relationship, the debtor does not meet the achievement voluntarily, the creditor has the right to demand the fulfillment of receivables when the debt is already billable, namely against the debtor's assets used as collateral [6]. The rights of fulfillment of the creditor is done by selling the collateral objects of the debtor, which then the proceeds of the sale are used to meet the debtor's debt.

In carrying out the fulfillment of the creditor's right to the collateral provided by the debtor, namely through the execution of the collateral, the creditor must have the right to carry out execution through the executor's seizure. The terms of this executive title are held for protection for creditors against default of debtors. The equatorial title may arise based on a judge's decision made in the form of an executor who decides the debtor must pay a certain amount of payment or achievement,

orit can also be based on a Notarial deed that is deliberately made in the form of an execution, in the form of a grosse deed, in this case grosse deed of debt recognition. In the deed contained a statement of recognition of the debt to a certain amount of money from the debtor to the [7].

The purposes set forth in the grosse deed of debt recognition is so that when the debtor defaults [8] the creditor only submits the application for the implementation of grosse deed of debt recognition to the District Court and not of ilealawsuit, to obtain fulfillment of the receivables. Therefore in practice often held grosse deed of debt recognition made in front of notary public. Grosse deed does not need to be proven, so it must be considered true what is listed in it, unless there is evidence of an opponent [9]. It is possible because in grosse deed of recognition of debt made before a Notary Public, contains the word For Justice Based on the One True God. Grosse therefore has an executive title that is likened to the decision of a judge who has a fixed legal force [10].

The legal basis of the above provisions is based on HIR (Het Herziene Indonesisch Reglement) which reads:

Agrosse of mortgage deed and iou made before a Notary public in Indonesia and whose head uses the word On Behalf of Seri Baginda Raja of the same power as the judge's decision [11]. The words on behalf of His Majesty's Series in accordance with what is contained in Article 6 of the Emergency Law No. 51 of 1951 must be read in the Name of Justice. According to Law No. 48 of 2009 on The Power of Justice, the provision must be read for justice based on the One True God [12].

Grosse deed of recognition of debt and grosse deed of mortgage that uses the head for Justice Based on The One True God has a special position in the settlement of debts because of the power such as the judge's verdict [13], if the debtor fails to fulfill the obligation, it is open to the creditor to apply for execution to the Chief Justice of the District Court where the debtor resides or the place of residence specified in the deed. In a stable economic environment, credit poured in grosse deed rarely ends with the act of auction or general sale [14]. This is because the debtor is able to fulfill the creditor. Other things the lethargy of the world economic situation. In the event that the debtor is unable to repay the debt, there is a lot of fact about the demand from *executorial verkoop* [15]. especially in major cities that are classified as hubs of business and industrial activity.

A proof to the public that economic lethargy results in the failure and inability of debtors to meet the obligation to pay off debts. As a result of the law, the debtor is in the category of default to give the right and authority for the creditor to force the debtor in the threat of execution under Article 224 HIR, because the credit agreement is set forth in the grosse deed. The application of the utilization of Article 224 HIR with the rate of economic, business

and industrial growth on the one hand and the flexibility of economic life on the other hand, in practice often cause problems.

Emphasizing the complexity of the implementation of Article 224 HIR, In practice the complexity of the implementation of Article 224 HIR is caused by several factors, including the cunning factor of the debtor, there are also factors of fraud committed by the creditor such as fraud does not include payments made by the debtor in the bookkeeping account [16]. The constraints regarding the creation of grosse deed documents are concerned because for the court and juridically, the formal condition of the validity of the grosse deed is the essence of the validity of the grosse deed to be equated with its existence as a verdict that contains value or has the power of execution that can be carried out execution.

The misrepresentation of grosse deed documents is due to a lack of understanding and sitting of the grosse form of deed specified in Article 224 of the HIR, so it is not excessive to say that almost all grosse deed is found to overlap between grosse deed of debt recognition with grosse deed of mortgage, or with grosse deed of dependent rights [17]. As a result grosse deed is grosse deed is not clear form. In addition to the above problems, there are still problems that are often an obstacle to the executorial verkoop grosse deed that is about the amount of debt that must be paid by the debtor. Generally in the agreement clause is always called the absolute right of the creditor party to set the final amount of the credit agreement.

Evidence shows the creditor has the absolute right to determine the final amount of the credit agreement, namely:

- a. The amount of the borrower's debt to the bank can be seen and apparently from the bank's records or administration which is valid and binding evidence against the borrower and/or guarantor regarding the amount of money owed and must be paid by the borrower and/or guarantor to the bank and such records or administration are the most important and inseparable part of the recognition of this debt [18].
- b. The Bank reserves the right to determine the amount of its claim to the debtor in respect of the amount of debt payable by the debtor and the debtor hereby waives all his rights to object to the calculations of the bank [19]
- c. The Bank reserves the right to determine for itself the amount of claims against debtors arising from principal debt, provision interest and bank fees and any other costs that must be paid by the debtor to the bank, and the current debtor also to later waive all his rights to object to the calculations made by the bank [20]
- d. The debtor grants the creditor the right to self-establish the amount of debtor's outstanding debt based on the account and/or bookkeeping of the creditor specifically made for it. account and/or bookkeeping is sufficient and binding evidence of the debtor, the lender and the creditor regarding the amount of debts to the creditor, so that no more evidence or means of additional proof is required and the debtor waives all rights to deny or deny the amount of debtor's debt set by the creditor until the entire amount of the debtor's debt set by the creditor is repaid in advance [21]

This can cause a problem that may occur, namely there is a difference in the final amount that is not in accordance with the amount contained in the principal agreement with what is listed in the agreement grosse deed and with what is stated in the bank's bookkeeping account. Related to the description above, the author is interested in researching and writing in the thesis entitled Grosse Function of Debt Recognition Act as an Effort to Provide Protection against The Interests of Creditor Banks (Research in Medan City).

2 Research Methods

The purpose of this research is: 1. To know and analyse the legal basis of the validity of grosse deed of debt recognition in the field of credit. 2. To know and analyse the protection of creditors in connection with the grosse deed of debt recognition in bank credit agreements in Medan. 3. To find out and analyze about the execution of grosse deed of debt recognition in bank credit agreement in Medan City.

3 Results and Discussion

3.1 Based on the above background, the following issues are raised:

1. What is the legal basis for the validity of grosse deed of debt recognition in the field of credit?
2. What is the protection of creditors in connection with the grosse deed of debt recognition in bank credit agreements in Medan?
3. How is the execution of grosse deed of debt recognition in bank credit agreement in Medan?

3.2 Benefits Of Research

The expected benefits of this research are as follows :

1. Theoretically, this research is expected to add to the literature on grosse deed of debt recognition in the development of legal science that is closely related in creating economic development, especially in the field of banking credit in Indonesia
2. Practically speaking, this research is expected to provide input for practitioners, namely Notaries, Land Deed Officials, and banks on the extent of the role of a grosse deed of debt recognition in the implementation of banking credit agreements. As well as this research is expected to provide an overview to practitioners about the legal consequences arising from grosse deed of debt recognition in banking credit agreements.

3.3 Theoretical Framework And Conception

Framework Theory

Continuity of the development of legal science, in addition to relying on methodology, research activities and social imagination is very determined by the theory [22]. The theoretical framework in question is a frame of thought or points of opinion, theory, thesis on a case or problem that is used as a comparison material, theoretical handle, that may be approved or disapproved that is used as input in creating a frame of mind in the writing of [23]. The function of theory in thesis research is to provide direction and predict and explain the observed symptoms [24]. The theory that became the guideline in writing this thesis is grosse deed of debt recognition is one of the assessment agreements that have an equatorial power that is closely related to the development of banking credit in Indonesia..

Banking credit activities in Indonesia at this time can not be released from the bonds of agreement that are poured in the form of grosse deed. The breadth of the frequency and intensity of money loan agreements in the traffic of the business and industry world in the last ten years has dragged Article 224 HIR into the arena of turnaround of financial and banking relations. In analyzing the above symptoms that occur in banking practices and legislation, especially in credit problems, a system approach is required.

A system is a unified set of principles, which is the foundation, on which the rule of law is built [25]. The purpose of using the system approach is to hint at the complexity of the legal problems grosse deed faced with the aim of avoiding views that simplify the issue of grosse deed so as to produce a wrong opinion on the relationship between credit granting, credit settlement with grosse deed.

Based on this system approach, it can be known that the essence of lending by banks to debtors lies in: [26].

- a. Collateral is the ability of the prospective debtor to provide economically valuable collateral and legally legal
- b. Credit Repayment is the ability of the prospective debtor to make a credit return to the bank at the promised time..

In lending, one of the preventive efforts [27]. in overcoming bad credit is to bind credit in notaril, because it will juridically give a positive legal effect because one of the functions of a notaril deed is to prove in the future. Grosse's deed is one of the elements in the bank's credit security system, which was born preceded by a basic agreement [28]. a money-borrowing agreement. Regarding the definition of the agreement by scholars is also interpreted differently, namely :

According to R.Subekti, a covenant is an event where one promises to another or where the two men promise each other to carry out something [29]. According to R.Wirjono Prodjodikoro, the Agreement is a legal relationship regarding property between two parties, in which a party promises to do something achievement, while the other party has the right to demand the implementation of such achievements [30]. According to Abdulkadir Muhammad, the Agreement is an agreement with which two or more persons bind themselves to carry out a matter in the field of wealth [31].

Whereas according to the KUHPdt, the Covenant is an act, by which one or more persons bind themselves to one or more persons [32]. From the formulation of the agreement above, it is concluded that the elements of the agreement are: The existence of the parties; Agreement between the parties; There are goals to be achieved; There are achievements that will be implemented.

Regarding the definition of a loan agreement, KUHPdt there regulates it is an agreement in which one party gives to the other party a certain amount of goods that are impregnated because of usage, provided that the borrowing party will return the same amount of the same kind and circumstances as well [33]. The rights and obligations of the parties in the loan agreement are :

- a. The lending party, has:
 1. The obligation cannot request back what it lent before the time specified in the agreement.
 2. The right to promise interest on borrowing money or other goods that are prohibited because of usage.
- b. The borrower, has :
 1. The right to be the temporary owner of the loaned goods.
 2. The obligation to return the loaned goods in the same amount and circumstances at the time specified in the agreement.

Lending agreements in the banking world are better known as bank credit agreements [35]. Bank credit agreements usually take the form of unilateral agreements only or in the form of standard terms which means that :

The terms of the contract have manifestly been used and determined by either party without negotiation with the other party, and the binding of such standard terms for the parties

is based on the signatures on the contract document as a whole, at least as long as those terms are reproduced on top of those signatures e.g. on the back of the contract document.

In the practice of giving credit to debtors, banks require a credit guarantee object. Example of a bank credit agreement that shows the bank needs a guarantee object in the provision of credit:

- a. To guarantee repayment as appropriate everything owed and payable by the borrower to the bank based on the credit agreement, whether principal debt, interest, provision and other costs, then with the guarantee agreement referred to in paragraph (2) of this article or by other letters or deed deemed necessary by the bank, to the bank is given a guarantee to pay off the borrower's obligations, all of which are inseparable and are the most important part of this credit agreement, which in the absence of guarantees in the guarantee agreement and / or deed and / or other letters, then the credit agreement will not be accepted and carried out between the two parties, therefore the guarantee agreement or the provision of other guarantees can not be revoked and will not expire for any reason whatsoever, as long as and as long as all amounts of money owed by the borrower to the bank under the credit agreement have not been fully paid
- b. In order to guarantee further repayment in an orderly manner and as appropriate all debts, interest, provisions and costs and fines that must be paid by the debtor to the bank based on this deed and the letter of credit agreement that has been and/or to be made between the debtor and the bank, the debtor hereby provides guarantees to the bank.
- c. In order to further guarantee everything that must be paid by the debtor to the bank based on this deed, the debtor and the guarantor hereby bind themselves to submit as a debt guarantee as evidenced by a deed and/or letter made separately from this deed.
- d. To further guarantee the repayment of the debtor's debt to the creditor either the principal debt, interest, provision fines and other costs or any payment that must be paid by the debtor to the creditor in an orderly manner and as appropriate based on this IOU including the extension, addition and/or amendment of which has been or will be made between the creditor and the debtor, then the debtor hereinafter referred to as the guarantor, hereby authorizes the creditor as the beneficiary or beneficiary of the dependent rights in question registered at the local land office will act as the holder of dependent rights, specifically to charge the right of dependents rank I (first), on the object of liability [36].

The provision of guarantees is always in the form of providing a share of the property of the giver for the fulfillment of obligations. That is, the bailment temporarily waived his or her judicial rights. According to R. Subekti, giving an item as a credit guarantee means relinquishing some power over the goods. Power is not to relinquish the power of objects economically but juridically. Collateral is everything that can be owned and transferred, whether tangible or intangible, registered or unregistered, mobile or immovable that can be burdened with dependent, mortgage and/or fiduciary rights.

Regarding guarantees whose object objects must pay attention to the legal principle of guarantees, namely:

- a. The right to material rights (real right). The nature of the material right is absolute, meaning it can be maintained in everyone. The property rights holder has the right to sue any person who interferes with his or her rights. Another property of material rights is *droit de suite*, meaning the right of material to follow its object in the hands of whoever it is in. In this character is contained the principle of the old right takes precedence over the young right (*droit de preference*). If some material is placed on an object, then the power of that right is determined by the order of time. In addition, the nature of material rights is to

- give strong authority to the owner, that right can be enjoyed, transferred, guaranteed, leased
- b. The principle of the assessor means that this guarantee right is not a standing right (zelfstandingrecht), but exists and removes it depending (accessorium) to the principal agreement.
 - c. The right that takes precedence means the right of guarantee is a right that precedes the fulfillment of other receivables.
 - d. The object is an immovable, registered or unregistered object.
 - e. The basis of the assessment is the attachment between the object on the ground and the land site.
 - f. The principle of horizontal separation is that it can be separated objects that are on the ground with the soil that is the site.
 - g. Open principle means that there is a publication as an announcement so that the public knows the burden placed on an object.
 - h. Basic specifications/swallowing of the warranty object.
 - l. The principle is easy to execute.

The name of the agreement, both a credit agreement and any agreement, must do an achievement. Achievements in the science of law are giving something, doing something or not doing something. Deed of debt recognition is a form of achievement that does not do something, meaning in the deed of debt recognition, the creditor does not do something because the creditor is only silent, the creditor only receives a recognition from the debtor that the debtor claimed to have owed the creditor for some money or objects. The parties to the agreement must perform each other's achievements. If the debtor does not perform his performance as promised, i.e. pay the credit or credit installments on time then the creditor cannot directly say the debtor has defaulted.

In general, a new default occurs if the debtor is declared to have failed to meet his achievements. If in the implementation of the fulfillment of achievement has been determined grace period, according to Article 1238 KUHPdt, the debtor is considered negligent by the time specified, and a statement must be submitted in writing explaining what is required, on what basis and at the time when it is expected the fulfillment of presentation. This is useful for creditors if they want to sue the debtor in front of the court or to request fiat execution from the court to carry out the execution of collateral objects or carry out the execution of grosse deed. Therefore, somasi is a tool of evidence that proves that the debtor has actually committed default.

Defaults may arise due to intentionality or negligence of the debtor itself and due to coercive circumstances, both of these causes :

- a. The debtor does not fulfill his achievements at all;
- b. The debtor fulfills his/her achievements, but not as it should;
- c. Debtor meets achievements, remains untimely;
- d. The debtor fulfills the achievement, but performs what is prohibited in the agreement.

So that in accordance with the provisions of Article 1267 KUHPdt, then creditors can choose the claim of rights in the form of:

- a. Fulfillment of agreements;
- b. Fulfillment of the agreement accompanied by compensation;
- c. Indemnification only;
- d. Cancellation of the agreement;
- e. Cancellation of the agreement accompanied by indemnification.

The creditor's efforts in exercising its rights as given in Article 1267 kuhpdt, namely the fulfillment of the agreement accompanied by compensation, then the creditor can carry out the execution of grosse deed or execution of the debtor's collateral. Grosse deed can be executed because it contains the title of execution that is the containment of a sentence that reads: For justice based on the God almighty, so grosse deed is equated with the decision of the court that has obtained a permanent legal force, which thus can be executed.

Regarding execution, it is distinguished into 4 types, namely :

- a. The execution of the verdict punishes the defeated party for paying a certain amount of money. This execution is stipulated in Article 196 HIR .
- b. Execution of a verdict punishes a person for committing an act. This is stipulated in Article 225 of the HIR. People cannot be forced to fulfill achievements in the form of deeds. However, the winning party can ask the judge so that the interests he will obtain are assessed with money.
- c. Real execution, which is the implementation of achievements charged to the debtor by the judge's decision directly. So the real execution is the implementation of the verdict that leads to the same result as if it was carried out voluntarily by the party concerned. This real execution is not regulated in the HIR but is stipulated in Article 1033 Rv which is the implementation of the award in the form of emptying of fixed objects. HIR only recognizes real execution in auction sales (Article 200 paragraph (11) HIR).
- d. Execution parat (parate executie), which is the implementation of the agreement without through a lawsuit or without going through the courts. This executie parate occurs when a creditor sells certain goods belonging to the debtor without having an executive title (Article 1155, 1175 (2) BW).

In order for a credit guarantee to be executed based on the equatorial power of grosse deed, the process of making grosse deed must be done perfectly, starting from the stage of making a deed of credit agreement recognition of debts made unilaterally by the debtor. This stage has an important meaning because it will give its own character with all the consequences.

3.4 Conception Framework

Conception is one of the most important parts of the theory. The role of concepts connects the world of theory and observation, between abstraction and reality. Conception is translated as an attempt to bring something from abstract to concrete, called operational definition. Operational definitions avoid differences in understanding or interpretation of dubious from a term used. To answer the problems in this study must be defined some basic concepts, in order to be operationally obtained the results of the research in accordance with the specified objectives, namely:

- a. An authentic deed is a deed that in the form of a statutory provision is made by or before the public official authorized to do so in the place where the deed is made.
- b. Grosse deed is a derivative or copy of a notarial deed that is given the title of executorial For Justice Based on the One True God.
- c. Grosse deed of debt recognition is a statement of unilateral recognition of the debtor about his debt to the creditors formulated notary in grosse deed.
- d. Banking is everything about banks, institutions, business activities, as well as ways and processes in carrying out their business activities.

- e. Bank is a business entity that collects funds from the community in the form of deposits and distributes to the public in the form of credit and /or other forms in order to improve the standard of living of the people.
- f. Branch Office is a bank office directly responsible to the head office of the bank concerned, with a clear business address where the branch office conducts its business;
- g. Credit is the provision of money or bills that can be equalized, based on the agreement or loan agreement between the bank and other parties that requires the borrower to pay off his debt after a certain period of time with interest;
- h. Customer is a party that uses the services of the bank;
- i. Customer debtor is a customer who obtains a credit or financing facility based on Sharia Principles or which is likened to it based on the bank's agreement with the customer concerned.
- j. A debtor is a person or business entity that owes to a bank or other financing institution due to an agreement or law.
- k. Creditors are banks or other financing institutions that have receivables due to agreements or laws.
- l. The preferred creditor is the creditor of the guarantee rights who has the right in precedence to other creditors to take the repayment of their receivables on the results of the execution of the object of the guarantee.
- m. Separatist creditors are creditors whose receivables are billed as if there is no bankruptcy because it is considered independent.
- n. An agreement is a legal relationship between the debtor's client and the creditor in the banking environment and notary in written form.
- o. Debt is a debtor's obligation to be paid to creditors in rupiah or other currency as a result of a credit agreement. *Agunan adalah jaminan tambahan yang diserahkan nasabah debitur kepada bank dalam rangka pemberian fasilitas kredit atau pembiayaan berdasarkan Prinsip Syariah;*
- p. Guarantee is something given to creditors to give rise to confidence, that the debtor will fulfill his obligations, which can be assessed by money arising from an alliance.
- q. Material guarantee is an absolute right to a certain object that becomes the collateral object of a debt, which at one time can be cashed for the repayment of the debtor's debt if the debtor reneges on a promise.
- r. The collateral is anything that can be owned and transferred, whether tangible or intangible, registered or unregistered, mobile or immovable, which cannot be burdened with dependents or mortgage rights.
- s. A registered object is an object registered with a particular institution that has proof of certificate.
- t. A moving object is an object that by its nature can be moved or because it is determined by law.
- u. Immovable objects are objects that by their nature cannot be moved or because of designation or because they are statutory.
- v. Non-land objects are objects other than soil either moving or immovable, whether registered or unregistered.
- w. The guarantor is a person or business entity that has a guarantee object.
- x. The beneficiary of the guarantee is a bank or financing institution that has receivables against the guarantor whose payment is guaranteed with collateral and other assets from the guarantor.

The decision of the court is the final result or conclusion of a case examination at either the level of the District Court, the High Court, or the Supreme Court, which has a permanent legal force.

4 Conclusion

The legal basis for the validity of grosse deed of debt recognition in the field of credit is based on KUHPdt, Article 224 HIR/258 RBG, and Law No. 2 of 2014 jo Law No. 30 of 2004, where grosse deed of debt recognition is a follow-up agreement of the principal bond of the credit agreement, so without the existence of the principal agreement of credit, it is not possible to occur grosse bond deed of recognition of debt or grosse other deed in relation to the credit.

Grosse deed of debt recognition made by Notary public based on the request of the creditor bank that is used as a research object in the city of Medan has not been able to provide legal protection to the bank for the act of default of the debtor, because in the grosse deed of recognition of the debt there is still a clause that is an agreement that causes legal consequences in the form of changing its status into an authentic deed of agreement that does not have the equatorial power, so the execution can only be carried out through a regular civil lawsuit.

Obstacles creditor banks that are used as research objects in the city of Medan in carrying out the execution of grosse deed, be it grosse deed of debt recognition or grosse other deed is the mixing of forms of grosse deed made, and also the bank has difficulty in determining the final amount of debtor debt that must be included in the grosse deed of debt recognition. So in grosse execution the deed is considered an ordinary credit agreement.

Recommendation

- a. The Law of Notarial Department must be refined, especially Article 1 number 11 so as not to narrow the perception and understanding of the meaning of the grosse deed, that which can only be given in the form of grosse deed is only a deed made in the form of minuta with the title of Debt Recognition only, but expanded can be issued grosse deed from minuta notarial deed using other titles, such as Credit Agreement.
- b. The Notary Department Law may add provisions or articles governing grosse deed specifically in order to be a reference in its application so that there is no bias in its proof.
- c. To the Indonesian Notary Association and the Government to issue a unification / standard of debt recognition deed for Notary public for the Indonesian banking world, so as to overcome the problems surrounding grosse deed in relation to credit agreements that still occur.

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