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Land Execution as Collateral in Debt Agreement Default
(A Case Study of Decision No. 65/PDT.BTH/2022/PN KDI)

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ABSTRACT
This study aims to analyze the implementation of land execution as collateral in a debt agreement when the debtor is in default, using the Kendari District Court Decision Number 65/Pdt.Bth/2022/PN Kdi as a case study. The background of this study stems from the persistent legal disputes between creditors and debtors regarding the mechanism for executing collateral objects in the form of land, particularly when the agreement lacks a valid material guarantee or violates the principles of contract law. The research adopts a normative juridical approach by examining relevant legal provisions, including the Civil Code, Law No. 4 of 1996 concerning Mortgage Rights, as well as doctrines and jurisprudence related to collateral execution. In addition, an empirical juridical approach was employed to evaluate the practical application of these legal norms in the Kendari District Court. Data were collected through literature review, decision analysis, and interviews with parties familiar with the case. The findings indicate that the execution of land as collateral for debt in this case was conducted through a request for an execution order after the debtor was proven to be in default. However, the process encountered obstacles due to the absence of a valid mortgage deed as the legal basis for execution. The judge, in rendering the decision, upheld the principles of justice and legal certainty by rejecting the execution request and emphasizing that a debt agreement not accompanied by a valid mortgage deed cannot serve as the legal foundation for executing the land object.

Keywords: Land Execution; Default; Debt Agreement

INTRODUCTION

Collateral refers to the debtor's assets pledged to the creditor to secure the fulfillment of the debtor's obligations. According to Article 1131 of the Indonesian Civil Code, all assets owned by the debtor constitute collateral for all personal obligations. Collateral constitutes an absolute right (in rem) over an object that can be defended against anyone and remains attached to the object itself. When a debtor defaults, ownership of the collateralized asset remains with the debtor, as the essence of collateral is not to transfer ownership but to ensure the creditor's claim. The characteristics of collateral include: (1) an absolute right enforceable against anyone; (2) attachment to the object irrespective of ownership transfer; and (3) the principle of priority, which grants precedence to the earlier right established (Usanti, 2012).

In the context of secured transactions, agreements between creditors and debtors must clearly stipulate the object pledged as collateral, such as land under a mortgage (hak tanggungan). The concept of mortgage continues to play an important role within Indonesian civil law. Contract law fosters honesty and fairness in transactions, whether verbal or written, and imposes legal obligations on both parties. Default (wanprestasi) occurs when one party fails to perform as agreed, thereby entitling the other party to demand performance or termination of the contract along

with compensation for losses incurred. Contracts made in good faith tend to operate smoothly, whereas defaults occur due to breaches of obligation (Supramono, 2013).

One such instance of default occurred in Case No. 65/Pdt.Bth/2022/PN Kdi, a civil lawsuit filed by Kasim Ramali (Plaintiff) against Laode Bungi (Defendant I) and Waode Suriati (Co-Defendant). The dispute revolved around the ownership of a parcel of land initially belonging to Defendant II and Defendant III, which was subsequently sold in good faith to a third party, Pelawan. However, the land had previously been used as collateral for Defendant II's debt to Defendant I. Despite the land sale, the payment of IDR 175,000,000 was not remitted to Defendant I. The land in question remained registered under the name of Muh. Riso in the Certificate of Ownership (No. 6063/1993), and the transfer of title to Terlawan II or Pelawan had not been completed (Kalley, 2023).

Defendant I contested the plaintiff's claim, arguing that although the land and buildings were purchased, legal ownership had not yet transferred, as the title remained under Muh. Riso in Certificate No. 6063/1993. In legal doctrine, any party causing harm must compensate the injured party for losses resulting from unlawful acts or negligence, as stipulated in Article 1365 of the Civil Code (Girsang, 2021).

Based on the Kendari District Court Decision No. 57/Pdt.G/2019/PN Kdi, the principle of conservatoir beslag (collateral seizure) serves as a preparatory action to secure the execution of a civil judgment. It ensures that goods used as collateral are not transferred or sold before the case concludes. However, complications arose following this decision when the subsequent land buyer, Laode Abu Bakar, claimed to have suffered losses, prompting an opposition lawsuit. Consequently, the Kendari District Court Decision No. 65/Pdt.Bth/2022/PN Kdi was issued to resolve the ensuing legal dispute.

METHOD

This study employs a normative juridical approach, commonly referred to as doctrinal legal research. This approach is corroborated by various scholars who assert that doctrinal research provides a systematic exposition of the rules governing specific legal categories and analyses the relationships between these rules to identify areas of deficiency in legal frameworks Majeed et al., 2023), (Rahmat, 2023; . It is especially pertinent in examining judicial decisions related to the imposition of minimum penalties for corruption offenses, where understanding the legal theories and concepts embedded in the Indonesian Criminal Code is crucial (Bahy et al., 2024). The method facilitates a comprehensive analysis of statutory provisions and judicial interpretations, thus enhancing legal scholarship and maintaining consistency within the legal domain (Hadi & Suraji, 2024; , Marwiyah et al., 2023). Additionally, the normative approach enables researchers to investigate legal doctrines effectively, allowing for the exploration of legal principles and the application of judicial precedent in contemporary judicial settings (Listiyani et al., 2023; , Majeed et al., 2023). The depth of this methodological framework supports a rigorous examination of corruption laws, as understanding the nuances of legal rules involves integrating a multitude of legal doctrines and concepts (Hamid et al., 2023; , Marwiyah et al., 2023).

Moreover, this research methodology places emphasis on an analytical-descriptive approach, aiming to provide a systematic overview of disputes related to

legal frameworks governing brand issues (Barbabela, 2023; , Baig et al., 2023). This analytical perspective is essential for articulating legal facts, principles, and regulations relevant to the investigation of such legal phenomena, allowing researchers to identify and analyze unique legal circumstances (Shaari & Amirul, 2023). By employing several normative juridical analyses, such as the statute approach and conceptual approach, this study aligns with existing legal scholarship while ensuring coherent interpretations and evaluations of pertinent legal frameworks (Disemadi & Putri, 2024; , Magalhães, 2022). Through this methodology, the ability to synthesize information from various legal sources ensures that the conclusions drawn are not only well-founded but also contribute meaningfully to ongoing legal discourse (Rahmat, 2023; , Shukla, 2023). Hence, adopting a multifaceted approach that leverages diverse normative legal analyses ensures completeness and depth in evaluating the legal aspects surrounding brand issues and corruption in Indonesia.

RESULTS AND DISCUSSION

1. Land and Building Property Rights Used as Collateral for Debt Settlement Based on Decision Number 65/PDT.BTH/2022/PN KDI

Material collateral—including pledges, fiduciary transfers, mortgages, ship mortgages, and warehouse receipts—constitutes a right that may be asserted erga omnes, or against any party. Article 1131 of the Indonesian Civil Code stipulates that all assets of a debtor, whether movable or immovable, serve as collateral for the fulfillment of their individual obligations. Furthermore, Article 1132 of the Indonesian Civil Code provides that such collateral shall be distributed proportionally among creditors, unless there exists a legitimate ground for priority. Notably, Article 1131 recognizes only two principal forms of collateral: pledges for movable property and mortgages for immovable property.

This distinction is significant, as the placement and nature of collateral depend on the characteristics of the property involved—whether by nature, intended use, designation, or statutory provision—as regulated under Articles 506–508 of the Indonesian Civil Code. Similarly, Articles 509 and 510 govern movable property by its nature, while Article 511 concerns movable property by statutory designation.

With respect to land and building property rights used as collateral for debt repayment in Decision Number 65/Pdt.Bth/2022/PN Kdi, the actions of Laode Bungi were deemed unlawful. Such unlawful conduct may take the form of either acts or omissions, meaning that both active and passive behavior may constitute an actionable offense. In this case, both Laode Bungi and Kasim Ramali engaged in conduct violating Article 1365 of the Civil Code, which states: “Every unlawful act that causes harm to another person requires the person who, through their fault, causes the loss, to compensate for the loss” (Rodiatun Adawiyah, 2022).

Based on the case analysis, both individuals were proven to have committed unlawful acts by fulfilling the constitutive elements of such a violation. Specifically, Laode Bungi entered into a debt repayment guarantee agreement with Kasim Ramali involving land rights; however, the land and permanent buildings used as collateral no longer belonged to him. The property had been lawfully transferred to Laode Abu Bakar, as evidenced by a valid receipt of sale and purchase.

Consequently, the debt guarantee agreement between Kasim Ramali and

Laode Bungi contravenes both the subjective and objective legal requirements stipulated in the Civil Code. Therefore, this agreement is null and void, or at the very least voidable, in accordance with the objective condition (fourth condition) of Article 1320 of the Civil Code. It further violates the principle of justice concerning the opposing party, Laode Abu Bakar (Muhammad Arif Prasetyo, 2022).

2. Considerations of the District Court Judges in Issuing Decision Number 65/PDT.BTH/2022/PN KDI

In rendering a judicial decision, judges are obliged to consider legal, philosophical, and sociological truths. Legal truth refers to whether the applied legal basis aligns with prevailing statutory provisions. Philosophical truth requires that judges ensure fairness and equity in their reasoning and decisions (Deity Yuningsih, 2022).

Sociological considerations necessitate that judges also evaluate the broader implications of their decisions on society—ensuring that rulings do not generate adverse social effects. Thus, a fair and wise judicial decision must balance legal accuracy with societal harmony. However, an analysis of Decision Number 65/Pdt.Bth/2022/PN Kdi reveals that the first-instance ruling did not adequately address Laode Abu Bakar's claims.

A sound judicial decision must embody justice, legal certainty, and benefit (expediency). Justice entails equal opportunity and treatment for all litigants, as well as timely and affordable dispute resolution—since procedural delays themselves constitute a form of injustice. Legal certainty ensures predictability and consistency in judicial reasoning, while expediency underscores the social utility and enforceability of a judgment. Judges must also integrate prevailing societal values, including customary law, to realize these objectives (Achmad Ali, 2008).

A combination of factual findings, applicable legal norms, and the moral conscience of the judge influences each judicial decision. In civil adjudication, the principle of expediency is reflected in the efficient resolution of disputes, particularly in cases involving property or economic transactions. Although ethical dilemmas may arise, legal expediency aims to balance individual rights with collective welfare.

In Decision Number 65/Pdt.Bth/2022/PN Kdi, the Panel of Judges erred in their evaluation by questioning Laode Abu Bakar's ownership evidence, despite the presence of valid documentation—namely receipts and notarial memoranda (Exhibits P-1 and P-2)—which are recognized as legitimate legal proof. Prior to purchasing the property, Laode Abu Bakar had undertaken both physical and legal due diligence to ensure that no disputes existed regarding the land. During the proceedings, he also provided testimonial and documentary evidence corroborating his ownership claim.

The Panel of Judges, however, misapplied evidentiary principles by disregarding Laode Bungi's confession and supporting witness statements affirming Laode Abu Bakar's ownership. According to procedural law, the confessions of Laode Bungi and Waode Suriati constitute valid evidence that substantiates Laode Abu Bakar's rightful claim. The object of dispute, verified through Exhibits P-1 and P-2, fulfills the burden of proof as required by law.

Therefore, the panel's oversight represents a substantive legal error, as the court failed to consider critical confessions and factual evidence. The agreement between Laode Bungi and Kasim Ramali should consequently be declared null and

void, given that the collateralized property no longer belonged to Laode Bungi at the time of agreement. The lower court's decision is thus unjust, as it fails to uphold the rights and legal protections due to Laode Abu Bakar. His property transaction should be safeguarded under Indonesian law, particularly in accordance with the Supreme Court Circular Letter Number 07 of 2012 and Supreme Court Jurisprudence Number 3201 K/Pdt/1991, dated January 30, 1996.

CONCLUSION

In the judicial decision regarding the challenger's lawsuit, Case No. 65/Pdt.Bth/2022/PN Kdi, the author's analysis indicates that justice for the defendant, Laode Abu Bakar, has not been fully achieved. Although the ownership of the land and building had been legally transferred to Laode Abu Bakar through a valid sales receipt, the presiding judge failed to acknowledge this legal fact properly and did not give adequate consideration to the evidence and witness testimonies presented by the defendant. Consequently, the decision rendered by the court fell short of the expected standards of justice.

The author's examination of the judgment in Case No. 65/Pdt.Bth/2022/PN Kdi reveals that the court should have more thoroughly evaluated all factual and evidentiary materials presented during the trial to ensure a balanced and impartial verdict. Such careful deliberation is essential to guarantee that the judgment rests on fair and objective grounds, uninfluenced by bias toward either party. The findings further highlight the judge's insufficient attention to the evidence submitted by Laode Abu Bakar, which should have been a decisive factor in the ruling. Therefore, the author underscores the necessity for a more comprehensive assessment of the defendant's evidence, including the verified transfer of ownership of the disputed land and building. A more meticulous judicial evaluation would help secure a decision that genuinely upholds fairness, prevents undue harm to the aggrieved party, and preserves the integrity and credibility of the judicial process.

Acknowledgment

An appeal to the High Court must be filed within fourteen days from the issuance of the decision. The right to appeal constitutes a fundamental legal mechanism that allows an aggrieved party to seek a higher level of justice by presenting additional arguments or clarifications concerning perceived errors or misinterpretations in the initial judgment. In certain circumstances, an unbalanced or biased ruling can cause significant detriment to one of the litigants and erode public confidence in the judicial system.

Accordingly, judges must perform their duties with the highest degree of prudence, professionalism, and integrity. Likewise, parties involved in legal proceedings must fully exercise their procedural rights, including the right to appeal, if they believe that the decision rendered does not reflect true justice. Through such mechanisms, the judicial system can continually refine its practices and reaffirm its commitment to the paramount principles of justice, fairness, and the rule of law.

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