



## Responsibility of the Default Debtor in the Implementation of the Credit Agreement and Settlement

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**Abstract:** This article discusses the provision of credit provided by banks, one of which is at the Telaga Unit BRI bank with a building guarantee. Where at the Telaga Unit BRI bank in providing credit previously preceded by an agreement. To enter into an agreement, the borrower (customer) must have collateral. Without collateral, a customer cannot obtain a loan because collateral is one of the requirements for the customer to enter into a loan agreement. There is a close relationship between the lender and the guarantee. To guarantee repayment of credit from the debtor.

**Keywords:** Debtor's Accountability, Default, Credit Agreement;

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## 1. Pendahuluan

The development of the times has made changes to various human needs in order to be able to fulfill aspects of life in society, to meet these needs humans need costs to fulfill them.<sup>1</sup> The high cost of living needs makes everyone in society work to earn income, with income that humans can meet their needs, although not all needs can be met, because humans are always dissatisfied because there are always needs that want to be fulfilled, not only with work, humans get fees to meet their needs, someone can get money by borrowing from banks, cooperatives, or other people.<sup>2</sup> In borrowing money, the person is bound by the agreement made by him and the creditor, the person entering into a loan agreement with the creditor is called a debtor. Agreements on lending and borrowing money between parties can result in default.

Lending by banks or financing institutions is based on an agreement, namely a credit agreement. A credit agreement involves parties consisting of a party that lends or a creditor or a party that borrows or a debtor. The credit agreement itself is rooted in the loan agreement. In a credit agreement, sometimes there is a risk, that is, the party that borrows or the debtor is unable to pay off the credit on time, and to minimize this risk, the creditor usually asks the debtor for collateral.

This guarantee is the source of funds for repayment of credit in the event that the debtor is unable to pay off the credit he has received. In this case the author will discuss the provision of credit provided by banks, one of which is at the Telaga Unit BRI bank with a building guarantee. Where at the Telaga Unit BRI bank in providing credit previously preceded by an agreement. To enter into an agreement, the borrower (customer) must have collateral. Without collateral, a customer cannot obtain a loan because collateral is one of the requirements for the customer to enter into a loan agreement.

There is a close relationship between the lender and the guarantee. To guarantee repayment of credit from the debtor, the creditor does not want to give debt/loan if there is no collateral that is considered capable of guaranteeing the repayment of the debtor's debt and the collateral to be guaranteed must be equal or more than the value of the loan so that if the debtor does not fulfill his achievements, the value of the collateral object sure to be able to pay off the loan (debtor's debt)

The provision of credit or the provision of funds by banks is the largest element of bank activity, which is also the main asset as well as determining the progress of the banking sector concerned in carrying out its functions and efforts to collect and distribute public funds. Besides carrying out the function of mobilizing funds from

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<sup>1</sup> Putu Ikaputri Ayu Paramitha, I. Marwanto, dan I. N. Darmadha, "Perlindungan Hukum Bagi Kreditur Dalam Perjanjian Kredit Dengan Jaminan Hak Tanggungan (Studi Di Bank Bni Cabang Gatsu Barat)," *Jurnal Kertha Semaya* 5, no. 5 (2017).

<sup>2</sup> Ketut Gde Dannu Mertha Wiguna dan I. Gede Artha, "Tanggungjawab Induk Perusahaan Sebagai Penanggung (Corporate Guatantee) Anak Perusahaan Dalam Perjanjian Kredit Jika Terjadi Wanprestasi," *Kertha Semaya: Journal Ilmu Hukum* 2 (t.t.): 1-14.

the public in the form of savings, banks also function as credit or financing institutions.<sup>3</sup>

Therefore, the bank in providing credit must be based on an analysis of adequate credit, so that the credit provided by the bank does not easily become bad credit. If the credit provided by a bank experiences a lot of congestion, it will certainly cripple the bank's ability to carry out its obligations to depositors of funds. The ability of a bank to be able to repay deposits of public funds depends on the ability of the bank to be able to repay deposits of public funds depending on the ability of the bank to obtain repayments on credit extended by the bank to its debtor customers.

The default that occurred in the agreement agreed upon by both parties between Bank Bri Unit Telaga and Iwan Fataha's shop had a problem, namely that Iwan Fataha had not made payments to Bank Bri. Research in this writing uses empirical research methods, namely a legal research that departs from the gap between *das solen* and *das sein*, namely the gap between theory and the world of reality. In this case research will be based on existing theory and facts.

The causal factor is because Iwan Fataha did not perform the achievements as specified in the initial agreement, he broke his promise (default) with his credit loan of 2.5 billion and the bank demands the responsibility of the debtor to repay the debt.

there are legal problems that arise in the debt agreement according to the Civil Code, so far the guarantee agreement is an individual guarantee or corporate guarantee, so this guarantee agreement is always held between creditors binding themselves to fulfill the debtor's agreement if the debtor himself does not fulfill it, such as described in article 1820 of the Civil Code, the agreement that was made under article 1320 of the Civil Code applies as a law for the parties as contained in article 1338 paragraph (1) of the Civil Code.<sup>4</sup>

But in practice, sometimes what was promised was not carried out by one of the parties or is called default. Default is a situation where a debtor (indebted) does not fulfill or carry out the achievements as stipulated in an agreement. Default can occur both intentionally and unintentionally. Default can be in the form of not fulfilling the achievement at all, the achievement is not perfect, being late in fulfilling the achievement, doing what is prohibited in the agreement. The occurrence of a default causes the other party (the opponent of the party who defaults) to be harmed. Due to losses by other parties, the party that has defaulted must bear the consequences of the opposing party's demands in the form of cancellation of the agreement. Cancellation of the agreement accompanied by a claim for compensation,

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<sup>3</sup> IB Eka Karanantara, I. Nyoman Putu Budiarta, dan Ni Made Puspasutari Ujianti, "Wanprestasi yang Dilakukan oleh Pihak Debitur Pelaksanaan Perjanjian Kredit Pada Koperasi Dana Rahayu," *Jurnal Analogi Hukum* 2, no. 2 (2020): 160-64.

<sup>4</sup> Satriyo Ajie Yulianto dan S. H. Nuswardhani, "Tanggung Jawab Hukum dalam Perjanjian Kredit Antara PT. BPR Cita Dewi dengan Nasabah" (Universitas Muhammadiyah Surakarta, 2021).

Losses in civil law can be divided into 2 (two) classifications, namely material losses and/or immaterial losses. Material losses are real losses suffered. As for what is meant by immaterial losses is the loss of the benefits received in the future. In practice, the fulfillment of claims for immaterial losses is left to the judge, this then makes it difficult to determine the amount of immaterial losses to be granted because the yardstick is left to the subjectivity of the judge who decides.<sup>5</sup>

In the decisions of the Gorontalo High Court, there are 22 default cases with a total number of decisions per year that is :

| Year | Number of Cases |
|------|-----------------|
| 2019 | 2               |
| 2020 | 10              |
| 2021 | 7               |
| 2022 | 3               |

## 2. Methods

The research used in this writing is Juridical Sociological research and uses a qualitative research approach that is descriptive in nature and uses interactive analysis techniques.

## 3. Accountability of Default Debtors In The Implementation of Credit agreements and Their Settlements

In the legal dictionary there are two terms that refer to liability, namely liability and responsibility. Liability refers to the most comprehensive meaning covering almost every character of risk or responsibility, which is certain which depends or is responsible, which is certain which depends or which is possible, while responsibility means the obligation to be responsible for the laws implemented and correct or otherwise provide compensation for any damage it has caused.<sup>6</sup> Responsibility is defined as a condition of being obliged to bear everything (if there is something, one may be sued, blamed, sued and so on).

The legal relationship that arises between the debtor and the creditor originates from two agreements, namely the main agreement in the form of a loan agreement and the mortgage agreement as an assessor agreement or additional

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<sup>5</sup> Rahmat Hidayat dan Soegianto Soegianto, "Penyelesaian Debitur Wan Prestasi Atas Obyek Jaminan Fidusia Yang Telah Didaftarkan," *Jurnal USM Law Review* 2, no. 2 (2019): 288–99.

<sup>6</sup> Ridwan, *Hukum Administrasi Negara* (Yogyakarta: UII Press, t.t.).

agreement. Therefore the responsibility of the debtor also consists of responsibilities originating from the two types of agreements mentioned above.<sup>7</sup>

According to the General Indonesian Dictionary, responsibility is a state of being obliged to bear everything. Obligated to bear, bear the responsibility to bear everything, or give responsibility and bear the consequences. Legal responsibility is human awareness of intentional or unintentional behavior or actions. Responsibility also means acting as an embodiment of awareness of one's obligations.<sup>8</sup> Purbacaraka is of the opinion that legal responsibility originates or arises from the use of facilities in the exercise of each person's ability to exercise their rights or/and carry out their obligations. It was further emphasized that every implementation of obligations and every use of rights, whether carried out inadequately or adequately, basically must still be accompanied by accountability, as well as the exercise of power.<sup>9</sup>

The debtor's responsibility for his debts in the Civil Code is regulated in Article 1131 of the Civil Code, that all of the debtor's assets are bound as collateral for his performance obligations. This means that all of the debtor's assets, both movable and immovable, both those that already exist and those that will exist in the future, are all collateral for their debt obligations. Guarantees that are aimed at all of the debtor's assets and are given to all creditors are referred to as general security rights.<sup>10</sup>

From the results of the research where the interview with Mr. ARMAN SAID SH, as (Civil Junior Registrar) The case that was examined was at the execution stage

Application for execution of Mortgage No.1 pdt.eks/2020/PN.LBO The stages of the execution process are that the applicant (Bank Bri Gorontalo Branch) submits an application to the court then the head of the court reads, examines the contents of the application after that a review/investigation team is formed from Limboto District Court to examine whether the petition can be executed or not.

According to Pak Arman Said SH (Junior Civil Registrar) that "not all requests for execution can be granted, all must be studied first whether the execution may

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<sup>7</sup> Siska Tri Wibawati, Tri Lisiani Prihatinah, dan Budiman Setyo Haryanto, "Tanggung Jawab Atas Terjadinya Wanprestasi (Tinjauan Yuridis Terhadap Putusan Pengadilan Negeri Purwokerto Nomor 30/Pdt. GS/2018/Pn. Pwt)," *Soedirman Law Review* 1, no. 1 (2019).

<sup>8</sup> Marsheila Audrey Nuralisha dan Siti Mahmudah, "Tinjauan Yuridis Tanggung Jawab Hukum dalam Perjanjian Kredit Perbankan Apabila Debitur Wanprestasi," *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (2023): 277-90.

<sup>9</sup> Muhammad Andre Farros, "Pertanggungjawaban Hukum Debitur Wanprestasi Dalam Perjanjian Kredit Karena Alasan Pandemi Covid-19 Sebagai Force Majeure" (Universitas Islam Sultan Agung, 2022).

<sup>10</sup> Siti Yuliningsih, "Penyelesaian Wanprestasi dalam Perjanjian Kredit dengan Jaminan Fidusia pada Koperasi Jasa Keuangan Syariah Mandiri Sejahtera di Teluk Belitung" (UNIVERSITAS ISLAM NEGERI SULTAN SYRIEF RIAU, 2013).

be carried out or not. The case under investigation is a mortgage, which means that this case was directly filed by the person concerned.<sup>11</sup>

There are also cases that have been terminated through trial, the case is only an ordinary execution. While the case examined by the author is the execution of mortgage rights where there is no trial held in court only between the bank and the debtor (customer). Which is where the debtor has a debt to the bank. The debtor did not pay off the payment. In the end, the bank submitted a request for assistance to the Limboto district court to carry out the execution

After the application has been submitted to the court, it is first reviewed and a review team is formed by the court which consists of judges and clerks who study the application file. If it has been reviewed and the results can be carried out, the court will automatically summon both parties to carry out *aanmaning*, namely in the language of law, a reprimand addressed to the respondent. For example, the bank with the customer. Then the customer is given a warning along with the bank. Then met with the chairman of the court where the chairman of the court as a mediator. In other words, at this meeting there is still a meeting point and a solution whether the debtor can pay off his debt or not.<sup>12</sup>

#### **A. Mortgage and Execution Rights**

According to Article 1 number (1) of Law Number 4 of 1996, the definition of a mortgage is a security right that is charged to land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, including or not including objects -other objects which are an integral part of the land, for the settlement of certain debts which give priority to certain creditors over other creditors<sup>13</sup>.

Arrangements regarding the object of mortgage rights in UUHT listed in Article 4 states:

1. Land rights that can be encumbered with mortgage rights are:
  - a. Right of ownership
  - b. Cultivation Rights
  - c. Building rights
2. In addition to the land rights as referred to in paragraph (1), usufructuary rights over State land which, according to applicable provisions, must be

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<sup>11</sup> "Wawancara 30 Januari 2023 pukul 15.30 WITA."

<sup>12</sup> E Mustofa, A. G., & Widiastuti, "Perlindungan hukum terhadap kreditur dalam perjanjian kredit yang mengalami wanprestasi debitur.," *Jurnal Hukum dan Pembangunan* 49, no. 2 (2019): 149-164.

<sup>13</sup> Akbar Fariz Tandjung, "Penyelesaian Hukum Melalui Lembaga Alternatif Penyelesaian Sengketa Perbankan oleh Kreditur Terhadap Debitur yang Wanprestasi dalam Perjanjian Kartu Kredit (Studi Pada PT. Bank Mega Cabang Medan)," *JURNAL CIVIL LAW USU* 1, no. 5 (2018).



registered and by their nature can be transferred, may also be encumbered with mortgage rights.

3. The imposition of mortgage rights on usufructuary rights over private land will be further regulated by government regulations.
4. Mortgage rights can also be imposed on land rights including buildings, plants, and works of art that have existed or will exist which belong to the holder of land rights whose encumbrance is expressly stated in the deed of granting the related mortgage rights.
5. If the building, plants and works of art as referred to in paragraph (4) are not owned by the holder of land rights, the imposition of mortgage rights on these objects can only be carried out by bringing along the deed of granting the mortgage rights in question by the owner or someone authorized to do so. by him with an authentic deed.<sup>14</sup>

The subject of mortgage rights is regulated in articles 8 to 9 UUHT. In that article it is determined that those who can become legal subjects in imposing Mortgage Rights are the Mortgage givers and Mortgage holders.<sup>15</sup>

Mortgage giver (Article 8 paragraph (1) UUHT): is an individual or legal entity that has the authority to take legal action against the object of the mortgage in question. Mortgage holders (Article 9 UUHT): consist of people or legal entities domiciled as a debtor.<sup>16</sup>

The principles of mortgage rights as a guarantee institution for land for the settlement of certain debts include:

1. Give preference to creditors. This means that creditors holding mortgage rights have priority rights in obtaining payment of their receivables from other creditors for the proceeds from the sale of objects burdened with mortgage rights.
2. Always follow the object in the hands of whoever the object is, meaning that even though the right to the land which is the object of the mortgage has been transferred or transferred to another person, the existing mortgage is still attached to the object and still has binding power.
3. Fulfill the principle of specialty and publicity. The Speciality Principle must be included in the Mortgage Deed. The principle of publicity must be

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<sup>14</sup> Bambang Risanto, "Perlindungan Kreditur Dalam Perjanjian Jual Beli Perumahan Secara Angsuran Terhadap Debitur Yang Wanprestasi (Studi Cv. Bena Surya Kota Malang)," 2022.

<sup>15</sup> Dedy Tri Hartono, "Perlindungan Hukum Kreditur Berdasarkan Undang-Undang Kepailitan" (Tadulako University, 2016).

<sup>16</sup> Achmad Hasan Basri, "PENYELESAIAN SENGKETA ATAS WANPRESTASI DALAM PERJANJIAN JUAL BELI SECARA ANGSURAN KENDARAAN BERMOTOR," 2020.

carried out with the deed of the Official for Making Land Deeds (PPAT) and must be registered at the land office.

4. It is easy and certain to carry out the execution, meaning that it can be executed like a judge's decision which has permanent and definite legal force.<sup>17</sup>

The subject of the mortgage as regulated in Article 8 and Article 9 of Law Number 4 of 1996, namely:

- a. Mortgage giver, is an individual or legal entity that has the authority to take legal action against the mortgage object at the time the mortgage is registered.
- b. The Mortgage Holder is an individual or legal entity that is domiciled as the party that gets the expansion of the loan given.<sup>18</sup>

The procedure for granting mortgage rights according to the provisions in article 10 UUHT:

1. The granting of mortgage rights is preceded by a promise to provide collateral as collateral for repayment of certain debts, which is set forth in and forms an integral part of the debt agreement in question or other agreements that give rise to said debt.
2. The granting of mortgage rights is carried out by drawing up a deed of granting mortgage rights by the PPAT in accordance with the applicable laws and regulations.
3. If the object of the mortgage right is a land right originating from the conversion of an old right that has fulfilled the requirements for registration but has not been registered, the granting of the mortgage right is carried out simultaneously with the application for the registration of the right over the land in question.<sup>19</sup>

Execution is the implementation of the judge's decision. Not all judge's decisions can be requested for execution, except for decisions that have permanent legal force which cannot be challenged with *verzet*, appeal or cassation legal remedies.

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<sup>17</sup> Ni Made Mirah Dwi Lestari, I. Nyoman Putu Budiarta, dan Ni Gusti Ketut Sri, "Upaya Perlindungan Hukum Terhadap Kreditur Atas Debitur Wanprestasi Dalam Perjanjian Kredit Pada Masa Pandemi Covid-19," *Jurnal Interpretasi Hukum* 3, no. 1 (2022): 176–81.

<sup>18</sup> Pamela Cleopatra Sajow, "KAJIAN YURIDIS DEBITUR YANG MELAKUKAN WANPRESTASI DALAM PERJANJIAN KREDIT DENGAN PEMBEBANAN HAK TANGGUNGAN," *LEX PRIVATUM* 10, no. 1 (2022).

<sup>19</sup> Yulia Risa, "Perlindungan Hukum Terhadap Kreditur Atas Wanprestasi Debitur Pada Perjanjian Kredit Dengan Jaminan Hak Tanggungan," *Normative Jurnal Ilmiah Hukum* 5, no. 2 November (2017): 78–93.



Execution is the realization of obligations that were defeated in a judge's decision, to fulfill the achievements stated in the judge's decision. In other words, the execution of decisions that have permanent legal force, where this process is the last stage in the proceedings in court

## **B. Execution Implementation Stages**

- a. Execution Application
- b. The review of the request for execution is carried out by the Junior Registrar or a Team assigned by the Chairperson of the District Court and set forth in the execution review review resume
- c. If the results of the resume review of the execution of the application can be carried out, then the execution fee is calculated down and the execution applicant is welcome to make a payment<sup>20</sup>
- d. The Head of the District Court issues a stipulation of an execution warning/Aanmaning after there is a request for execution from the petitioner for execution (Plaintiff/Party who won the case), based on Article 196 HIR or Article 207 RBg. The determination of the execution warning contains an order to the Registrar/Bailiff/Bailiff Substitute to summon the party being executed (Defendant/Lossing Party) to be warned in order to fulfill or carry out the decision.
- e. If the respondent for execution (the Defendant/the losing party) is absent without reason after being summoned legally and properly, then the Chairperson of the District Court can immediately order the execution process without incidental hearings to give a warning, unless the Chairperson of the Court deems it necessary to be summoned once again.
- f. The warning of the execution led by the Chairperson of the District Court must be carried out in an incidental trial, assisted by the Registrar, in the presence of the executed party (the Defendant/the losing party), and if deemed necessary, be able to present the execution applicant (the plaintiff/the party who won the case)
- g. The warning of the execution in the incidental trial is recorded in the minutes signed by the Chief Justice of the District Court and the Registrar.
- h. In the execution warning, the Head of the District Court warns the execution respondent (defendant/losing party) to fulfill or implement the contents of the decision no later than 8 (eight) days from the time the warning is given

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<sup>20</sup> Citra Amira Zolecha, "Perlindungan Hukum Bagi Kreditur atas Jaminan Kebendaan yang Terindikasi Bukan Milik Debitur" (UNS (Sebelas Maret University), 2017).

- i. If the deadline has passed, and there is no statement or statement from the losing party regarding the fulfillment of the decision, then since then the applicant can apply to the Head of the District Court to follow up on the request for execution without having to submit another application from the winning party (Article 197 paragraph 1 HIR / Article 208 paragraph 1 RBg)
- j. If the case has been confiscated (conservatoir beslaag), then there is no need to order another execution (executory beslaag). And if in this case no prior confiscation of collateral was carried out, then the Head of the District Court can issue a writ of execution confiscation. In the event that the execution of the vacancy is not always vacated and the confiscation of the execution is not always placed, vacation can be carried out immediately without confiscation
- k. In the case of carrying out a decision ordering an evacuation (real execution), then the day and date of the evacuation is determined by the Head of the District Court, after a meeting is coordinated with the security forces
- l. If the respondent is an element of the TNI (who is still active or who is retired), then the Military Police (PM) must be involved.
- m. Prior to carrying out the execution of vacancies, a survey of the location of the land or building to be vacated is first carried out by matching (constating) to ensure the boundaries and area of the land concerned are in accordance with the stipulation of confiscation or stated in the verdict in the presence of clerks, bailiffs/bailiffs substitutes, interested parties, local apparatus and if necessary present officers from the National Defense Agency, as well as set out in the official report
- n. In the event that notification of the execution of the vacancy is carried out by letter (Notification Letter) to the party accused of execution, it must take into account the adequate period of time from the date of the notification until the execution of the vacancy
- o. The evacuation was carried out and carried out with due regard to human values and justice, in a persuasive and not arrogant manner. For example, by ordering the execution applicant to prepare a storage warehouse to store the possessions of the execution applicant within a specified time, at the applicant's expense
- p. After the vacancy is complete, the land or building that was vacated, then on that same day it is immediately handed over to the applicant for execution or their attorney in which the minutes of the handover are stated, in the presence of the apparatus.

Requirements for a Request for Reprimand (Aanmaning)/Execution of a District Court/High Court/Supreme Court Decision:

1. Request for Reprimand (Aanmaning)/execution submitted in writing signed by the applicant for execution or his attorney by attaching a special power of attorney which has been registered at the Legal Registrar's Office
2. The execution/execution application letter contains: Identity of the Execution Applicant and the Execution Respondent (according to personal identity/KTP), a brief description of the case and reasons for the application, the object of the case, the first to the last court decision, the date of receipt of the notification of the decision to the applicant
3. The application letter is accompanied by: Photocopy of the decision which has permanent legal force in accordance with the copy (wet stamped PN), Special power of attorney, if the application is filed by the attorney, Relaaas notification of the decision to the Applicant, Statement from the applicant that the object of execution is not related to other cases (for example TUN, Criminal, Corruption cases), other documents deemed necessary (if any).

### **C. Execution of Mortgage Rights**

- a. Article 1 point (1) Law No. 4 of 1996 states that "Collateral rights over land and objects related to land, hereinafter referred to as mortgage rights, are guarantees imposed on land rights as referred to in the Law Number 5 of 1960 concerning the Basic Regulations, following or not following other objects that are an integral part of owned land, for the settlement of certain debts, which gives priority positions to certain creditors over other creditors
- b. The granting of the Mortgage is preceded by a promise to provide the Mortgage as a guarantee for repayment of certain debts, which is stated in and is an integral part of the debt agreement concerned, another agreement that gives rise to said debt, and the Granting of the Mortgage is carried out by making a Deed of Granting The Mortgage is carried out by making the Deed of Granting Mortgage by PPAT (Article 10 paragraph (1) and (2) of Law No.4 of 1996)
- c. The granting of Mortgage must be registered with the Office of Defence, and as proof of the existence of Mortgage, the Land Registration Office issues a Mortgage Certificate which makes irah-irah for the sake of JUSTICE BASED ON THE ONE ALMIGHTY GOD (ARTICLE 13 paragraph (1), Article 14 paragraph (1) and (2) Law No.4 of 1996)
- d. The Mortgage Certificate has the same executive power as a court decision that has permanent legal force, and if the debtor defaults, then based on the executorial title contained in the said Mortgage certificate, the Mortgage holder requests the execution of the Mortgage certificate to the

Chairman of the competent District Court. Then the execution will be carried out like the execution of a decision that has permanent legal force

- e. Based on the agreement between the giver and the holder of the Mortgage, the sale of the object of the Mortgage can be carried out under the hands, if in this way the highest price will be obtained which will benefit all parties (Article 20 paragraph (2) Law No.4 of 1996)
- f. The implementation of private sales can only be carried out after 1 (one) month has passed after being notified in writing by the buyer/or Mortgage holder to interested parties and announced in at least 2 (two) newspapers circulating in the area concerned. and/or local mass media, and no party expressed objection (Article 20 paragraph (3) of Law no.4 of 1996)
- g. The Power of Attorney for imposing Mortgage must be made with a notarial deed or PPAT deed, and must meet the following requirements:
  - 1) does not contain the power to perform other legal actions than imposing mortgage rights
  - 2) Does not contain the power of substitution
  - 3) clearly states the object of the mortgage, the amount owed and the name and identity of the creditor, another name for the identity of the debtor if the debtor is not the giver of the mortgage.
- h. The execution of the mortgage right is carried out in the same way as the execution of a court decision that has permanent legal force
- i. The execution begins with a reprimand and ends and ends with an auction of land burdened with mortgages
- j. After the auction is carried out on the land burdened with Mortgage Rights and the money from the auction is handed over to the creditor, the Mortgage burdening the land will be handed over cleanly, and free of all burdens, to the auction buyer.
- k. If the auctioneer does not want to leave the land, then the provisions contained in Article 200 paragraph (11) HIR apply.
- l. This is different from sales based on a promise to sell on their own power based on a promise to sell on their own power based on Article 1178 paragraph (2) Bw, and Article 11 paragraph (2) BW, and Article 11 paragraph (2) Law No.4 of 1996 which is also carried out through an auction by the State Auction Office at the request of the holder of the first mortgage right, this promise only applies to the holder of the first mortgage right. If the holder of the first Mortgage has made a promise not

to be cleared (Article 1210 BW and Article 11 paragraph (2) j Law No. 4 of 1996 concerning Mortgage), then if there are other Mortgage Rights and the results of the auction are not enough to pay all mortgage rights that burden the land in question, then the mortgage rights that are not paid, will still burden the parcels concerned, even though it has been purchased by a legitimate buyer and auction. So the auction buyer obtains the land with unpaid mortgage obligations. The *terlelang* still has to leave the land and if he disobeys, he and his family will be expelled by force.

- m. In the event that the auction has been ordered by the Chairperson of the District Court, then the auction can only be suspended by the Chairperson of the District Court and carried out by the State Auction Office, is in the framework of execution, and is not a decision from the State Auction Office.
- n. Sales (auction) of fixed objects must be announced twice with an interval of fifteen days in the daily published in that city or the city adjacent to the object to be auctioned (Article 200 paragraph (7) HIR, Article 217 RBG)

The debtor's other responsibilities arise from the mortgage agreement. Mortgage guarantee rights are material guarantee rights, which give birth to material rights for creditors receiving mortgage rights, namely material rights that are<sup>21</sup>guarantee. One form or implementation of the creditor's rights is to carry out the execution of the mortgage object on its own power, if the debtor defaults, or executes on the basis of executive power on the mortgage certificate. So in *contrario* the debtor's responsibility arising from the mortgage agreement is to hand over the mortgage object to be executed by the creditor if the debtor defaults.

#### **4. Conclusion**

Legal arrangements regarding debt and credit contracts in Indonesia are regulated in Article 1754 of the Civil Code that lending and borrowing is an agreement by which the creditor gives another party (the debtor) an amount of goods or money that can be used up due to use, provided that the debtor will return the same amount of goods/money of the same type and condition.

Legal responsibility for creditors who default on debt contracts is that debtors who have done it can ask for fulfillment of achievements, demand performance accompanied by compensation. The responsibility of the debtor for his debts in the Civil Code is regulated in Article 1131 of the Civil Code, that all of the debtor's assets are tied up as collateral for his performance obligations. This means that all of the debtor's assets, both movable and immovable, both those that already exist and those that will only exist in the future, are all collateral for their debt obligations. The factors that cause defaults committed by the debtor include, among others, the debtor is less able to manage.

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<sup>21</sup> Deni Akbar SANTOSO, "Eksekusi Lelang Benda Jaminan Hak Tanggungan Akibat Debitur Wanprestasi" (UNIVERSITAS JEMBER FAKULTAS HUKUM, t.t.).

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