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Legal Certainty of Business use Rights Certificate (SHPTU) as Credit Collateral Due to Default

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KEYWORDS
SHPTU, credit collateral, default, fiduciary, cessie, legal certainty

ABSTRACT
This study examines the legal certainty surrounding the use of the Business Use Rights Certificate (SHPTU) as credit collateral in cases of default. Although the Regional Regulation of DKI Jakarta Province Number 7 of 2018 states that SHPTU can be used as collateral, it does not explicitly define whether SHPTU constitutes a property right or a personal right. Using a normative-empirical legal research method, this study is based on primary data from interviews and secondary data from legislation and legal literature. The findings indicate that SHPTU closely resembles a leasehold right rather than ownership, and therefore, cannot be used as a collateral object under material security mechanisms such as fiduciary or mortgage. In the event of default, SHPTU cannot be executed directly. The resolution must involve mediation and assignment of receivables (cessie) through a power of attorney agreement. This study recommends the need for clearer regulation to ensure legal certainty and protection for creditors.

INTRODUCTION

An agreement is an act where the act is a legal act. The consequences of these legal acts will definitely have legal consequences. Then from the legal act it will also give rise to rights and obligations between the parties. Agreements do not necessarily arise by themselves because the agreement must be made by at least two parties, namely the debtor and the creditor where the parties agree to bind themselves in making an agreement (Li & Li, 2022; Sinaga, 2018; Soerodjo, 2016).

The agreement made is a credit agreement or receivables agreement which can be said to be a consensual agreement. A concession agreement is an agreement made between the parties, namely between the debtor and the creditor so that it has binding force. The business capital obtained by MSME actors is assisted by guarantees, namely "the provision of loans for Micro, Small, and Medium Enterprises by credit guarantee institutions as support to increase the opportunity to obtain loans in order to strengthen their capital (Ambarini, 2019; DPR RI, 2023; Indriasri et al., 2017; Menengah et al., 2017; Putri Wahyuni Arnold et al., 2020; Sapti, 2019)." MSME actors, one of which is market traders, if they want to get funds, are obliged to provide loan guarantees to banks to increase confidence and build trust in banks that debtors are able to repay credit because banks in providing loans in the form of credit must be able to manage the credit provided with good credit management, implementing *prudential principles.*, as well as conducting an in-depth analysis of all aspects.

The distribution of loan or credit funds is carried out by the bank as a financial intermediary institution to the public in need of capital, always stated in an agreement as the basis of the legal relationship between the creditors and debtors. The existence of the money lending agreement, it is absolutely necessary to have a legal solution for the existence of a

guarantee institution to provide certainty for the repayment of the loan. In the banking world, banks are prohibited from providing loans or credit to anyone without a sufficient guarantee. Guarantee is essentially a form of security for funds lent by debtors because the main function of collateral is to protect public funds managed by banks and to protect the continuity of banking business and debtors are required to be responsible for repaying their debts. The bank as a creditor must be guided by the principle of *Commanditerings Vervood* which means that "the bank does not bear the risk of the debtor's business with the credit provided."

The existence of a guarantee institution is very necessary because it can provide certainty and legal protection for fund/credit providers or creditors and borrowers or debtors. The consequence of a credit agreement is to create a credit guarantee. The term guarantee comes from the Dutch word *zekerheid* or *cautie* , which "includes in general the ways in which the creditor guarantees the fulfillment of his bills, in addition to the debtor's general liability for his goods." Guarantee can also be interpreted as the ability of the debtor to fulfill or pay off his debts to creditors which is carried out by withholding certain objects of economic value as a liability for loans or debts received by the debtor to his creditors.

The term collateral is differentiated from the term collateral according to banking law. Law Number 14 of 1967 concerning Banking Principals uses the term guarantee, while Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 uses the term collateral which means "collateral is an additional guarantee submitted by the Debtor Customer to the bank in the context of providing credit or financing facilities based on Sharia Principles."The Banking Law also provides another definition of guarantee, namely "confidence in the goodwill and ability and ability of the debtor customer to pay off his debt or return the financing in accordance with the agreement (Presiden Republik Indonesia, 1998; Rohaedi, 2021; Sihombing & Nuraeni, 2019)."

This means that the term collateral is part of the term collateral for providing credit or financing based on sharia principles, where the definition of collateral is broader than collateral. Collateral is related to goods, while collateral is not only related to goods but also related to the *character, capacity, capital, collateral* and *Condition of Economy* of the debtor customer concerned. Guarantees are born because of the law and some are born as a result of something that is agreed.

Guarantees in the Civil Code are material rights and individual rights. Material security is a guarantee in the form of an absolute right to an object, which has the characteristics of being directly related to certain objects of the debtor, can be maintained by anyone, always follows the object *(droit de suite)* and can be transferred. While individual guarantees are guarantees that give rise to relationships; Angsung to a certain individual, can only be maintained by a certain debtor, against the debtor's property in general *(borgtocht)*. A guarantee that is born out of a covenant is referred to as a special guarantee. General guarantees do not need to be agreed, this is regulated in the Civil Code Articles 1131 and 1132, namely all movable and immovable goods belonging to the debtor, both existing and future, will be collateral and the proceeds from the sale of the goods will be divided according to the ratio of their respective receivables. In general guarantees, creditors are called concurrent creditors. In general guarantees, if there is more than one creditor, the distribution of the proceeds from the sale of the debtor's goods will be divided according to the proportion of the debtor's debt to the creditor.

This means that the debtor does not necessarily get debt repayment in accordance with his receivables unless there is a valid reason between the creditor and the debtor to take precedence, namely with an additional agreement or special guarantee. Therefore, a special guarantee must first be agreed between the parties. This makes the position of concurrent creditors change to preferred creditors. In the special guarantee, it will be agreed specifically that the object belonging to the debtor will be pledged which certainly has a higher value than

the debtor's debt. A credit agreement or receivables agreement is a principal agreement while a guarantee agreement is an additional agreement or *accessory* where an agreement is *an accessory* meaning that an additional agreement of a principal agreement gives rise to the obligations and responsibilities of the parties to fulfill a performance as a result of an agreement.

So the guarantee agreement arises as a result of the side effects of the credit agreement or receivables. Additional agreements cannot be deleted if the principal agreement still exists, but if the principal agreement is deleted, the additional agreement is automatically deleted. A guarantee agreement only contains what constitutes a guarantee, who guarantees it, and what object is guaranteed. Objects that are pledged in debts or credits are usually objects that have economic value, so that if an execution or auction is carried out, it will be able to return the debtor's achievements to creditors because the issue of collateral rights is closely related to the issue of execution or auction. Over time, the implementation of credit agreements or debts can arise, for example if the debtor is unable to return the loan funds that have been given by the creditor which results in the non-fulfillment of the achievements that the debtor has promised to the creditor or commonly referred to as promise injury. If the promise is broken, the creditor has the right to collect the debtor's wealth, equal to the debt owed to the debtor *(verhaalsrecht).*

If this happens, the creditor will give the debtor the first warning that the payment is due. If the first, second and third warnings are not heeded by the debtor, the creditor will take stricter action which in the end the creditor will forcibly withdraw the pledged object in accordance with what is stated in the credit agreement. In other words, the creditor will execute the object pledged by the debtor. In connection with this, the objects that are used as collateral should be transferable objects because execution is basically the transfer of collateral from the owner to the buyer. If the debtor defaults, the settlement can be reached through litigation and non-litigation. Litigation can be interpreted as the settlement of disputes between parties that is carried out in court, while non-litigation is the settlement of disputes that can be carried out outside of court, namely by way of consultation, negotiation, mediation, conciliation, or expert assessment.

Based on the Regional Regulation of the Special Capital Region of Jakarta Number 7 of 2018 concerning the Management and Development of Business of Public Companies in the Pasar Jaya Region, it is stated that the Certificate of the Right to Use the Business Place (SHPTU) which is proof of ownership of the right to use the place of business in the markets is "proof of ownership of the right to use the business place which is valid for a maximum period of 20 (twenty) years which can be used as collateral."

The land and market buildings belong to the Pasar Jaya Regional Company (hereinafter abbreviated as Perumda Pasar Jaya), namely the property of the separated region where the management is handed over to be managed based on the Jakarta Special Capital Region Regulation (DKI) Number 6 of 1992 dated July 21, 1992 concerning Market Management in the Special Capital Region of Jakarta (hereinafter referred to as Regional Regulation No. 6 of 1992). Regional Regulation No. 6 of 1992 states that to be able to use business places, you must obtain a permit to use the place of business in writing from the Governor of the Regional Head so that the use of the place has the right to use the place in the market (Article 1 letter 9). According to Regional Regulation No. 6 of 1992, it is also stated that the Use of a Business Place is a person or legal entity that based on an occupancy permit has the right to use the place in the market to trade goods and services (Article 1 letter e). The License for the Use of the Business Place (SIPTU) is a written permission from the Board of Directors for the use of the business place in the market while the Certificate of the Right to Use the Business Place (SHPTU) is proof of ownership of the right to use the business place. The right to use the business premises in the Perumda Pasar Jaya markets as stipulated in Article 9 paragraph (2) of Regional Regulation No.6 of 1992 is a right to use tangible goods and business premises in

market buildings that can be owned and transferred and can be used as credit guarantees, both working capital loans and credit for the ownership of the Business Place Use Rights. This is in accordance with Article 10 paragraphs (1) and (2) of the Decree of the Board of Directors of the Regional Company (Perumda) of Pasar Jaya Number 450 of 2003, namely: "The use of the business premises can guarantee the right to use the business premises in the form of a certificate of the right to use the business premises and the agreement letter of agreement for the use of the business premises to obtain bank credit after first obtaining written permission/reference and the directors or appointed officials".

Related to this, traders who want to have a certificate of the right to use the place of business as a form of ownership of the right to use the place in the market, can enter into a credit agreement with the note that if the creditor has paid in full the remaining payment that has not been made by the trader in order to obtain a certificate of rights, it will first be withheld by the creditor until the trader's debt is paid off. This provision is a breath of fresh air for MSME actors, especially maarket traders who need funding to start or increase their business capital because SHPTU can be used as credit guarantee. However, in practice, this is not the case because SHPTU is only received by the bank as an additional guarantee.

This thesis aims to develop laws regarding the legal certainty of the Certificate of Right to Use of Business Premises (SHPTU) as credit collateral in cases of default. The research provides both theoretical and practical benefits: theoretically, it contributes to legal science by enhancing understanding of SHPTU's legal certainty as credit collateral, while practically, it aids Notary organizations (such as the Indonesian Notary Association), banks, and MSME actors—particularly market traders—in better comprehending SHPTU regulations for credit guarantees, enabling wiser and more informed decision-making.

RESEARCH METHODS

Types of Research

Legal research can be categorized into several types, including normative, normative-empirical, and empirical research. Normative legal research focuses on analyzing legal norms, rules, and doctrines to assess the correctness of legal events based on existing laws and regulations. It systematically examines legal structures to provide justified arguments or prescriptions. Normative-empirical research combines normative analysis with empirical elements, studying both the legal provisions and their real-world application in society through secondary and primary data. Empirical legal research, also known as sociological research, evaluates how laws function within society by gathering primary data directly from social interactions.

The author employs normative-empirical legal research, which examines the implementation of legal provisions in real-life cases to determine their alignment with written laws. This approach blends normative and empirical methods, studying not only legal norms but also societal reactions to their application. It is divided into three categories: non-judicial case studies (no conflict or court involvement), judicial case studies (conflicts requiring court intervention), and live case studies (ongoing legal proceedings). This method ensures a comprehensive understanding of law in both theory and practice.

Data Type

This study utilizes secondary data, which includes primary, secondary, and tertiary legal materials. Primary data was collected through interviews with key informants, such as Dr. Nancy Patricia from Bank BCA’s credit department, Prof. Irawan Soerodjo from Pelita Harapan University, Notary Karin Christina Basoeki, and Rania from Pasar Jaya’s HRD team. Primary legal materials consist of authoritative sources like laws, regulations, and

jurisprudence, including the 1945 Indonesian Constitution, banking laws, fiduciary regulations, and regional market management decrees. These materials form the legal foundation for the research.

Secondary legal materials provide analysis and interpretation of primary sources, such as research papers, articles, and seminar findings, particularly from banking and MSME institutions. Tertiary legal materials, including dictionaries, encyclopedias, and media publications, offer supplementary explanations and context. Together, these sources ensure a comprehensive examination of the legal framework surrounding credit guarantees and MSME regulations, combining authoritative texts with expert insights and practical applications.

Types of Approaches

Legal research employs various approaches, including the legal approach, which examines laws and regulations for consistency, comprehensiveness, and systematic hierarchy; the legal case approach, analyzing relevant court decisions; the legal comparative approach, comparing laws across countries; the legal systematics approach, identifying key legal elements such as subjects, rights, obligations, and events; and the legal synchronization approach, ensuring alignment between laws to avoid conflicts, both horizontally (between laws at the same level) and vertically (between higher and lower regulations). This study specifically uses the legal systematics approach and legal principles approach, focusing on core legal concepts within Indonesia’s positive law and societal legal practices.

Data Analysis

The data that has been collected will be presented qualitatively, namely in the form of a text description and analyzed with descriptive and critical analysis techniques. Furthermore, based on this analysis, various recommendations and suggestions related to the legal certainty of the Certificate of Right to Use of Business Premises (SHPTU) as credit guarantee due to default are described. The form of research that has been presented is in the form of a descriptive research report by presenting a comprehensive overview of related regulations. At the end, the author presents a prescription to provide an explanation regarding the legal certainty of the Certificate of the Right to Use Business Place (SHPTU) as a credit guarantee due to default.

RESULTS AND DISCUSSION

Results of Research on the Legal Certainty of the Certificate of Right to Use of Business Premises (SHPTU) as Credit Guarantee Due to Default

In supporting this research, the author first researches existing research as a reference in this research, this is in order to obtain reference information that can be used as a guideline for the research that is being carried out. This information will later be used as a reference and comparison in the context of conducting research. The study references several previous studies, including Zubaidah's 2016 thesis from the University of Indonesia examining the Certificate of Right to Use Business Place (SHPTU) as collateral under Indonesian guarantee law, focusing on its legal position and nature. Additionally, national journal articles were reviewed, such as Liana P Nugroho and Gunawan Djajaputra's 2021 study on SHPTU's evidentiary strength as debt collateral, Ilman Khairi's 2023 research on legal protection for traditional market tenants in securing funding, Henny Putri Raya Bernice Marpaung et al.'s 2024 analysis of Kiosk Rental Rights Holder Cards (KPHSK) as credit guarantees, and Rini Ristanti's 2024 study on creditor protection in market stall rental right guarantee deeds during defaults. These works collectively inform the author's research on SHPTU's legal framework and practical applications.

Regulation of the Certificate of Right to Use of Business Premises (SHPTU) as Credit Guarantee

SHPTU based on the Provincial Regulation of the Special Capital Region of Jakarta Number 7 of 2018 concerning the Management and Development of Public Companies in the Pasar Jaya Market Area Area, in article 1 number 33 states: "The Certificate of Right to Use the Business Place is proof of ownership of the right to use the business place that is valid for a maximum period of 20 (twenty) years", which in article 7 paragraph 6 states that the SHPTU can be used as collateral. From the sound of the article, there are the words "*ownership*" and "*right of use.*" From the word "ownership" it seems as if SHPTU is a material right, but if you look at the word "right of use" it is as if SHPTU is an individual right. This creates ambiguity in the nature of SHPTU as an object of collateral. Because of this ambiguity, in the end it gave rise to 2 (two) different opinions, where Perumda Pasar Jaya argued that SHPTU is a material right, while the Ministry of Justice and Human Rights is of the opinion that SHPTU is not a material right.

The basis for Perumda Pasar Jaya to state that SHPTU as a material right is as follows:"

1. The right to use the place of business in the PD Pasar Jaya markets is given by the DKI Jakarta government cq. PD Pasar Jaya to market traders ± 62,617 people with a total of ± 100,000 business places (spread across 151 markets) guided by the Regional Regulation of DKI Jakarta Province Number 6 of 1992 (Article 9 paragraph 2) jo. DKI Jakarta Regional Regulation Number 12 of 1999;
2. The right is granted for a maximum period of 20 years by way of acquisition through the redemption of the selling price of the right to use the business premises to PD Pasar Jaya;
3. In relation to the matter referred to in point 2 and in accordance with the provisions of the Regional Regulation and its implementation, the Right to Use the Business Place in the PD Pasar Jaya market building can be owned and transferred and can be used as credit guarantee. This has been going on since the issuance of Regional Regulation Number 6 of 1982;
4. In connection with the above, the Right to Use the Business Place is an intangible movable property on a place of business or stall that has economic value established on land that does not belong to HGB and HGU but on the land of the Right of Use."

The results of the interview with Resource Person 2 also stated that SHPTU has characteristics that can be guaranteed by fiduciary guarantees for the following reasons:

1. SHPTU is a guarantee that has the nature of material rights which are movable objects;
2. The execution uses an executory title where this executory title is attached by the way of execution of a fiduciary guarantee certificate where there is a title "For Justice Based on the One Godhead". This confirms that the SHPTU has the same executory power as a court decision that has acquired permanent legal force. What is meant by "executory power" is that it can be immediately exercised without going through the court and is final and binding on the parties to implement the decision. If the debtor defaults on the promise, the Fiduciary has the right to sell the object that is the object of the Fiduciary Guarantee in its own power.

Meanwhile, several other speakers mentioned that SHPTU is not a material right because:

1. Article 499 of the Civil Code: "*According to the Law, property is every property and every right that can be controlled by property rights."* Meanwhile, the Right to Use the Business Place is not a property right, but a Right to Use;
2. SHPTU is not a property right but a lease and right of use that can be used as collateral for a long period of time;
3. The position of creditors in SHPTU credit as collateral is included as a concurrent

creditor, this is the reason why SHPTU cannot be charged with fiduciary guarantees because the characteristics of the creditors holding fiduciary guarantees are preferred creditors, in this case the more suitable binding is to use a cessie in the event of default.

SHPTU also has similar elements with renting as seen from:

1. There is a Delivery of Goods from the Owner to the Tenant and the Payment of Rent from the Tenant to the Owner of the Goods, Perumda Pasar Jaya as the owner of the building (kiosk) hands over the stall to the owner of the SHPTU (trader) to be used for business, while the Trader (Owner of SHPTU) must pay to Perumda Pasar Jaya (which in this case payment is given to the developer as the power of attorney of Perumda Pasar Jaya) a sum of money for the right to use, as stated in the Provincial Regulation of the Special Capital Region of Jakarta Number 7 of 2018 concerning the Management of the Jaya Market Area, in article 1 point 29, as mentioned above;
2. There is a Term Limitation, the term of SHPTU is limited in accordance with the period stated in the SHPTU or a maximum of 20 (twenty) years, as defined by SHPTU in the Provincial Regulation of the Special Capital Region of Jakarta Number 7 of 2018 concerning the Management and Development of the Business of Public Companies in the Pasar Jaya Market Area, in article 7 paragraph 6;
3. It is not allowed to repeat the lease, if you want to repeat the lease must be allowed by the owner of the goods, if the owner of the SHPTU wants to transfer the SHPTU to another party, then the transfer must get approval from Perumda Pasar Jaya, as in the record of the mutation sheet of the Transfer of the Right to Use the Business Premises, stating that the basis for the transfer is the existence of consent, just like the provisions of article 1559 of the Civil Code which states that the tenant is not allowed Repeatedly renting out the goods he wants, or releasing the lease to another person if he is not allowed by the owner of the goods.

The existence of several differences of views shows that there is uncertainty that has not been definitively regulated in the legislation. Based on the above, the author is of the view that SHPTU is not a material right, because:

1. The right to use the Business Place is a right that is not included in the rights regulated in Book II of the Civil Code;
2. SHPTU is not proof of ownership of buildings (stalls) in the market but proof of ownership of the right to use. The owner of the SHPTU only has the right to use, because basically the owner of the market building (kiosk) is the Provincial Government of the Special Capital Region of Jakarta which is managed by Perumda Pasar Jaya, this is in accordance with:
    a. Provincial Regulation of the Special Capital Region of Jakarta Number 7 of 2018 concerning the Management and Business Development of Public Companies in the Pasar Jaya Region Article 1 point 11 which states:
    "*A market is an area where goods are bought and sold with more than one number of sellers, both referred to as shopping centers, traditional markets, shops, malls, squares, trade centers and other designations belonging to the Provincial Government of the Special Capital Region of Jakarta which is managed by the Pasar Jaya Regional Company."*
    b. The Business Place Use Permit Sheet (SIPTU) issued by the Board of Directors of the Pasar Jaya Regional Company is intended for market traders who use stalls which states that traders only use and not have, "*To use the place of business owned by the Pasar Jaya Regional Company*"
    c. Regional Regulation of the Special Capital Region of Jakarta Number 7 of 2018 concerning the Management and Business Development of Public Companies in the Pasar Jaya Region, in article 1 point 20, as follows:

> " *The right to use the place of business is the right to use the place of business to sell actively given by the Pasar Jaua Regional Public Company to Traders for a maximum period of 20 years by paying obligations for the use of the place of business and other obligations determined by the Board of Directors."*

Based on the description mentioned above, the author argues that there is a risk if the binding of the SHPTU guarantee on the stall is carried out through the Fiduciary Guarantee institution because the position of the right to use the stall as the object of the Fiduciary Guarantee is not supported by a legal basis or strong reason, so that in the event of a default it will give rise to many different and incorrect interpretations. If this happens, it will cause the cancellation of the deed. The consequences of cancellation are regulated in Articles 1451 and 1452 of the Civil Code, which read:
"The declaration of the nullity of the covenants based on the incompetence of the persons mentioned in Article 1330, results in that the goods and persons are restored in the state before the covenant was made, with the understanding that everything that has been given or paid to those powerless persons, or merely that it appears that this person has benefited from what is given or paid, or that what is enjoyed has been used or is useful to the Significance.
A declaration void by coercion, error, or fraud, also results in the goods and persons being restored in the state before the engagement was made."

If an agreement is categorized as a condition of cancellation, then the consequences that arise in the situation or agreement are retroactive (*ex tunc*). The party who demands the cancellation can claim reimbursement of costs, losses and interest if there is a reason for it. In addition to the consequences of cancellation, namely *ex tunc*, there are also other consequences of cancellation, namely:"

1. Partial cancellation
   Cancellation generally implies the cancellation of the entire content of the agreement. Partial cancellation is made when it is not related to the essential part of an agreement. This type of cancellation can be made against one or more clauses of the agreement. Regarding this type of cancellation, a firmness from the judge is required whether the agreement has been canceled in whole or only in part. The partial cancellation of an alternative agreement must also be affirmed whether the cancellation also occurs in the agreement relating to the alternative agreement (the whole series) or only the alternative agreement alone;
2. Confirmation/determination and reinforcement.
   According to Article 1892 of the Civil Code, "determination or strengthening can be carried out by a deed of determination or a deed of strengthening in the form required by law. Such an act results in the loss or relinquishment of the right to cancel legal acts that should have been brought forward; by not prejudice the rights of third parties. The deed must include the main content of the act and the reasons that cause the cancellation to be demanded along with the intention to correct the defect that should be the basis of the claim."

A deed made by a notary is legally obligatory to contain an element of truth (the content of the deed made is really the will of the witnesses and known as a legal result by the witnesses), clarity (starting from the title to the closing contains a clear meaning of the intention of the will of the witnesses that cannot be interpreted otherwise) and validity (the wetness of the deed is material and formal). The element of validity based on the material requirements of the deed is related to the content of the deed, namely the agreement. This material requirement shows that the deed is truly proving the truth of a legal event held by the witnesses. An agreement is said to be valid if it meets the conditions for the validity of the agreement contained in Article

1320 of the Civil Code, capable, agreeable, halal cause and a certain thing, as explained in the previous sub-point. If this condition is not met, it will have an impact on 3 things on the deed, namely:

1) Can be cancelled if the subjective conditions (agree and talk) are not met;
2) Null and void if the objective conditions are not met (halal and certain reasons);
3) Null and void for the sake of law due to non-existent (non-essential in the agreement and non-fulfillment of specified conditions);

The formal requirements of the deed are related to the form/format of the deed as described in Article 38 paragraphs 1 to 5, namely:"

1) Each Act consists of:
   a. the beginning of the Act or the head of the Act;
   b. the body of the Act; and
   c. end or closing of the Act.
2) The beginning of the Act or the head of the Act contains:
   a. title of Act;
   b. Deed number;
   c. general, day, date, month, and year; and
   d. full name and place of residence of Notary.
3) The Act contains:
   a. full name, place and date of birth, nationality, occupation, position, residence, residence of the persons present and/or the person they represent;
   b. a description of the acting position of the face;
   c. the content of the Deed which is the will and desire of the interested party; and
   d. the full name, place and date of birth, as well as the occupation, position, position, and residence of each identifying witness.
4) The end or closing of the Act contains:
   a. description of the reading of the Deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
   b. a description of the signing and place of signing or translation of the Act, if any;
   c. the full name, place and date of birth, occupation, position, position, and residence of each witness of the Deed; and
   d. a description of the absence of changes that occurred in the making of the Deed or a description of the changes that can be in the form of additions, strikeouts, or replacements and the number of changes.
5) The Deed of Substitute Notary and Temporary Notary Official, in addition to containing the provisions as intended in paragraph (2), paragraph (3), and paragraph (4), also contains the number and date of determination of appointment, as well as the official who appointed it."

With ratification/determination and strengthening, the agreement that has been canceled can be ratified and retroactive (valid since the legal act is inaugurated). As for agreements that are classified as void, they cannot be ratified, stipulated or strengthened.

Execution of Guarantee for the Certificate of Right to Use of Business Premises (SHPTU) as Credit Guarantee Due to Default

The issue of security rights is closely related to the issue of execution. In connection with this connection, it is logical that collateral should be transferable objects, because an execution is essentially a transfer of collateral from the owner to the buyer. As stipulated in the Circular Letter of the Board of Directors of Bank Indonesia No. 30/16/UPPB dated February 27, 1998, the bank is authorized in its own power to execute or sell the collateral through a public auction

and to take the repayment of its receivables from the proceeds of the sale (*parate executie*). What is meant by *rescheduling* , *reconditioning* or *restructuring* are:"

1. *Rescheduling* or rescheduling is a change in credit terms that only concerns the payment schedule and/or the term.
2. *Restructuring* or restructuring is a change in credit conditions that concern:
    a. Increase in the amount of bank funds, term, type, installments, principal conditions and others according to previously agreed requirements;
    b. The conversion of all or part of the arrears of interest into a new credit principal, which in banking practice is more commonly known as a ring ceiling and should not be carried out;
    c. Conversion of all or part of the credit into participation in the company;
    d. Which can be accompanied by rescheduling and or return requirements.
3. *Reconditioning* or re-requirements, namely changing the loan conditions, conditions and covenants of the credit agreement previously received by the debtor or changing part or all of the credit terms which are not limited to changes in payment schedules, terms, and/or other requirements as long as they do not involve a maximum change in the credit balance (D. Bholat et al., 2018; D. M. Bholat et al., 2017; Idayati, 2022; Kostyuchenko et al., 2021; Tjoe Kang Long & Widyawati Boediningsih, 2023)."

According to Resource Person 3, a credit agreement is a form of special agreement that is subject to the provisions of Book III of the Civil Code. The freedom of everyone to enter into such agreements is broadly interpreted by business actors who use contracts in their business life. One of them is that the parties agreed to release the provisions of Article 1266 of the Civil Code. That Article 1266 of the Civil Code contains:

1. Void conditions are always considered to be included in reciprocal agreements, when one of the parties fails to fulfill its obligations;
2. In such a case the consent is not null and void, but the annulment must be requested from the Judge;
3. This request must also be made, even if the nullity of the non-fulfillment of the obligations is stated in the agreement;
4. If the conditions of nullity are not stated in the agreement, the Judge is free to according to the circumstances, at the request of the defendant to provide a period of time to still fulfill his obligations, which period shall not exceed one month;

The parties also usually agree to waive article 1267 of the Civil Code which states that the party to whom the agreement is not fulfilled can choose: compel the other party to comply with the agreement, if it is still practicable, or demand the cancellation of the agreement, with reimbursement of costs, losses and interest. Regarding this article, it applies to a reciprocal agreement, meaning that in the agreement there is an achievement and counter-achievement between the parties, which if a condition is not fulfilled, regarding the non-fulfillment of obligations means due to default, then for the process of termination or cancellation through a court decision. However, according to the source, the 3 kiosks that were used as collateral could not be executed, either transferred, let alone auctioned by the creditor. This is because the market stalls that are used as collateral do not belong to traders who have the rental rights, but belong to the DKI Jakarta Government through the Industry and Trade Office of the Market Subdivision.

Defaults committed by the debtor are detrimental to the creditor because the collateral provided by the debtor cannot be executed (either transferred or sold) by the creditor as debt repayment. Thus, it cannot provide legal protection for creditors who have provided financing facilities. The usual effort made by creditors according to Resource Person 1 is by means of mediation with related parties, if they do not find a bright spot, the bank will sell the kiosk to

other traders. According to Resource Person 1 and Resource Person 3, if there is a default, there will be a transfer of rights. A transfer of rights is the transfer of rights from the old right holder to the new right holder. The transfer of rights generally occurs in two ways, namely transfer (due to legal events, such as inheritance) and transfer (by an agreed way, such as buying and selling) or the transfer of billing rights by cessie. Resource person 3 added that if the object of the guarantee is SHPTU, then it is for the benefit of the bank and in accordance with the bank's internal regulations, in addition to signing a credit agreement to the debtor or guarantor, it is also required to sign a power of attorney agreement. Power of attorney is the authority given by a person to another person to perform legal actions on his or her behalf and/or receive statements. In Article 1792 of the Civil Code, it is formulated that "the granting of power of attorney is an agreement by which one gives power to another person who receives it, for and on his behalf to conduct an affair". The word "consent" indicates the granting of power of attorney adherence to the concept of agreement (lastgeving), where the conditions of the validity of the agreement and fundamental legal principles are binding and apply to the power of attorney agreement. The word "for and on behalf of" is interpreted to mean that in the power of attorney agreement always gives birth to a representative, which means that the provisions of lastgeving apply to the granting of power of attorney that gives birth to a representative (volmacht). The provision of "granting power" in the Civil Code mixes two forms of law, namely between lastgeving and volmacht. The essence of the difference between lastgeving and volmacht is that lastgeving provides an obligation to represent the birth of an agreement, while volmacht gives the authority to represent those born from unilateral legal actions, not the obligation to represent.

Based on Article 1792 of the Civil Code, the definition of a power of attorney agreement according to is an agreement that contains the granting of power to another person who receives it to carry out something on behalf of the person who gives power. Meanwhile, Gunawan Widjaja explained that:"

1. *Lastgeving* or the granting of power of attorney is a consensual agreement, which is not bound by a specific formal form;
2. Like a general agreement, a power of attorney also requires an offer and acceptance. A new grant of power is binding when there has been acceptance by the grantee of a power offered by the authorizer;
3. Acceptance of power of attorney can occur with a proof of acceptance expressly stating his will to accept the power of attorney and exercise the power of attorney granted; or directly implement the power offered"

The object of the grant of power of attorney is to include one or more legal acts in the law of property. Meanwhile, in the granting of power of attorney there are two parties (subjects), namely the party who gives the power of attorney (the power of attorney) and the party who receives the power of attorney (the power of attorney).

The end of the grant of power in five ways, namely:"

1. Withdrawal of power by the author;
2. The power of attorney notifies the termination of the grant of power;
3. One party died;
4. The giver/receiver under the authority;
5. The giver/receiver of the insolvent power of attorney."

The types of power of attorney are contained in Article 1795 and Article 1796 of the Civil Code. The content of Article 1795 of the Civil Code, namely: "The granting of power of attorney can be done specifically, namely regarding only one specific interest or more, or in general, that is, it includes all the interests of the authorizer." Article 1796 of the Civil Code

reads:
"The granting of power, which is formulated in general words, only covers the acts of management. To transfer things or to put a mortgage on them, or again to make a peace, or some other act which only an owner can do, a power of attorney is required in firm words."

From the two formulations in Articles 1795 and 1796 of the Civil Code, the granting of power of attorney is divided into:

1. General power, the granting of general power of attorney means that the content or substance of the power of attorney is general which includes all the interests of the power of attorney. In such a power, it contains every action related to the management of a guardian.
2. Special power, the granting of special power of attorney is only about the exercise of interests. This power of attorney is intended to administer special matters as excluded from administrative actions.

With regard to SHPTU as an object of collateral where the debtor is in default, the kiosk as collateral for debts that have not gone through a public auction that has previously been requested permission from the Court is invalid and void according to the law. Therefore, the other two methods of execution of the collateral object, namely in the form of an executory title and underhand execution, cannot be carried out for the execution of the collateral object in the framework of a credit agreement. So in this case, the Notary will make a Guarantee and Power of Attorney Agreement (PPJK) which is made based on the principle of freedom of contact in accordance with Article 1338 paragraph (1) of the Civil Code. The author argues that the Notary can first explain to the parties about the legal consequences of the Deed that can be canceled for the sake of law. Then the Notary can offer in advance in order to secure the agreed agreement to remain with the making of the PPJK Deed if the object of collateral has legally transferred on behalf of the new debtors. This is intended so that there are no losses that occur to one of the parties. Joint cancellation before this Court is the main condition is an agreement between the parties. If one of the parties turns out not to want to apply for cancellation to the Court to request the cancellation of the deed or agreement, the other party can demand its own cancellation in the Court.

CONCLUSION

SHPTU (Certificate of Right to Use Business Premises) according to DKI Jakarta Regional Regulation No. 7 of 2018 can be used as collateral for credit, but its legal status as a property right or personal right is not explained in detail. In practice, SHPTU only grants the right to use business premises owned by Perumda Pasar Jaya, not ownership rights over buildings or land, and thus resembles a lease agreement as regulated in Article 1548 of the Civil Code. Since it is not a property right, SHPTU cannot be used as collateral through property collateral mechanisms such as pledges, mortgages, liens, or fiduciary rights, and cannot be enforced in the event of default. Therefore, disputes related to SHPTU can only be resolved through mediation and the assignment of claims (cessie) to another interested party, with the issuance of a Power of Attorney (PPJK). Attempting to use SHPTU as collateral for a fiduciary agreement is considered risky because it lacks a strong legal basis and may be invalidated by law.

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