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## Juridical Reasons for the Acceptance of the Actio Pauliana Application for Assets Encumbered with Mortgage Rights in Decision Number 461 K/Pdt.sus-bankrupt/2019.

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### Abstract

*Mortgage rights are born when registered at the National Land Agency office. Actio Pauliana's request was granted by the panel of judges by canceling the credit agreement which also resulted in the imposition of mortgage rights that had been registered. The purpose of the research is to analyze the juridical reasons for granting Actio Pauliana's request in decision number 461K/Pdt.sus bankruptcy/2019 and to analyze the implications for creditors, namely the BANK. Pdt. sus-bankrupt. Normative juridical research methods with statutory approaches, conceptual approaches, and case approaches. From the results of the study, it can be concluded that the judge's reason for deciding case Number 461K/Pdt.sus-Bankrupt/2019 based on a marriage agreement that was made was not registered at the Civil Registry Office resulting in the bankruptcy of the property association which has legal implications for creditors to return it to its original state before the credit agreement occurred. PPAT has an important role, namely in the process of checking the data of the parties present along with the documents that are a requirement for making APHT before the registration of collateral rights is carried out.*

**Keywords:** Mortgage Rights ; Babkrupcty; Actio Pauliana

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### Introduction

A credit agreement is an agreement with tough conditions whose fulfillment depends on the borrower, namely, if the credit recipient accepts and takes the loan (Article 1253 of the Civil Code) (Marbun & Bram, 2012). Collateral is property that is placed as collateral for payment or ability for an obligation. Collateral used as credit collateral is merchandise, securities, intangible assets and business results. Mortgage rights are assessor agreements or assessors with the main debt (credit) agreement. Mortgage rights cannot stand alone, but are a companion to the main agreement, namely an agreement that provides security for the repayment of debt referred to in the main agreement.

Mortgage rights are born after being registered, registration of mortgage rights is an imperative requirement, it is mandatory to register at the Land Office (KP). According to the explanation of Article 13 paragraph 1 of Law No. 4 on Mortgage Rights, hereinafter written as HT Law, registration is the principle of publicity, and at the same time is an absolute requirement for other and binding of mortgage rights to third parties. The PPAT's obligation as the maker of the APHT is to send the APHT and other documents (including evidence letters relating to the object of the mortgage and the identity of the parties, land title certificates) required to the Land Office.

Mortgage rights that have been registered at the Land Office are still possible to be canceled by the court as in the case of decision number 461 K/Pdt.sus-bankruptcy/2019 with the decision to cancel the credit agreement which is the main agreement before the issuance of the mortgage right and cancel the mortgage

right with the legal consideration that the object used as credit collateral is the joint property of the defendant which is part of the bankruptcy estate.

The case began with an actio pauliana application in the Semarang Commercial Court on the object of the mortgage agreement between RSW and Bank P. The Semarang Court decided to reject the actio pauliana application in decision number 13/Pdt.Sus-Actio Pauliana/2018/PN.Smg., in conjunction with Number 07/Pdt.Sus-Bankruptcy/2011/PN.Smg. the actio pauliana application was considered insufficient evidence. The actio pauliana application was granted in cassation decision Number 461 K/Pdt.Sus-Pait/2019 with the decision to cancel the credit agreement and mortgage rights between RSW and BANK P.

The problem that needs to be studied from the description above is that the credit agreement which is the main agreement of the agreement to grant collateral for the mortgage is canceled and has no legal force and has the effect of the mortgage rights that have been registered at the National Land Office are also canceled and have no legal force. The decision to cancel the mortgage by the Court raises the question of what are the juridical reasons for the panel of judges to grant the request for actio pauliana on assets encumbered by mortgage rights that have been registered in decision number 461 K/Pdt.sus-bankruptcy/2019, whether it is appropriate or there is still something that is not appropriate and what are the legal implications for creditors, namely BANK.

Before the Land Agency issues a mortgage right, the parties first take care of the Land Deed Official (PPAT), the requirements related to the mortgage right are put together and checked as part of the PPAT's authority in making deeds related to land before being submitted to the Land Office. PPAT should carry out its role in accordance with the Legislation, it is suspected that in this case the PPAT has not carried out this role considering that the deed is canceled. Based on the above problems, the authors are interested in conducting research with the title "Juridical Reasons for the Acceptance of the Actio Pauliana Application for Assets Encumbered with Mortgage Rights in Decision Number 461 K/Pdt.sus-bankrupt/2019".

### **Research Problems**

Based on the background description above, a problem formulation can be drawn as follows

1. How are the juridical reasons for granting the actio pauliana application on assets encumbered by mortgage rights in decision number 461K/Pdt.sus-Bankruptcy/2019 granted?
2. What are the implications for creditors due to the granting of an action pauliana application on assets encumbered by mortgage rights in decision number 461K/Pdt.sus-bankruptcy/2019?
3. What is the role of PPAT to prevent the cancellation of APHT in Decision number 461 K/Pdt.sus-bankruptcy/2019?

### **Research Method**

This research was conducted using the normative juridical method. The approach method used in this research is a statutory approach, concept approach and case approach (Soekanto & Mamuji, 1985) data obtained through related regulations and literature studies, supported by court decisions, then arranged systematically. This research is conducted in an analytical perspective (Marzuki, 2011) then analyzed with theory and positive law then concluded inductively to answer problems that are analyzed qualitatively to achieve clarity of the problems to be discussed.

## Discussion

### 1. The juridical reasons for granting the request for actio pauliana on assets encumbered by mortgage rights in decision number 461 K / Pdt.sus-bankruptcy / 2019.

An agreement is a legal act that gives rise to, changes the elimination of rights or creates a legal relationship and in this way, the agreement causes legal consequences which are the objectives of the parties. Article 1 number 11 of Law Number 10 of 1998, credit is defined as the provision of money or bills that can be equated with it, based on an agreement or borrowing and lending agreement between a bank and another party that requires the borrower to repay his debt after a certain period of time with interest. (Ibrahim, 2004) Based on this understanding, a credit agreement can be interpreted as a lending and borrowing agreement between a bank as a creditor and another party as a debtor that requires the debtor to repay his debt after a certain period of time with interest.

Mortgage rights are accessory agreements or accessories with the main debt (credit) agreement. Mortgage rights cannot stand alone, but are a companion to the main agreement, namely an agreement that provides security for the repayment of debt referred to in the main agreement. Mortgage rights are born after being registered, registration of mortgage rights is an imperative requirement, it is mandatory to register at the Land Office (KP). According to the explanation of Article 13 paragraph 1 of UU HT, registration is the principle of publicity, and at the same time is an absolute requirement for the birth and binding of a mortgage right to third parties. Article 1 point 1 of UU HT states that a mortgage is a security right over land as referred to in the UUPA. Land rights that can be used as debt collateral by encumbering a mortgage right must fulfill two conditions determined by the HT Law, namely:

- a. The land rights according to the applicable provisions must be registered.
- b. The land rights are by their nature transferable.

The two conditions mentioned above are cumulative, meaning that if one of the conditions is not fulfilled, the land rights cannot be used as debt collateral encumbered by mortgage rights. The conditions of land rights that can be used as debt collateral encumbered by mortgage rights are expanded by Soegiarto and Boedi Harsono, namely:

- a. Can be valued in money;
- b. It is a right that has been registered (general register of land registration as a condition to fulfill the principle of publicity).
- c. Transferable (in the event of a debtor's default, the object can be sold in public).
- d. Requires designation by legislation.

In relation to debts that can be charged with mortgage rights as referred to in Article 3 of the HT Law Paragraph (1), namely debts that are guaranteed in repayment with mortgage rights can be debts that have existed or that have been promised with a certain amount or an amount that at the time the application for execution of the mortgage rights is submitted can be determined based on the debt-debt agreement

The marriage between Defendant I (RSW) and DH had an agreement before marriage, namely Exhibit T-1 (prenuptial agreement) and the testimony of witnesses from Defendant I (RSW), namely witnesses Muh. Muhaimin and Kusnadi confirmed that Defendant I (RSW) manages restaurants, catering, antiques, and kuna traditional houses and other businesses and is managed by the family of Defendant I (RSW) until now. Defendant I (RSW) was previously married

to a man named Wahyu and then divorced. Based on the facts revealed during the trial, the lawsuit filed by the Plaintiff (SOM) was an inappropriate action and step and was not justified by the law as per Article 41 (1) of the applicable laws and regulations, especially Law No. 37 of 2004 on Bankruptcy and PKPU; Article 41

- a. For the benefit of the bankruptcy estate, the Court may request the annulment of all legal acts of a debtor who has been declared bankrupt that are detrimental to the interests of creditors, which were carried out before the declaration of bankruptcy was pronounced.
- b. Cancellation as referred to in paragraph (1) may only be made if it can be proven that at the time the legal act was performed, the debtor and the party with whom the legal act was performed knew or reasonably should have known that the legal act would result in harm to creditors.
- c. Excluded from the provisions as referred to in paragraph (1) are legal acts of the debtor which he is obliged to perform by virtue of an agreement and/or by the law.

That Defendant II (Bank P) provided a credit facility to Defendant I (RSW) following banking standards and applicable regulations and was incorporated into a credit agreement and deed of granting of mortgage rights (APHT) number 481/2017 in Sleman Regency between Defendant I (RSW) and Defendant II (Bank P) which was made by Co-Defendant I (AYA notary and (PPAT) with the involvement of Co-Defendant II (Land Office) in the issuance of mortgage rights certificate number 00170/2018 and supported by Exhibits T- 01 to T-05 where from the aforementioned evidence the legal facts obtained before the trial that the actions of Defendant II (Bank P) in providing a credit loan facility to Defendant I (RSW) with mortgage rights were in accordance with the corridors of justice. 01 to T-05 where from the evidence obtained legal facts before the court that the actions of Defendant II (Bank P) to provide a credit loan facility to Defendant I (RSW) with a mortgage was by the law.

Based on Article 21 of UU HT: "If the grantor of a mortgage is declared bankrupt, the holder of the mortgage is still authorized to exercise all the rights he has obtained under the provisions of this law" and Article 27 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees ("Fiduciary Law"): "The prior rights of the Fiduciary shall not be extinguished due to the bankruptcy and/or liquidation of the Fiduciary". This is then reaffirmed in Article 55 paragraph (1) of the PKPU Bankruptcy Law which reads: "With due regard to the provisions referred to in Articles 56, 57 and 58, every creditor holding a pawn, fiduciary guarantee, mortgage, or other collateral or property rights, may execute its rights as if bankruptcy had not occurred." It can be concluded from these two provisions that holders of mortgage rights and/or fiduciary guarantees have a secure position in the bankruptcy process and postponement of debt payment obligations (PKPU).

The Panel of Judges in decision number 461K/Pdt.sus- bankruptcy/2019. APPROVED the request for actio pauliana based on the consideration that the defendant I (RSW) is the legal wife of the bankruptcy debtor Sodara D.H who has the same address as the bankruptcy debtor Sodara D.H, namely at Bromonilan RT.008 / RW.003 That the first respondent (RSW) during her marriage with the bankruptcy debtor Sodara D.H on December 5, 2014 purchased a piece of land with a Certificate of Ownership (SHM) Number 13795/Purwomartani, which the first respondent (RSW) then used as collateral for her debt to the second respondent (Bank P) based on credit agreement number 83 with the consent of the bankruptcy debtor Sodara D.H. That the prenuptial agreement between the first respondent (RSW) and the bankruptcy debtor Sodara D.H was a prenuptial agreement. H. That the prenuptial agreement between the first respondent (RSW) and his brother D.H. was not registered with the Marriage Registrar, so that it only

applied to the two of them who signed the agreement and was not binding on third parties, thus resulting in the property acquired during their marriage becoming joint property, thus becoming bankruptcy estate for the debtor brother D.H.

## **2. Implications for creditors on the application of actio pauliana on assets encumbered by Mortgage Rights is granted.**

Collateral is anything in the form of objects or goods (assets) belonging to the debtor that is submitted to the creditor to provide confidence that the debtor (borrower) will fulfill his obligations arising from the engagement.

Material collateral can be classified into 5 (five) types, one of which is mortgage rights. (Adiyatma et al., 2021) Mortgage rights are security rights that are imposed on land rights as referred to in the PA Law along with or without other objects that are an integral part of the land for the repayment of certain debts, which give priority to certain creditors against other creditors. (Sumardjono, 1996) The creditor or holder of a mortgage right is the party that is indebted in a certain debt and credit relationship. The creditor of the mortgage in this case is a BANK that acts in a credit agreement to provide money to the debtor.

Based on the data of R.S.W as a debtor in the legal act of a credit agreement with BANK P where R.S.W is the wife of D.H in the legal act of bankruptcy. Cassation verdict Number 461 K/Pdt.Sus-Pailt/2019 includes, among others, the collateral object used by R.S.W in the legal act of the credit agreement was decided to be bankruptcy property, R.S.W's credit agreement with BANK P was canceled and had no legal force. The D.H bankruptcy verdict has an impact on R.S.W in carrying out legal acts of engagement following Article 25 of the Bankruptcy and PKPU Law, namely "All debtor obligations issued after the bankruptcy declaration decision cannot be paid from the bankruptcy estate, unless the obligation benefits the bankruptcy estate." Article 27 of the Bankruptcy and PKPU Law, namely "During the bankruptcy, claims to obtain fulfillment of obligations from the bankruptcy estate aimed at bankrupt debtors can only be submitted by registering them to be matched."

Credit agreements and make the object of collateral for mortgage rights declared as bankruptcy property (boedel) so that the mortgage rights have no legal force and the order to remove the certificate of mortgage rights to be submitted to the curator to be taken care of related to bankruptcy property, the legal consequence is that the land is no longer bound in a debt and credit agreement using a mortgage guarantee. Cancellation of the Credit agreement by the court, then legal problems arise regarding the implementation of the credit agreement that has been carried out by the defendant R.S.W with Bank P on the object of the mortgage guarantee which is no longer a guarantee for the implementation of the credit agreement.

Based on the data, BANK P has carried out standard procedures for granting credit to RSW as outlined in the credit agreement and APHT Number 481/2017 dated November 16, 2017 in Sleman Regency. The provision of credit facilities by BANK P to RSW is under the applicable legal corridor. Article 1341 of the Civil Code states that:

"However, any creditor may claim the nullity of any unauthorized act done by the debtor under any name whatsoever, to the detriment of the creditor, provided that it is proved that at the time the act was done neither the debtor nor any person with or for that act had an adverse effect on the creditor. The rights acquired in good faith by third parties in the goods which are the subject of the brutal act are protected. In order to raise the issue of the nullity of the acts performed freely by the debtor, it is sufficient for the debtor to prove that the debtor at the time of performing the act knew that by doing so, he was detrimental

to those who favored him, regardless of whether the person who received the benefit also knew it or not".(Setiawan, 2015) Bank P is good in the legal acts of credit agreements and encumbrance of mortgage rights on collateral objects in accordance with applicable legal procedures according to the data provided by RWS as a credit agreement debtor by attaching a prenuptial agreement.

If the actio pauliana claim is granted, the party against whom the actio pauliana claim is granted shall:

- a. Return to the estate any property he acquired from the debtor's property before his bankruptcy; or
- b. If the price/value of the goods is reduced, the party is obliged to return the goods plus compensation; or
- c. If the goods do not exist, he is obliged to compensate the value of the goods.(Shubhan, 2008)

Based on the data from cassation decision number 461 K/Pdt.sus-bankruptcy/2019 which states that Credit Agreement Number 83 and Deed of Granting Mortgage Number 481/2017, which was made in front of the Co-Defendant I (RSW) A.Y.A, as a Notary and PPAT in Sleman Regency, Yogyakarta Special Region Province, between RSW and BANK P with the consent of the bankrupt debtor D. H is **void and has no legal force**. H is canceled and has no legal force, so the implications of this decision on the creditor in the legal act of the credit agreement, namely BANK P returns to its original state before the credit agreement where RSW as a debtor returns the money in full without any interest to Bank P, on the other hand, Bank P returns the object that is the guarantee of RSW in the legal act.

### **3. The role of PPAT to prevent the cancellation of the Mortgage Deed in Decision Number 461 K/Pdt.sus-bankruptcy/2019.**

The role according to Abdulsyani is an act of a person or group of people in a certain way in an effort to carry out their rights and obligations in accordance with their social status with society. The definition of role can be concluded that role is an action that limits a person or an organization to carry out an activity based on mutually agreed upon goals and conditions so that it can be carried out as well as possible.

The role of PPAT in the procedure for encumbering Hak Tanggungam on land or property rights over a unit of susuan ruamah must fulfill 3 (three) stages, namely:

- a. The existence of a debt and credit agreement

The debt and credit agreement between the debtor and creditor is the main agreement in the Mortgage Right. This debt and credit agreement can be made by an authentic deed, which is made by a notary, or made by a deed under the hand, which is made by the debtor and creditor themselves.

- b. Deed of Grant of Mortgage

To guarantee the debtor's debt to the creditor, the debtor promises to submit land rights or property rights over the Flat Unit as collateral to the creditor. The submission of this guarantee is *accessoir*, meaning that it is an accompanying agreement or an additional agreement to the main agreement in the form of debt and credit. Submission of collateral by the debtor to the creditor as a grant of Mortgage Rights is carried out by making APHT by PPAT. The APHT must include information regarding:

- a) the name and identity of the holder and grantee of the Mortgage Right;

- b) the domicile of the holder and grantor of the Mortgage Right.
  - c) the value of the mortgage;
  - d) a clear description of the object of the Mortgage Right Article 11 Paragraph
- c. Registration of Mortgage Rights. (Santoso, 2010)

Within no later than seven working days after the signing of the deed of granting a mortgage, the PPAT is obliged to register the deed with the local Regency / City Land Office. The purpose of the registration of the encumbrance of the pledge right is to make a land book of the pledge right and to confirm the record on the certificate of land rights concerned. Registration of the granting of a mortgage right is an absolute requirement for the existence of a mortgage right and the binding of the right against third parties. With the registration of the granting of a mortgage right to the local Regency / City Land Office, the principle of publicity is fulfilled, meaning that everyone can know that the land rights or Property Rights over the Flat Unit are being encumbered by a mortgage right. As evidence of the existence of a mortgage right on land or property rights over an apartment unit, the Regency / City Land Office after issuing a mortgage certificate, which contains the irah-irah with the words "DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA".

The Mortgage Rights Certificate is handed over by the District/City Land Office to the applicant for registration of the encumbrance of the Mortgage Rights, namely the PPAT or the Mortgage Rights holder (Bank). The certificate of Mortgage Rights has the same executorial power as a court decision that has permanent legal force and is valid as a substitute for the acte hypotheek process as far as land rights are concerned. The irah- irah included in the certificate of mortgage rights is intended to emphasize the existence of executorial power on the certificate of mortgage rights, so that if the debtor breaks his promise, the object of mortgage rights is ready to be executed as well as a court decision that has obtained permanent legal force through certain procedures and by using parate executie institutions in accordance with civil procedural law regulations. (Giri, 2013)

PPAT in carrying out its authority to make deeds relating to land is expected to apply the principle of prudence full of responsibility. The role of PPAT is very important in making the encumbrance of mortgage rights in the case of R.SW where the credit agreement is canceled by the court where the credit agreement is the main agreement resulting in the mortgage agreement having an impact. The cancellation of the credit agreement in this cassation decision is based on the judge's consideration of the object of the mortgage which is part of the bankruptcy estate where R.SW is the debtor in the credit agreement. R.SW entered into a credit agreement with the consent of her husband D.H, who is a bankrupt debtor, here the role of PPAT is to be careful in checking the identity files of the parties, whether or not there is a marriage agreement that shows the unity of property or separation of property that has an impact on the object of collateral that will be used as part of the mortgage.

Based on Article 1 point 4 of Government Regulation No. 37 of 1998, it states that, a deed made by a PPAT as evidence that certain legal actions have been carried out regarding Land Rights or Property Rights Over Flat Housing Units. (Giri, 2013) A PPAT deed is a deed of evidence consisting of a date and a signature according to the events that form the basis of a right or obligation that is used in evidence. A deed made by a PPAT who is authorized to make deeds is an authentic deed. (Poernomo, 2006) PPAT is a public official who is authorized to make authentic deeds regarding certain legal acts regarding land rights, as a strong evidentiary tool that should provide legal certainty for rights holders.

PPAT as an authorized public official has an obligation to work with a full

sense of responsibility, independently, honestly and impartially as stated in Article 3 letter f of the PPAT Code of Ethics. PPATs are also prohibited from taking actions that violate the provisions in the PPAT Position Regulation and other laws and regulations (Article 4 letter r number 1 of the PPAT Code of Ethics). In addition, PPAT as a public official authorized to make authentic deeds is required to:

1. Make deeds that can be used as a strong basis for the implementation of registration of transfer of rights or encumbrance of rights;
2. PPAT is responsible for the fulfillment of the elements of competence and authority of the confronter in the deed and the validity of the legal action according to the data and information submitted by the confronter who is known or introduced;
3. PPAT is responsible that the document used as the basis for performing legal actions, its strength and proof have fulfilled the guarantee of legal certainty to be followed up in an authentic deed and in accordance with the applicable provisions.
4. PPAT is responsible for the validity of legal actions by the data and testimony of the confrontants and guarantees the authenticity of the deed and is responsible for making it according to the procedure. (Assikin et al., 2019)

Thus, the role of PPAT in preventing the cancellation of the deed of mortgage when the parties want to make a security encumbrance agreement, namely APHT, PPAT is expected to be more careful in checking the data of the parties involved before making the deed.

## **Conclusion**

1. The juridical reason for the actio pauliana application on assets encumbered by mortgage rights in decision number 461 K/Pdt.sus-bankruptcy/2019 was granted. The panel of judges in Decision number 461K/Pdt.sus-bankruptcy/2019 ruled that the credit agreement was null and void and had no legal force, which also resulted in the certificate of mortgage rights issued by the National Land Agency of Sleman Regency and included the collateral object into the bankruptcy estate of D. H based on Article 64 of the Bankruptcy and PKankit Law. H based on Article 64 of the Bankruptcy and PKPU Law where D.H's marriage with R.S.W (credit agreement debtor) with a prenuptial agreement that was not registered at the Civil Registry Office resulted in the bankruptcy of the unity of property, because the prenuptial agreement that was not registered did not apply to third parties in this case, namely BANK P.
2. The legal implications for creditors as a result of the judge granting the request for actio pauliana on assets that have been encumbered by mortgage rights, namely based on Article 1341 of the Civil Code in the legal act of credit agreement BANK P which is an affiliated party does not know that the legal act of credit agreement with the encumbrance of mortgage rights on assets owned by RSW is detrimental to the bankruptcy creditor and Bank P is in good faith in granting credit according to applicable legal procedures so that Bank P must be protected. The implication of that is that BANK P returns to its original state before the credit agreement where RSW as a debtor returns the loan money in full without any interest to Bank P, on the other hand Bank P returns the object that is RSW's collateral to be included in the bankruptcy estate.
3. The role of PPAT to prevent the cancellation of mortgage rights in Decision Number 461 K/Pdt.sus-bankruptcy/2019 has an important role, namely exercising its authority as a public official in making APHT as the basis for registering PPAT's mortgage rights requires caution and accuracy in checking the parties' data.



## Suggestions

1. The authorities in examining and deciding cases of agreements on the burden of mortgage rights after the bankruptcy decision are expected to be more careful, especially related to marital property there is property unity or property separation.
2. As a creditor party, namely the Bank, so that it continues to apply credit granting procedures under applicable regulations in granting credit to debtors and related to decision number 461 K / Pdt.sus - Bankruptcy can make efforts to review the application of Article 42 Bankruptcy and PKPU.
3. The role of PPAT is very important in making deeds related to the encumbrance of property rights where the data of the parties and the object to be used as collateral for the burden are safe and not in dispute so that no losses arise to the parties.

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