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Bank's Position as a Holder of Lien Objects Confiscated By The State From a Public Interest Perspective

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Abstract
Banking plays a strategic role in supporting national development through its financial intermediation function. One of the main instruments in banking activities is collateral, which provides legal certainty for creditors. However, problems arise when the collateral is seized by the state in corruption cases. The conflict between the bank's right of execution as the creditor holding the collateral and the state's interest in recovering assets resulting from corruption creates legal uncertainty that has a systemic impact on public trust in the banking sector. One form of uncertainty regarding bank collateral is the ease with which the state can seize the collateral for reasons of public interest. In this case, banks lack legal protection and strong legal certainty as the separatist party holding the collateral. The research results show, first, that Supreme Court Regulation Number 2 of 2022 concerning Procedures for Resolving Objections from Good-Faith Third Parties to Decisions on Confiscation of Property Not Owned by the Defendant in Corruption Cases does not provide adequate protection for banks because it only accommodates third parties with physical ownership of the assets. Furthermore, Supreme Court Decision No. 540 K/Pdt/2022 reinforces the tendency to prioritize state interests, weakening the legal position of banks as collateral holders. As agents of development, banks have a public interest that should be protected by law to maintain national economic stability. Therefore, regulatory reform is needed that explicitly recognizes banks as third parties acting in good faith in the Banking Law. Furthermore, the position of banks as collateral holders in Law Number 4 of 1996 concerning Mortgage Rights needs to be explicitly regulated by adding a norm or paragraph to Article 9 in Part III concerning Grantors and Holders of Mortgage Rights. Furthermore, there needs to be an exception in the Corruption Crime Law regarding the seizure of tangible and intangible movable assets that have become collateral objects by banks. This way, there is legal certainty for banks as creditors with separatist rights over material objects, allowing them to directly execute their collateral objects without the need for asset seizure by the state.

INTRODUCTION

In the banking system, collateral plays an important role in providing legal certainty for creditors and protecting the interests of banks as lending institutions.[1]. Collateral in banking functions as a form of protection against the risk of debtor default and provides the bank with the right of execution in the event of default.[2]Collateral in banking also serves as a way for banks to protect the interests of other customers, minimizing the risk of bad debts caused by customers failing to repay their debts. However, in practice, problems arise when the collateral held by the bank is seized by the state in corruption cases. This situation creates a conflict

[1] Efforts to Set et al., "Journal of Supremacy," 12, no. 013 (2022): 79–93.
[2] M Ardiansyah Lubis and Mhd Yadi Harahap, "Legal Protection for Creditors as Holders of Collateral Rights in Debtor Default Cases," Journal of Legal Interpretation | 4, no. 2 (2023): 2746–5047.

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between the interests of creditors, who have the right to enforce the collateral, and the state's interest in recovering assets, such as the proceeds of corruption.[3]

The confiscation of assets by the state is regulated in Article 18 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. This provision gives the state the authority to confiscate assets obtained from criminal acts or used in crimes, including assets that have been used as collateral in banking transactions.[4]. Assets used as collateral by banks must be handed over to the state without considering the bank's rights as a creditor holding the collateral. This raises serious legal questions regarding the position of banks as holders of collateral seized by the state and how the balance between creditor interests and the public interest can be achieved within the Indonesian legal system. The legal uncertainty arising from the seizure of collateral assets by the state has a significant impact on the banking system as a vehicle for economic stability. Banks, as legitimate creditors, may lose their rights to legally obtained collateral, which ultimately can affect the confidence of financial institutions in providing credit.[5]This has the potential to reduce the availability of credit for the public, especially in business sectors that require asset collateral to obtain financing.

In the context of asset confiscation in corruption cases, banks, as creditors holding collateral rights, can seek legal protection by referring to the provisions regarding third parties acting in good faith. This is stipulated in Supreme Court Regulation (PERMA) Number 2 of 2022 concerning Procedures for Resolving Objections from Third Parties in Good Faith to Decisions on Confiscation of Property Not Belonging to the Defendant in Corruption Cases. Article 1, number 3 of the PERMA explicitly states that:

> A Third Party in Good Faith is a party who can prove to be the legal owner, guardian, trustee of the owner of the goods, or curator in bankruptcy cases for goods that have no legal connection to the process of the occurrence of the crime of corruption.

However, this uncertainty is increasingly apparent because the PERMA does not provide a solution that can be used by banks as collateral holders, as the protection provided is limited to the physical owner. This contrasts with banks as collateral holders, meaning that banks holding collateral rights do not fulfill the good faith element stipulated in the PERMA. This is further reflected in Supreme Court Decision Number 540 K/Pdt/2022, which granted the cassation appeal. In its consideration, the Supreme Court stated that the seizure of assets by the state is legitimate under Article 18 of the Corruption Crime Law and emphasized that the public interest in recovering state losses due to corruption must be prioritized over private interests such as creditor rights. This indicates a tendency for decisions to prioritize the state's interests in recovering criminal assets, thus creating legal uncertainty in the implementation of regulations regarding collateral. The overlap between the legal regime of collateral and criminal law emphasizes the urgency of establishing more comprehensive and firm regulations, particularly in determining the legal standing of banks as creditors holding rights over collateral objects seized by the state.

In this context, the theory of legal certainty is one approach that can be used to examine this issue. The state has an obligation to protect the public interest by ensuring the restitution of losses resulting from criminal acts. However, in its implementation, the public interest must be balanced with the protection of creditors' rights, which have legal certainty through the collateral system. Without a clear balance between state interests and creditors' rights, the seizure of collateral assets by the state could set a negative precedent that is detrimental to the

[3] Najlaa Putri Virdiansyah, "Legal Protection of Creditors Against Objects of Security of Dependencies Confiscated by the State," n.d.

[4] Degree of Acidity et al., "Indonesian Journal of Social Science," Indonesian Journal of Social Science 2, no. 3 (2021): 494,http://jiss.publikasiindonesia.id/

[5] Husnia Hilmi Wahyuni, "Legal Analysis of Credit Guarantees in the Perspective of Credit Jammed Prevention" 13, no. 42 (2024): 297–311, https://doi.org/10.37893/jbh.v13i2.954.

financial system as a whole.[6]Based on these issues, this study aims to analyze the position of banks as holders of collateral objects seized by the state from a public interest perspective. This study will examine how the law can provide certainty for banks in carrying out their financial intermediation function, as well as formulate legal recommendations that can clarify the position of banks in cases of asset seizure by the state. Therefore, it is hoped that this study can contribute to strengthening the legal system of collateral in Indonesia and creating a balance between state interests and creditor protection.

RESEARCH METHODS

This research falls into the category of normative legal research, a type of research that positions law as a system of norms. This system of norms encompasses legal principles, normative provisions, and rules contained in legislation, court decisions, and the doctrines or opinions of legal experts.[7]. The approach in this research uses a statutory approach (*statutory approach*) and conceptual approach (*conceptual approach*). The statutory approach aims to examine the form and substance of regulations related to the issue of reversing the burden of proof in the context of consumer dispute resolution. The conceptual approach is used to obtain clarity and a scientific basis for argumentation by exploring legal concepts derived from legal principles.

DISCUSSION

Forms of Public Interest Held by Banks

The public interest refers to the welfare and prosperity of all people, not just individuals or certain groups. This encompasses national, state, and community interests, which are the government's responsibility to realize and utilize to the maximum extent possible for the welfare of the people. Public welfare is a state duty that must be fulfilled, especially within legal corridors such as regulatory reform. In line with this, referring to Article 1 number 6 of Law Number 2 of 2012 concerning Land Acquisition for Development, which forms the basis of the concept of the public interest, it is stated that:

> Public interest is the interest of the nation, state and society which must be realized by the government and used as much as possible for the prosperity of the people.

In fact, prioritizing public interests can sometimes be a dilemma for private parties, such as banking interests in safeguarding credit collateral seized by the state due to corruption committed by convicted bank customers. Although public interests will never be defeated by private interests, this does not mean there is no balance between the two interests. The author analyzes that the role of the courts is to mediate between public and private interests. In practice, in the process of confiscating an asset, a court decision is first issued to determine whether it can be confiscated for the public interest or otherwise. Furthermore, referring to Article 18 of Law Number 5 of 1960 concerning the Principles of Agrarian Law, public interests are;

> For the public interest, including the interest of the nation and the State as well as the common interest of the people, the rights to land can be revoked, by giving appropriate compensation and in accordance with the method regulated by Law

Referring to the elements contained in Article 18 of UUPA Number 5 of 1960, namely "providing compensation," can the role of banks in safeguarding credit collateral objects be

[6] Fiduciary Guarantee et al., “Journal of Legal Law Legal Certainty for Creditors Regarding Execution” 6 (2019).

[7] Mukti Fajar and Yulianto Achmad, 2010, Dualism of Normative Legal Research and Empirical Law, Pustaka Pelajar, Yogyakarta, p. 34

classified as in the public interest in the context of banking customers? This is certainly a legal debate that must be carried out because the public interest does not only exist for the general public, but banking customers are also part of society whose assets must be maintained and protected due to future financial risks. Referring to a number of previous legal bases, the public interest can be understood as an interest that encompasses the nation, state, and/or collective interests of society. Thus, it is important to examine the meaning of each of its constituent elements. The first element, namely 'the interests of the nation and state', according to Krasner, is interpreted as the overall role and institution oriented towards a specific goal, which is essentially different from the interests of groups at the societal level.[8]According to the Big Indonesian Dictionary (KBBI), a nation is defined as a group of people bound by a common language, traditions, ancestors, and shared historical experiences. Diversity is a fundamental characteristic of a nation, making it impossible to define it rigidly or mathematically. This characteristic is evident in various objective factors that shape national identity, such as shared traditions, language, beliefs, ethnicity, and territory, which collectively form the historical foundation of a nation.

From the explanation above, it can be concluded that the scope of public interest encompasses all aspects concerning the interests of the nation and state. The state acts as an institution that oversees the various interests of a nation. Thus, the interests of the nation and state represent everything related to the existence and survival of the nation and state, which, if ignored, has the potential to disrupt the stability of government. Consequently, this can become an obstacle to achieving the state's goals as stipulated in the Preamble to the 1945 Constitution, Paragraph IV. Based on this study, the meaning of public interest must be understood comprehensively because it is essentially a broad concept and cannot be confined by a narrow perspective. Essentially, banking functions as an agent of development, namely an institution that aims to encourage national development to expand the distribution of development and its results, spur economic growth, and maintain national stability in order to improve the welfare of the people. This role is an implementation of the provisions of Article 4 of Law No. 7 of 1992 concerning Banking.[9], that is;

> Indonesian banking aims to support the implementation of national development in order to increase equality, economic growth, and national stability towards improving the welfare of society.

An analysis of Article 4 of the Banking Law clearly demonstrates that Indonesian banking functions as a state instrument in realizing the public interest. This is in line with the legal basis outlined previously and theoretically within the concept of statehood. The implication is that all banking policies and activities must align with the goals of improving public welfare, economic justice, and state stability—which are the essence of the public interest according to the Indonesian legal system. The general section of Law Number 7 of 1992 concerning Banking states:

> In order to realize a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution, the continuity and improvement of the implementation of national development based on a family principle must be consistently maintained. To achieve this goal, the implementation of economic development must pay greater attention to the harmony, alignment, and balance of the elements of equitable development, economic growth, and national stability.

[8] Dinda Heidiyuan Agustalita and Deni Setya Bagus Yuherawan, "The Meaning of Public Interest in Deponering Authority from the Perspective of Legal Certainty," Suara Hukum Journal 4, no. 1 (2023), p. 173

[9] Muhammad Djumhanna, Banking Law in Indonesia, Bandung, PT. Citra Aditya Bakti, 1996, p. 112

The general section of the Banking Law explicitly states that national development, including the banking sector, aims to realize a just and prosperous society based on the values of Pancasila and the 1945 Constitution as the constitutional foundation of the state. In this context, banking functions as a means of supporting economic development, the implementation of which must pay attention to the harmonization of three fundamental aspects: equitable distribution of development outcomes, increased economic growth, and maintaining national stability. This trilogy of elements demonstrates an approach that is not only technically and economically oriented, but also prioritizes the values of social justice and collective interests, as manifested in the concept of public interest according to various applicable regulations. Therefore, the implementation of economic development must prioritize the collective interests of all society, not just benefiting certain groups or market players. In this context, the banking industry has a dual role as a driver of growth and a balancer of development, while also serving as a link between the community's financing needs and the nation's development agenda.

Furthermore, in the second general section, Law Number 7 of 1992 concerning Banking states:

> One of the means that plays a strategic role in harmonizing and balancing each element of the Development Trilogy is banking. This strategic role is primarily due to the primary function of banks as a vehicle that can collect and distribute public funds effectively and efficiently, which, based on economic democracy, supports the implementation of national development in order to increase the equality of development and its results, economic growth and national stability, towards improving the standard of living of the people.

In this general section, it is explained that banking is a strategic means in realizing the Development Trilogy, namely:

a. Equitable development and its results;
b. Economic growth; and
c. National stability

These three elements not only have technical and economic dimensions, but also function as key indicators in realizing the welfare of society at large. Banking plays a strategic role through its function as a financial intermediary institution, namely collecting and distributing public funds optimally. If this function is carried out accountably and in line with the principles of economic democracy, banks can play a role as a driving force in equalizing access to economic resources and contributing to the stability of the national financial system. The emphasis on the principle of economic democracy reflects that the banking sector does not solely operate based on free market mechanisms, but is bound by the principle that economic activities must be carried out collectively by all elements of society in order to realize shared prosperity, as mandated in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Within this framework, banks are positioned as public instruments that are not only oriented towards obtaining profits, but also have a constitutional responsibility to realize social justice and general welfare.

One of the roles of banking in carrying out public interests as regulated in Article 12 of Law Number 7 of 1992 concerning Banking is

> The government can assign Commercial Banks to implement government programs to develop certain economic sectors, or to pay greater attention to cooperatives and entrepreneurs from the economically weak/small business groups in order to improve the standard of living of the people, based on provisions further regulated by Government Regulation.

Thus, the role of banking occupies a crucial position within the framework of a welfare state. State intervention in the form of regulation, supervision, and even the implementation of extraordinary policies in the banking sector, such as in crisis situations or cases of economic crime, can be legally justified as long as it is aimed at protecting the public interest. This approach aligns with the principles of positive law that place the interests of the nation and state above the interests of individuals or specific groups. From this description, it can be concluded that banking is not simply an economic entity performing private functions, but rather an institution that bears public responsibility for realizing social justice and the welfare of society as a whole. Therefore, banks must be positioned as institutions with a public interest, so that every policy and action related to the banking sector must always consider public values, national economic stability, and the principle of social justice as the main pillars of national and state life.

Legal Certainty for Banks as Creditors for Mortgage Objects Confiscated by the State

This is reflected in Supreme Court Decision Number 540 K/Pdt/2022, which affirms the application of the principle of public interest priority in the event of a conflict between efforts to restitute state losses and the implementation of civil security rights. This decision explicitly states that the existence of a mortgage right over the disputed object owned by the Opponent (Bank) does not preclude the state's authority to seize assets related to corruption. In this decision, the state, through the application of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (the Corruption Law), overrides the mortgage right held by the bank under the pretext of recovering state financial losses. However, this approach has the potential to disrupt the systemic stability of the banking system, considering that the seized collateral is an integral part of the public funds collected by the bank. Neglecting creditors' execution rights can hinder the return of customer funds, which in turn can increase the risk of mass withdrawals (bank runs) and trigger a liquidity crisis. This condition is contrary to the principle of fiduciary duty inherent in banks towards the public and the state, and is not in line with the provisions of Article 29 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which emphasizes the importance of maintaining public trust in the banking system.

Therefore, guaranteeing legal certainty for banks facing asset seizures can only refer to the protection mechanism for good-faith third parties, as stipulated in Supreme Court Regulation (Perma) Number 2 of 2022 concerning Procedures for Resolving Objections from Good-Faith Third Parties to Decisions on Confiscation of Property Not Belonging to the Defendant in Corruption Cases. Upon further examination, there are several crucial points in the provisions of Article 1 number 3 of the Perma, including:

> A Third Party in Good Faith is a party who can prove to be the legal owner, guardian, trustee of the owner of the goods, or curator in a bankruptcy case for goods that have no legal connection to the process of the occurrence of the crime of corruption.

If analyzed in this article, the Bank is not the owner of the asset (only the holder of the mortgage) because the Regulation explicitly limits protection only to:

a. The physical owner of the object;
b. Guardian/guardian of the owner of the goods;
c. Curator in bankruptcy.

However, banks, as creditors holding mortgage rights, do not fall into this category because they only hold material rights to the collateral object without material ownership. Therefore, banks do not qualify as "good faith third parties" as defined in the Supreme Court Regulation. This regulation explicitly limits protection to parties holding legal ownership of physical objects, not to holders of material security rights such as mortgages. Based on this analysis, the provisions in Supreme Court Regulation (PERMA) Number 2 of 2022, which were originally intended to provide legal space for third parties, including creditors, to defend their mortgage rights through an objection mechanism, actually reinforce structural discrimination against holders of material security rights, such as banks. Limiting protection for "good faith third parties" exclusively to the legal owners of physical objects, without accommodating holders of material rights, creates a fundamental contradiction to the principles of property law. In fact, mortgage rights, as absolute property rights, as stipulated in Articles 4, 7, and 21 of Law Number 4 of 1996, hierarchically have an equal status to property rights. However, the Supreme Court Regulation reduces the position of these rights to merely obligatory interests. This contradicts the principle of specialization in property law and the provisions of Article 1134 of the Civil Code, which emphasizes the creditor's preferential rights. Therefore, a broader interpretation of the meaning of "third party in good faith" in the Supreme Court Regulation is needed to include creditors holding property security rights. It could even be created through a Government Regulation in Lieu of Law (Perppu) to address the legal vacuum regarding the role of banks as parties who do not act in good faith in protecting the rights of collateral objects from confiscation by the state due to future corruption.

CONCLUSION AND SUGGESTION

Conclusion

1. The concept of public interest in the Indonesian legal system is comprehensive, encompassing the interests of the nation, state, and wider society to achieve the welfare of the people. Indonesian banking plays a vital role as a state instrument in realizing this public interest. Through its intermediary function and based on the principles of economic democracy, banking is tasked with supporting national development by balancing the Development Trilogy (equality, growth, stability) to improve the standard of living of the people. As an institution with a public interest, banking has a constitutional responsibility that requires its policies and operations to always consider public values and social justice.
2. Supreme Court Decision No. 540 K/Pdt/2022 affirms the supremacy of the public interest in restitution of state losses for bank collateral rights, but has the potential to threaten banking stability. Supreme Court Regulation No. 2/2022 actually weakens the legal position of banks as collateral holders by limiting the definition of a "good faith third party" to only the physical owner. This limitation contradicts the principles of property law and risks creating legal uncertainty. Therefore, a more inclusive interpretation of the "good faith third party" in the Supreme Court Regulation is needed to accommodate bank interests and harmonize policies to balance efforts to eradicate corruption with financial system stability.

Suggestion

Therefore, it is necessary to reformulate regulations that explicitly recognize the position of banks in the Banking Law as a third party acting in good faith. Furthermore, it is necessary to explicitly regulate the position of banks as holders of collateral objects in Law Number 4 of 1996 concerning Mortgage Rights by adding norms or paragraphs to Article 9 in Part III of the Grantor and Holder of Mortgage Rights. Then, there needs to be an exception in the Corruption Crime Law regarding the confiscation of tangible and intangible movable assets that have become collateral objects by banks. In this way, there is legal certainty for banks as creditors who have separatist rights over material objects that can execute their collateral objects directly without having to confiscate assets by the state.

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Civil Code
Law Number 7 of 1992 concerning Banking
Law Number 10 of 1998 concerning Banking
Law Number 4 of 1996 concerning Mortgage Rights;