

Legal Consequences of the Termination of Building Use Rights as Mortgage Objects Before the Credit Agreement Matures

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Abstract. *This study aims to analyze: 1) The position of the holder of the mortgage right on the land of the building use right in the credit agreement. 2) The legal consequences of the termination of the building use right as the object of the mortgage right before the credit agreement matures. The approach method in this study is the statute approach. This type of research is a normative research. The type and source of data in this study are secondary data obtained through literature studies. The analysis in this study is descriptive qualitative. The results of the study concluded: 1) The position of the holder of the mortgage right on the land of the building use right in the credit agreement since the termination of the mortgage right, namely the creditor (holder of the mortgage right) is no longer guaranteed by the Mortgage Right, the creditor henceforth does not have a position as a preferred creditor, but rather as a concurrent creditor (Article 1131 of the Civil Code). The credit or debt agreement between the creditor and debtor remains in place (continues to take place), but the creditor's position as the holder of the mortgage rights which previously took precedence in the repayment of the debt changes status to become a concurrent creditor. His position will be the same as the position of other creditors who are not holders of collateral rights whose receivables are not prioritized and these creditors together as concurrent creditors. 2) The legal consequence of the termination of the building use right as the object of the mortgage before the credit agreement matures is that it does not cause the debt secured by the Mortgage Right to be extinguished. The extinguishment of the mortgage right due to the extinguishment of the land rights burdened with the Mortgage Right does not cause the guaranteed debt to be extinguished. The legal consequence of the expired Building Use Right is that logically the debtor in this case is no longer entitled to the object of the collateral because the expired land rights according to the law have returned to the state, but the debtor must continue to pay off his credit because in the process of guaranteeing the object there are 2 (two) Notary Deeds and Land Deed Making Officials (PPAT) attached, namely*

the Deed of Granting of Mortgage Rights (APHT) and the Credit Agreement Deed, which are the 2 (two) Deeds that are the basis for paying off his credit even though the object he owns has expired.

Keywords: Building; Credit; Maturity.

1. Introduction

Indicators of increasing economic wheels in Indonesia are currently marked by various factors, one of which is increasing activity. Business actors in meeting their financial needs are carried out in various ways, one of which is borrowing funds or capital known as credit which is done through banking. In Indonesia, what regulates banking is Law Number 7 of 1992 concerning Banking which was amended by Law Number 10 of 1998. The definition of a bank in article 1 number 1 of Law Number 7 of 1992 concerning Banking is a business entity that collects funds from the public in the form of savings and distributes them to the public in order to improve the standard of living of the people.¹ The strategic role of banking in harmonizing and balancing development equity, economic growth and national stability, namely by providing loans to the community through credit.²

Credit is a money lending agreement between a bank as a creditor and a customer as a debtor. In this agreement, the bank as the creditor believes that the customer will return (pay) in full within the agreed time period.³ Indeed, it can happen, because in practice, many debtor customers do not keep the agreed time in returning their loans for various reasons. Therefore, in the formulation of the definition of credit, it is emphasized regarding the obligation of debtor customers to pay off their debts according to the time period and accompanied by other obligations, which can be in the form of interest, compensation or profit sharing.⁴

Before providing credit to the public, the bank must be sure that the funds lent to the public will be returned on time along with interest and with the terms and conditions that have been mutually agreed upon by the bank and the customer, which are stated by the bank and the customer in the credit agreement. To find

¹I Ketut Sukawati Lanang Putra Perbawa, Settlement of Bad Debts in Banking. Journal of Law, Faculty of Law, Mahasaraswati University, Denpasar, p.62

²Sulistiani, Jawade Hafidz, Notary-PPAT Cooperation with Banks in Making Deeds of Granting Mortgage Rights, Jurnal Akta, Volume 4 Number 4 December 2017, p.708

³Adrian Sutedi, 2006, Implications of Mortgage Rights on the Provision of Credit by Banks and Settlement of Problematic Credit, Cipta Jaya, Jakarta, p. 19

⁴Lushun Adji Dharmanto, 2016, Legal Protection for Creditors with Building Use Rights Objects That End Before the Credit Agreement Matures, Journal of Legal Reform, Volume III Number 2, p.246

out the customer's ability and willingness to return the loan on time, in the credit application, the bank needs to review the credit application.⁵

Credit as one of the many businesses carried out by banks certainly has sufficient risks big for banks. To provide assurance of certainty regarding the return of credit from debtor customers, banks always ask for collateral or security.⁶ Guarantee institutions are a very important need for creditors or banks to minimize the risk in distributing credit. Guarantees as a means of protection for creditor security, namely the certainty of the debtor's debt repayment or the implementation of an achievement by the debtor or by the debtor's guarantor, if the debtor is unable to complete all obligations related to the credit.⁷ The institution of collateral is an important thing in making and implementing a credit agreement which is followed by the existence of a power of attorney to impose a mortgage in the case of the collateral in the form of land. The existence of collateral is basically intended to secure third party funds managed, such as by banks that lend their funds to customers, as well as fulfilling the requirements of laws and regulations.⁸ The collateral in the credit agreement must be examined first by the bank.

Mortgage Rights are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, with or without other objects that are an integral part of the land, for the repayment of certain debts, which give a priority position to certain creditors over other creditors.⁹ Mortgage rights are control over Mortgage rights which are the authority for creditors to do something to the Mortgage Rights that have been used as collateral. These rights are not to physically control and use them, but to sell them if the debtor fails to fulfill his promise and the right to take from the proceeds of all sales or part of the proceeds of sales as payment of the debtor's debt to him.¹⁰

Building use rights are one of the land rights that can be used as collateral in a loan. Building Use Rights in the UUPA are specifically regulated in Articles 35 to 40, which state that Building Use Rights are the right to construct and own buildings on land that is not one's own, with a maximum period of 30 years. An application for an extension of the term of the Building Use Rights according to

⁵Munir Fuady, 2002, *Contemporary Credit Law*, Second Printing, Revised Edition, Citra Aditya Bakti, Bandung, p. 22.

⁶Firdaus, R., and Ariyanti, M, 2004, *General Bank Credit Management*, Alfabeta, Bandung, p.87

⁷Herowati Poesoko, 2007, *Parate Executie Object of Mortgage Rights (Inconsistency, Conflict of Norms and Fallacies of Reasoning in UUHT)*, Yogyakarta, First Printing, Laksbang Presssindo, p. 185

⁸Yusup Sugiarto, Dany Bramandoko, and Gunarto, *The Role of Notaries/PPAT in Making Power of Attorney to Charge Mortgage Rights in Home Ownership Credit Agreements*, *Jurnal Akta*, Volume 5 Number 1 January 2018, p.2

⁹Purwadi Patrik and Kashadi, 2001, *Law of Guarantee*, Faculty of Law, Diponegoro University, Semarang, p. 14

¹⁰Sutan Remy Sjahdeini, 2012, *Mortgage Rights, Principles, Basic Provisions and Problems Faced by Comparison*, Airlangga University Press, p. 3

Article 41 of Government Regulation (PP) Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration can be submitted no later than two years before the end of the term of the Building Use Rights. Building Use Rights that are used as collateral for Mortgage Rights have a time limit, so of course it will give rise to its own legal problems. The ambiguity about the legal implications of the expiration of HGB in the context of mortgage rights before the maturity of the credit agreement can cause legal uncertainty, conflict between the parties involved in the transaction, and even the potential for significant financial losses for banks and borrowers.

2. Research methods

The approach method in this study is the statute approach. This type of research is normative research. The type and source of data in this study are secondary data obtained through literature studies. The analysis in this study is descriptive qualitative.

3. Results and Discussion

3.1 Position of the Holder of Mortgage Rights on Land with Building Use Rights in the Credit Agreement

Banks or creditors as financial institutions have an important role in the economy and development of every country whose business activities are as financial intermediary institutions for the community by collecting funds from the community who want to save funds and the community who need funds to improve social welfare, improve national development and improve the national economy.¹¹The function of banking can be seen in the provisions of Article 3 of Law Number 7 of 1992 concerning Banking, which formulates the main function of Indonesian Banking as a collector and distributor of public funds. From this Article, it can be concluded that the function of banks in the banking legal system in Indonesia is as an intermediary for people with surplus funds and people who are short of funds. The collection of public funds carried out by banks based on this article is called savings, while the distribution back from the bank to the community is called credit.¹²In this case, land is the object or collateral that is most preferred by financial institutions that provide credit facilities, because in general land is easy to sell, has strong proof of rights and can be burdened with mortgage rights.

Land rights that can be burdened with Mortgage Rights according to Law Number 4 of 1996 are Ownership Rights (HM), Cultivation Rights (HGU), Building Rights (HGB), and Use Rights over State land which according to applicable provisions must be registered, according to their nature can be transferred and can also be burdened with Mortgage Rights. Mortgage Rights burden land rights, not the land itself. As an immovable object, the land does not go anywhere, but land

¹¹Hermansyah, 2008, Indonesian National Banking Law, Jakarta, Kencana, p. 7

¹²Rani Apriani and Hartanto, 2019, Banking and Securities Law, Yogyakarta, Deepublish, p. 26

rights can be transferred or assigned or their term ends like Building Use Rights. With the end of the term of Building Use Rights, according to the law the land rights are terminated and thus the rights that burden it such as Mortgage Rights are also terminated. Although a land right in the form of Building Use Rights given as collateral is strategically located and has high economic value, it certainly has no meaning if the land rights have ended before the credit matures because with the end of the Building Use Rights, the Mortgage Rights are also terminated. Meanwhile, the elimination of the Mortgage Right makes the creditor's receivables no longer specifically guaranteed based on the creditor's special position, but only guaranteed based on the general guarantee of Article 1131 of the Civil Code. Such a situation can be detrimental to the creditor if the debtor is in default. In relation to the limited term of the Building Use Rights, the laws and regulations have provided two ways that allow the holder of the Building Use Rights whose term has expired to remain the holder of the Building Use Rights, namely through the extension of the rights and through the renewal of the rights.¹³

Banks as creditors are entitled to legal protection. Legal protection includes protection of a person's rights and obligations, including banks as creditors. Based on the theory of legal protection, legal protection provided to the Bank as the holder of the mortgage rights who has preference over other creditors if there is collateral with the status of Building Use Rights which will or has matured, can be carried out from 3 (three) aspects, namely:¹⁴

1. Aspects before credit binding is carried out which are preventive measures from the bank

Based on the theory of legal protection, preventive legal protection efforts carried out by banks when receiving Building Use Rights whose term ends before the credit matures, then before providing credit, prospective debtors must fill out a complete credit application on the form provided by the bank, with attached data then analyzed and evaluated, while still paying attention to the 5C factors (character, capacity, capital, collateral, and condition of economy), 3P (purpose, prospect, and payment), and 3R (returns, repayment, and risk bearing ability).

The status of Building Use Rights can be accepted as a credit guarantee, on condition that the credit has a longer term, and the maturity of the rights is also possible, but is given selectively and considering the nature of the credit, whether it can be extended or not. As long as the credit is extended (revolving), of course it will be easy for the bank to monitor the maturity of the Building Use Rights, because every time it is extended there is always a review from the Analyst, Appraisal, and Legal. It is different if the credit is not extended (unrevolving), of course it requires special attention, because if the rights end, while the credit has not ended, the bank here will certainly suffer losses because

¹³Lushun Adji Dharmanto, Op.cit., p.248

¹⁴Erny Herawati, Op.cit., p.140

it only has the position of concurrent creditor, which is only entitled to the building standing on the land that is the collateral, while the rights to the land return to the state. As a preventive measure, the bank makes efforts including:

1. Determine the credit period granted;
2. Determining how long the credit will be given based on the remaining maturity period of the Building Use Rights used as credit collateral.

If the credit has been running, it is possible for debtors who want to change the status of their land from Building Use Rights to Ownership Rights, because it is indeed possible by the Decree of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 6 of 1998 concerning the Granting of Ownership Rights to Land for residential homes. Another preventive effort is for the application submitted by the debtor, the bank will first consider whether the debtor is smooth in paying his credit, so that there are no undesirable consequences in the future.

Banks can also request additional collateral or replacement collateral. This step is taken by the bank, because the bank feels that the collateral provided by the debtor is still insufficient or for other reasons that require requesting additional collateral or replacement collateral. Additional collateral is requested by the bank, because the main collateral provided by the debtor is not sufficient to guarantee the debt/credit.

2. Aspects before credit binding carried out by Notary/PPAT

Preventive measures to prevent problems from arising in the future, especially those that can harm the bank as a creditor, are also the responsibility of the Notary / PPAT, because the Notary / PPAT is a public official who is authorized to make authentic deeds regarding certain legal acts regarding land rights (Article 1 number 1 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials).

The steps taken by the Notary / PPAT after the credit binding is to bind the collateral, namely by making an APHT made by the Notary / PPAT. Before carrying out the making of the APHT, according to the provisions of Article 39 of Government Regulation Number 24 of 1997 in conjunction with Article 97 of the Regulation of the Minister of Agrarian Affairs / Head of BPN Number 3 of 1997, the PPAT is required to first conduct an examination at the local Land Office of the lists in the office. The PPAT will see whether the rights holder is authorized to take legal action, whether it is done for himself, acting under power of attorney, acting based on the agreement of the husband / wife to guarantee joint property.

3. Aspects after credit binding is carried out.

The encumbrance of Mortgage Rights as stated in the APHT made by the PPAT, must be followed up with its registration at the Land Office. No later than 7 working days after signing the APHT, the Notary / PPAT is required to send the

relevant APHT and other required documents. Mortgage Rights are born when registered at the Land Office after the documents are complete, which is known as the principle of publicity (Article 13 UUHT). As the holder of the Mortgage Rights, the bank will continue to secure the credit position provided and the guarantees provided and the debtor, while still paying attention to the interests of the debtor, including if the debtor wants to change the Building Use Rights to be burdened with Mortgage Rights to Ownership Rights.

Based on the theory of legal protection, preventive efforts that can be made by banks / creditors are to supervise the credit facilities provided because the bank must monitor the use of credit, whether it has been used according to the provisions. The bank has the right to check the debtor, especially in checking the HGB files as collateral objects before the time period ends.

Talking about legal protection for creditors in the context of Mortgage Rights is certainly inseparable from legal protection and legal certainty for debtors or collateral owners and other related parties. Legal certainty is a value that in principle provides legal protection for every citizen from arbitrary power, so that the law gives responsibility to the state to implement it in this case the relationship between the issue of legal certainty and the state is apparent.¹⁵

Legal certainty is the implementation of the law according to its wording so that the community can ensure that the law is implemented. In understanding the value of legal certainty, what must be considered is that the value has a close relationship with positive legal instruments and the role of the state in actualizing it in positive law. The law does not only pay attention to the interests of creditors. Protection is also given to debtors or providers of Mortgage Rights. Even third parties who are interested can be affected by the way creditors and debtors settle their debts, in the event that the debtor defaults. Third parties, especially other creditors and parties who purchase the Mortgage Right object.¹⁶

The elimination of Mortgage Rights with the elimination of rights to the land that is burdened, raises problems and objections in practice, especially creditors. Building Use Rights whose term has expired return to the state, whereas according to the UUPA system, the state is not the owner of the land, but rather controls the land. Mortgage Rights that do not have a strong position, that do not have a material nature (can be defended against anyone) and do not have a *droit de suite* nature (always follows the object) will no longer meet the needs of modern and international banking, capital and credit traffic.

HGB in this case is the object of collateral in a mortgage institution that is bound to a credit agreement as the principal agreement. The nature of the guarantee agreement is constructed as an accessory agreement, namely an agreement that

¹⁵E. Fernando M. Manulang, 2016, *Legism, Legality and Legal Certainty*, First Edition, Kencana, p. 94.

¹⁶Boedi Harsono, 1999, *Indonesian Agrarian Law (History of the Formation of the Basic Agrarian Law, Contents and Implementation)*, Djembatan, Jakarta, p. 405.

is linked to the main agreement in the form of a credit granting agreement or a credit opening agreement by the Bank. The position of the guarantee agreement constructed as an accessory agreement guarantees the strength of the guarantee institution for the provision of credit by creditors.¹⁷

The elimination of HGB on land to become state land or land with management rights that is used as an object of collateral for mortgage rights as stipulated in Article 37 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, will cause the mortgage rights to also be eliminated. The mortgage right can no longer be used as collateral for a principal agreement that has been made previously, as regulated in Article 18 of the UUHT.¹⁸ Article 37 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, requires HGB to return to state land after being extended and renewed once each, resulting in banks as creditors having to be more careful with credit agreements as principal agreements. Banks as preferred creditors will become concurrent creditors if the HGB returns to state land in accordance with Article 18 of the UUHT. To prevent this, banks as creditors are required to take additional steps in securing credit and avoiding the risk of becoming concurrent creditors, one of which is with personal guarantees.

Article 22 of the UUHT stipulates that after the mortgage is removed, the Land Office will delete the mortgage note on the land title evidence and its certificate. The mortgage certificate in question is withdrawn and together with the mortgage book is declared no longer valid by the land office. If the certificate as referred to above, due to a certain reason, is not returned to the land office, this is recorded in the mortgage land book.¹⁹ If the mortgage right is extinguished, it will have legal consequences for the position of the creditor holding the mortgage right, who was originally positioned as a preferred creditor as the holder of the collateral for the object, then with the elimination of the mortgage right, the position of the creditor changes to become a concurrent creditor who has individual rights which are rights arising from general guarantees or guarantees arising from laws as stated in Article 1131 of the Civil Code.

¹⁷Yurichy Poppy Suhantri, et al., 2020, Legal Protection for Creditors with Building Use Rights Objects That Will Expire Before the Credit Agreement Matures Viewed from the Legal Aspect of Mortgage Rights, *Lex Et Societatis*, Volume 8 Number 3, p.83

¹⁸Purnama, Komang Adhi Kresna, 2021, Implementation of Changes in Building Use Rights Burdened with Mortgage Rights to Ownership Rights for Residential Houses, *Construction Law Journal*, Volume 2, Number 1, p. 148

¹⁹Ardiyanto, 2022, Legal Position of Holders of Mortgage Rights on Land Building Use Rights on State Land Whose Term Has Expired, *RechtIdee*, Volume 17, Number 2, p.282

3.2 Legal Consequences of the Termination of Building Use Rights as Mortgage Objects Before the Credit Agreement Matures

According to Article 18 paragraph (1) letter d UUPA, it is stated that Mortgage Rights are extinguished with the extinguishment of the land rights burdened with the Mortgage Rights. Meanwhile, land rights in the form of Building Use Rights can be extinguished due to the end of the land rights period (Article 40 UUPA). With the end of the Building Use Rights period, the land rights are extinguished, and the extinguishment of the Building Use Rights results in the extinguishment of the Mortgage Rights that burden it. However, the extinguishment of the Mortgage Rights certainly does not cause the debts secured by the Mortgage Rights to be extinguished. Thus, since the extinguishment of the Mortgage Rights, receivables and creditors are no longer guaranteed by the Mortgage Rights. Creditors henceforth do not have the position of preferred creditors, but rather as concurrent creditors (Article 1131 of the Civil Code).

The legal consequences of the termination of the building use rights as the object of the mortgage before the credit agreement matures do not cause the debt secured by the Mortgage Rights to be extinguished. This is as described in Article 8 paragraph (4) of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, which explains that the extinguishment of the mortgage rights due to the extinguishment of the rights to land burdened with the Mortgage Rights does not cause the guaranteed debt to be extinguished, which in the general explanation in this article is only written quite clearly, there is no in-depth explanation regarding the execution of its implementation, while the value of the collateralized SHGB is the main source for customers to complete their credit.

Based on the above description, the legal consequences arising from a legal act, namely entering into a debt agreement with a building use rights certificate that has expired or expired, are that the debtor no longer owns the object as a source or main basis for paying off his debt, because in accordance with Article 18 paragraph (1) letter d of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, regarding the elimination of mortgage rights which reads "Elimination of Rights to Land Encumbered with Mortgage Rights". This means that the mortgage rights are no longer bound because the building use rights have been terminated or expired, with this legal consequence, the debtor logically no longer has the right to the object of his collateral so that this can be one of the loopholes for the debtor not to pay off his debt because the building use rights certificate that has expired according to the law has returned to the state. Therefore, based on the legal consequences, in order to carry out the guarantee process on an object of land rights, it is mandatory to sign a deed of granting mortgage rights between the debtor and the creditor, which then, as previously explained, mortgage rights are not a stand-alone agreement, the existence of mortgage rights is due to the existence of another agreement which is usually called a credit agreement, in

other words, mortgage rights are an accessory agreement which is stated in point 8 of the general explanation of the mortgage rights law.

Expired building use rights cause the mortgage rights to be terminated, but because the mortgage rights are not a stand-alone agreement, there is a credit agreement that is the parent, so the debtor is still required to pay off his debt based on the credit agreement, in addition, considering that the building use rights that are attached to the mortgage rights are only as collateral that can be executed by the creditor if the debtor is negligent in completing his obligations as stated in the credit deed. Legal certainty requires that the settlement or legal consequences of the termination of the HGB as the object of the Mortgage Rights be based on the provisions stipulated in the relevant laws and regulations. This helps ensure that the decisions taken are based on a strong legal basis and can be accounted for.

4. Conclusion

The legal consequence of the termination of the building use rights as the object of the mortgage before the credit agreement matures is that it does not cause the debt secured by the Mortgage Right to be extinguished. This is as explained in Article 8 paragraph (4) of Law Number 4 of 1996 that the termination of the right to land burdened with the Mortgage Right does not cause the guaranteed debt to be extinguished. The legal consequence of the expired Building Use Rights is that logically the debtor in this case is no longer entitled to the object of his collateral because the expired land rights according to the law have returned to the state, but the debtor must continue to pay off his credit because in the process of guaranteeing the object there are 2 (two) Notary Deeds and Land Deed Making Officials (PPAT) attached, namely the Deed of Granting of Mortgage Rights (APHT) and the Credit Agreement Deed, which are the 2 (two) Deeds that are the basis for paying off his credit even though the object he owns has expired.

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