

Legal Position and Implications of Land Lease Agreements Subject to Mortgage Rights

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Abstract. *This study aims to analyze the legal position of land lease agreements and the legal implications of leasing land encumbered with mortgage rights. The research method used is normative legal research with statutory and conceptual approaches. Legal materials were obtained through library research consisting of primary, secondary, and tertiary legal materials, which were then analyzed qualitatively using a descriptive-analytical method. The novelty of this study lies in the analysis of the relationship between lease rights as personal rights and mortgage rights as material rights, particularly regarding legal protection for tenants when the leased object is executed by creditors. Based on the results of the study, it is concluded that land lease agreements provide tenants with the right to utilize the land; however, their position is weaker than mortgage rights, which possess preferential characteristics and the principle of droit de suite. Consequently, if the debtor defaults and execution is carried out on the collateral object, the tenant may lose the right to use the leased object before the lease period expires. Legal protection for tenants remains limited and largely depends on the contents of the agreement and the creditor's approval in the Deed of Granting Mortgage Rights, therefore caution is required when entering into land lease agreements in order to minimize potential legal risks.*

Keywords: Land; Lease; Implication; Mortgage; Protection.

1. Introduction

Agreements constitute the primary source of the emergence of civil legal relationships between parties (I Made Adi Saputra, 2021). In the context of Indonesian civil law, agreements are regulated under the Civil Code (Kitab Undang-Undang Hukum Perdata/KUHPerdata), which provides the legal foundation concerning the rights and obligations of parties who bind themselves (D. G. S. Mahottama., 2024). One of the most commonly encountered types of agreements is the lease agreement. In practice, the objects of lease agreements are highly diverse, one of which is land. Land holds a very important position in human life, both as a place of residence and as a means to carry out economic, social, and cultural activities.

Consequently, land is often used as the object of various legal acts, including lease agreements. Through such agreements, the lessee obtains the right to use and enjoy the land for a certain period based on an agreement with the landowner. In a land lease relationship, the lessee is granted the right to utilize land owned by the lessor for a specified period in exchange for rent. (Soleman, 2018).

The validity of a lease agreement is subject to the provisions of Article 1320 of the Civil Code, which requires the existence of mutual consent, legal capacity, a specific object, and a lawful cause (Yuliana, 2025). Furthermore, as stipulated in Article 1338 of the Civil Code, once these requirements are fulfilled, the agreement becomes legally binding as law upon the parties who enter into it. In addition, the parties to the agreement must also adhere to applicable customs, norms, and statutory regulations (Sari, 2019). However, in practice, complex legal issues often arise when the land that becomes the object of a lease agreement is encumbered with mortgage rights. Mortgage rights are rights granted to creditors to secure the fulfillment of obligations by debtors using immovable property, such as land, as collateral (Putri, 2024). Based on Article 1 point 1 of the Mortgage Law (UUHT), mortgage rights are security rights imposed on land rights for the settlement of certain debts, granting priority status to creditors over other creditors (Syamsiah, D., & Nurviana, 2022).

This provision indicates that mortgage rights possess a preferential nature and the principle of *droit de suite*, meaning that such rights remain attached to the object even when it is transferred to another party (Pertiwi, 2023). If the debtor fails to fulfill their obligations, the creditor has the right to execute the land that serves as collateral, including when the land has been leased to a third party (Paputungan, 2016). This condition demonstrates the potential vulnerability of lessees in lease relationships involving land encumbered with mortgage rights. The risks faced by lessees are not limited to the loss of the right to use the leased object before the expiration of the agreed period, but also include economic losses arising from rent payments already made. Moreover, lessees generally do not have sufficient access to information regarding the legal status of the land, particularly concerning the existence of mortgage encumbrances, thereby placing them in a weaker position within the legal relationship (I. M. Mahottama, 2024).

In this context, legal protection for lessees becomes an important issue to examine. In general, legal protection can be provided through both preventive and repressive mechanisms. Preventive protection may take the form of prudence in the contracting process, such as conducting due diligence on land certificates prior to entering into agreements, as well as including clauses that regulate risks in the event of mortgage execution (Jayani, N. P., 2024). Meanwhile, repressive protection may be pursued through legal remedies in the event of disputes, including claims for damages against lessors who fail to transparently disclose the legal status of the leased object (Yuniyanti, N. L., 2025). However, normatively, there is still no clear and comprehensive regulation governing the legal position and protection of lessees in such circumstances. This situation creates legal uncertainty and opens the possibility of conflicts of interest between lessees and creditors holding mortgage rights. Therefore, further

analysis is required to examine the legal position of lease agreements involving land encumbered with mortgage rights and their implications for the protection of lessees, as also highlighted in studies concerning the relationship between lease rights and mortgage rights.

2. Research Methods

This study employs a normative legal research method, namely research conducted by examining library materials or secondary data as the primary source. Normative legal research focuses on legal norms contained in statutory regulations as well as court decisions related to the issues under study (Soekanto, 2019). The approaches used in this research are the statute approach and the conceptual approach. The statute approach is carried out by examining various legal regulations related to lease agreements and mortgage rights, such as the Civil Code (KUHPPerdata) and Law Number 4 of 1996 concerning Mortgage Rights. Meanwhile, the conceptual approach is used to understand legal concepts developed in legal doctrines and literature (Marzuki, 2021).

The types of legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant statutory regulations, such as the Civil Code and the Mortgage Law. Secondary legal materials consist of legal literature books, journals, and expert opinions related to agreements and mortgage rights. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias that assist in explaining legal terms (Ibrahim, 2020). The technique for collecting legal materials is carried out through library research, by collecting and reviewing various literature relevant to the research topic. Furthermore, the obtained legal materials are analyzed qualitatively using a descriptive-analytical method, namely by systematically describing the legal issues under study and linking them to the applicable legal provisions (Amiruddin, & Asikin, 2018).

3. Results and Discussion

3.1. Legal Position of Land Lease Agreements

A land lease agreement is a form of civil law relationship that plays an important role in land utilization. Based on Article 1548 of the Civil Code (KUHPPerdata), a lease is an agreement in which one party grants the enjoyment of an object to another party for a certain period in exchange for an agreed price. In this context, land as a lease object has specific characteristics, as it not only has high economic value but is also closely related to agrarian law aspects. A land lease agreement falls within the category of personal rights (*persoonlijk recht*), as it arises from a contractual relationship between the landowner and the lessee. In principle, this right binds only the parties who enter into the agreement. However, in practice, lease rights over land have particular characteristics, as they grant direct control and utilization of the land for a specified period (Bramantya, R., Nugroho, A., & Wibowo, 2023)

The legal position of land lease agreements is important because it concerns legal certainty for the lessee in using the land. Although it is a personal right, lease rights enjoy a certain level of legal protection, particularly against interference by third parties. The lessee has the right to peacefully and securely enjoy the leased land throughout the duration of the agreement. In the event of interference, whether from the owner or other parties, the lessee may seek legal

protection based on the provisions of unlawful acts as stipulated in Article 1365 of the Civil Code (Putri, A. K., & Prakoso, 2022). Furthermore, within the framework of national agrarian law, lease rights for buildings on land are recognized under the Basic Agrarian Law (UUPA), particularly Article 44. This provision confirms that individuals or legal entities may lease land owned by others for the purpose of constructing buildings by paying a certain amount of rent. This demonstrates that Indonesian positive law provides legitimacy to land lease practices as a form of land utilization (Saputra, M. R., Hidayat, T., & Lestari, 2021).

Land lease agreements are temporal in nature, meaning they apply for a certain period as agreed by the parties. Once this period expires, the lease right also ends unless it is extended through a new agreement. During the validity of the agreement, the lessee has the right to use and utilize the land in accordance with the agreed purpose, while the landowner is obliged not to interfere with such use. However, the legal position of the lessee is not as strong as that of a holder of real rights, since lease rights do not confer ownership over the land. This places the lessee in a relatively weaker position, particularly in the event of a transfer of land rights or the imposition of other rights on the land. Therefore, the existence of a clear and comprehensive agreement is essential to ensure legal certainty and protection for the lessee. It can thus be understood that a land lease agreement is a legal instrument that grants limited land utilization rights to the lessee, while maintaining the landowner as the primary rights holder. This position implies that legal protection for the lessee largely depends on the contents of the agreement and applicable legal provisions, thereby requiring careful drafting to avoid potential disputes in the future.

3.2. Implications of Leasing Land Encumbered with Mortgage Rights

Mortgage rights constitute a form of security right over land that holds a significant position in Indonesia's legal system of collateral. Based on Article 1 point 1 of Law Number 4 of 1996 concerning Mortgage Rights (UUHT), mortgage rights are security rights imposed on land rights for the settlement of specific debts, granting priority status to creditors over other creditors. Mortgage rights have a preferential nature and are classified as real rights, meaning they can be enforced against any party (Saputra, M. R., Hidayat, T., & Lestari, 2021). The objects of mortgage rights are regulated in Article 4 paragraph (1) of the UUHT, which include ownership rights (Hak Milik), cultivation rights (Hak Guna Usaha), and building use rights (Hak Guna Bangunan). This means that land with such certified rights may be used as collateral for debt. The imposition process is carried out through a Deed of Granting Mortgage (Akta Pemberian Hak Tanggungan/APHT) as stipulated in Article 10 of the UUHT, which is executed by a Land Deed Official (PPAT) and must be registered at the Land Office to obtain binding legal force.

Mortgage rights possess several key characteristics that determine their legal implications. First, the principle of *droit de suite*, as regulated in Article 7 of the UUHT, which means that mortgage rights remain attached to and follow the object in the hands of whoever holds it. Second, the preferential right, which grants priority to creditors in debt repayment. Third, the executorial power, as regulated in Article 6 of the UUHT, which allows creditors to sell the

collateral object through public auction if the debtor defaults. In practice, land encumbered with mortgage rights may still be utilized by its owner, including being leased to third parties through lease agreements. However, legally, such land is no longer entirely free, as it is bound by the interests of the creditor as the holder of the mortgage right. In other words, there is a legal burden attached to the land certificate that may give rise to legal consequences if the debtor fails to fulfill their obligations (Bramantya, R., Nugroho, A., & Wibowo, 2023).

The primary legal implication for lessees arises when the debtor defaults, prompting the creditor to execute the mortgaged property. In such circumstances, pursuant to Article 6 of the UUHT, the creditor has the right to sell the collateral object through public auction without requiring the consent of the lessee. This demonstrates that real rights in the form of mortgage rights hold a stronger legal position than personal rights such as lease rights. Consequently, lessees of land encumbered with mortgage rights face several legal risks. First, the risk of termination of the lease agreement before the agreed period due to execution. Second, financial losses resulting from the loss of benefits from the leased object that has already been paid for. Third, limited legal protection, as the lessee has no direct legal relationship with the creditor as the holder of the mortgage right (Putri, A. K., & Prakoso, 2022). Although Article 1576 of the Civil Code provides that a lease is not terminated due to the transfer of rights over the leased object, in practice this provision does not fully protect lessees in cases of mortgage execution. This is because execution constitutes the enforcement of real rights, which hold a higher legal standing than contractual (personal) agreements.

Furthermore, Article 11 paragraph (2) of the UUHT allows for the inclusion of clauses in the APHT concerning prohibitions or limitations on the debtor in leasing the mortgaged property. If such a prohibition clause exists, then any lease agreement made without the creditor's consent does not bind the creditor. Conversely, if the creditor provides consent, the lessee may obtain stronger legal protection, as the existence of their lease right is recognized by the mortgage holder. Leasing land whose certificate is encumbered with mortgage rights poses legal risks for lessees, as the land may be executed by the creditor at any time if the debtor defaults. The position of mortgage rights as real rights places the lessee in a weaker position. Therefore, lessees must exercise caution, such as verifying the legal status of the land certificate and ensuring the existence of creditor consent, in order to minimize risks and obtain optimal legal protection.

4. Conclusion

A land lease agreement constitutes a legal relationship that grants the lessee the right to utilize land for a certain period based on the agreement of the parties. Although it falls within the category of personal rights, lease agreements still receive legal protection, particularly in ensuring the lessee's right to peacefully and securely enjoy the leased object throughout the duration of the agreement. However, the legal position of the lessee remains weaker than that of a holder of real rights, as lease rights do not confer ownership over the land, but merely grant temporary rights of use. When the leased land is encumbered with mortgage rights, it gives rise to serious legal implications for the lessee. Mortgage rights, as real rights, possess

preferential characteristics and the principle of *droit de suite*, which grant creditors the authority to execute the collateral object if the debtor defaults, without being bound by the existing lease agreement. As a result, the lessee may potentially lose the right to utilize the land before the expiration of the lease period and suffer financial losses. Legal protection for lessees in such circumstances remains limited and largely depends on the contents of the agreement as well as the existence of creditor consent as stipulated in the Deed of Granting Mortgage (APHT). Therefore, lessees must exercise due diligence before entering into a lease agreement, including verifying the legal status of the land and the existence of any mortgage rights, as well as seeking creditor consent in order to obtain greater legal certainty and protection. Balancing the interests of creditors and the protection of lessees is an important aspect that must be considered in the practice of land leasing in Indonesia.

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