

## Legal Protection for Creditors for Mortgage Rights for Building Use Rights that Have Expired Before the Credit Agreement Ends

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**Abstract.** *Providing credit carried out in Pekalongan should be able to provide legal protection for credit givers and recipients and related parties receive protection through a legal guarantee institution for all interested parties. The aim to be achieved in this research is to find out legal status regarding the expiry of Mortgage Rights on HGB that have expired before the credit agreement ends and to find out what the solution is to the Credit Agreement with Mortgage rights from HGB collateral that have expired before the credit period ends. This research uses a normative legal research approach, namely research carried out on certain laws or concepts. The main aim is to identify the main or basic meanings in law, namely legal society, legal subjects, rights and obligations, legal events, legal relations and legal objects. The results of research on credit agreements guaranteed by Building Use Rights certificates are always carried out by imposition of Mortgage Rights through three stages, namely the stage of entering into a debt and receivables agreement between the debtor and creditor, the process of granting Mortgage Rights before the PPAT, and the registration process by the Land Office. So, when signing the APHT, a power of attorney clause must be included so that the creditor can arrange for an extension of their rights if their Mortgage Rights end, offer to change their rights to Ownership Rights and ask for additional collateral or replacement collateral.*

**Keywords:** *Building; Mortgage; Protection; Rights.*

### 1. Introduction

One of the sources of law in the law in force in Indonesia which is commonly put forward in discussions of the Indonesian legal system is that the legislation in force at this time is very numerous and consists of several forms and levels, as

determined by the provisions on the sequence of statutory regulations. by applicable law. The provisions contained in article 1 paragraph (3) of the 1945 Constitution, Third Amendment, Indonesia are law.

According to the Fockema Andreae dictionary of legal terms, what is meant by a bank is an institution or individual who runs a company in receiving and giving money from and to third parties. Due to the existence of checks that can only be given to bankers as drawees, a bank in a broad sense is a person or institution which in its work regularly provides money to third parties.

Furthermore, Article 1132 of the Civil Code states: "These objects become joint collateral for all those who owe them, the income from the sale of these objects is divided according to the balance, namely according to the size of each individual's receivables, unless there are creditors among them. legitimate reasons to take precedence."

The general guarantees regulated in Articles 1131 and 1132 of the Civil Code have two weaknesses, namely:

- a. If all the assets or part of the assets can be transferred to another party, because they no longer belong to the debtor, then they are no longer collateral for the repayment of the creditor's receivables;
- b. If the proceeds from the sale of the debtor's assets are not sufficient to pay off the receivables of all creditors, each creditor will only receive partial payment in proportion to the amount of their respective receivables.

One of the consequences of the rule of law is that various actions and policies issued by the government must be based on laws and statutory regulations.

Mochtar Kusumaatmadja changed the meaning of tool law to law as a means to build society. that the definition of law as a means is broader than the definition of law as a tool.

In the process of granting credit, it often happens that the creditor is harmed when the debtor defaults, so that a legal rule is needed in implementing the imposition of Mortgage Rights as stated in a credit agreement, which aims to provide legal certainty and protection for the parties involved, especially the creditor if the debtor defaults or does not fulfill his obligations. Providing legal protection to creditors, especially if the debtor defaults on a credit agreement using a guarantee of rights in the general explanation of the Mortgage Rights Law, it has been stated that the characteristics of Mortgage Rights as a strong land rights guarantee institution are:

- 1) Giving a position that has priority or precedence to the holder;
- 2) Always follow the pledged object in whoever's hands the object is;

Fulfills the principles of specialization and publicity so that it can bind third parties and also provide legal certainty to interested parties, and easy and certain execution. In banking practice, it can happen that the term of the Building Use Rights has expired while the debts are still ongoing and the debtor is in default, or when the HGB term has not expired, while the debtor is in default because the debt repayment process is protracted, so that the validity period of the Building Use Rights is detrimental to the creditor. holders of mortgage rights, in this case the creditors of holders of mortgage rights need to receive legal protection.

In banking practice, it can happen that the term of the Building Use Rights has expired while the debts are still ongoing and the debtor is in default, or when the Building Use Rights period has not expired, while the debtor is in default because the debt repayment process is protracted, resulting in the validity period of the Building Use Rights detrimental to creditors holding mortgage rights, in this case creditors holding mortgage rights need to receive legal protection.<sup>6</sup>

The aim of the author of this journal is to find out what the solution is to a Credit Agreement with Mortgage Rights from HGB collateral that has expired before the credit period ends. So the problems discussed in writing this journal, What are the solutions if there is a Credit Agreement with Mortgage rights from HGB collateral that have expired before the credit period ends?

## 2. Research Methods

This research uses an approach method normative research, with a Statutory Approach and a Conceptual Approach. Secondary data collection method with Library study collection methods, namely: Collected by studying and compiling data from books, literature, journals, statutory regulations which is related to legal protection for creditors for mortgage rights for HGB that have expired before the credit agreement ends. And data analysis methods use qualitatively.

## 3. Results and Discussion

### 3.1. Legal status regarding the expiry of Mortgage Rights on HGB collateral that have expired before the credit period ends

With the problems that arise related to the expiration of HGB which is still in custody, new problems arise in the form of legal protection for cell banks. I'm a creditor. In this discussion there are two parts, namely:

1) Non-litigation legal protection; and

2) Litigation legal protection. The results of the analysis in this sub-chapter are to obtain the appropriate type of legal protection for creditors holding collateral rights for HGB whose term has expired.

To get credit at a bank you have to go through stages which will be described with the following structure and information:

1) Prospective debtors fill out a complete credit application on the form provided by the Bank, accompanied by data including:

a) Photocopy of the debtor's identity, such as the Debtor's Identity Card (KTP) and wife/husband and the Guarantor's Identity Card and husband/wife, Marriage Certificate,

Family Card, Proof of Citizenship and change of name if the debtor/guarantor is a citizen of Chinese descent. This is treated if the debtor is an individual debtor;

If the debtor is a Business Entity/Legal Entity, add the Deed of Establishment along with any amendments, up to the last amendment. This is to determine who has the right to represent the Business Entity/Legal Entity, both in borrowing money and providing collateral. In this regard, the bank usually asks the debtor to make a statement that the deeds submitted are deeds that are valid until the last change in the Business Entity/Legal Entity and release the bank if it turns out there is a mistake in terms of who represents the Business Entity/Legal Entity This is because the deed submitted to the bank is incomplete;

b) Financial reports for the last 3 (three) months;

c) Photocopy of the guarantee certificate, along with a photocopy of the last year's IMB (Building Permit) and PBB (Land and Building Tax) that have been paid;

d) NPWP (Taxpayer Identification Number);

e) Photocopy of business license.

2) All credit applications that have been received will undergo credit analysis and evaluation, while maintaining the 5C factors. Among others :

a) Checking the prospective debtor's data along with the business license they have, whether it meets the requirements in the sense that it is complete, and if

there are any requirements that are not yet complete, it must be completed at the maximum time the credit agreement is made;

b) Verify the correctness of the data, after matching it with the original. This can be done before/at the time of credit binding;

c) Judicial assessment of credit guarantees, meaning that the guarantee is not in dispute, has proof of ownership, has not been guaranteed to another party, meets the requirements to be bound by a mortgage right and is not used as a place of worship, social place or other public infrastructure, because this will make it difficult for the bank if the debtor later defaults;

d) Specifically regarding land collateral with Building Use Rights status, the legal entity must look at what year the term of the right expires, so that it can be a reference for credit decision makers to provide a maximum credit period, namely before the right expires;

e) Land with Building Use Rights status can be accepted with a credit guarantee on the condition that the credit facility must be paid off 2 years before the Building Use Rights expire.

In practice, for various reasons, credit facilities are often "forced" to be extended, for example because the debtor is unable to pay the debt immediately. Therefore, to secure the bank's position regarding the Building Use Rights guarantee;

f) Every time a HGB guarantee is received whose term is nearing its end, the bank always asks for additional collateral such as a guarantee for stock of goods, a personal guarantee, a guarantee for receivables or four-wheeled vehicles/cars. Credit facilities with such collateral conditions are provided very selectively.

3) After the credit evaluation analysis has been carried out, the credit application is brought to the credit committee/credit decision consisting of the Head of Credit, Head of Marketing, Branch Managers and coordinators of Branch leaders. The credit decision from this committee is considered valid if it is carried out by three the people mentioned above, and one of them must be a Business Coordinator. From the credit application submitted, the credit can be approved or rejected;

4) Credit decisions that have been approved or rejected by the bank are notified by the Account Officer to be conveyed to prospective debtors;

5) After the approval for granting credit is notified and approved by the prospective debtor, all credit application files along with approval for granting

credit are submitted to the legal officer for notarial credit binding and collateral binding, through a Notary/Land Deed Maker (PPAT) appointed by the bank. ;

6) After the credit binding and collateral binding processes are carried out, the files are submitted to the credit administration for credit disbursement/credit realization processes. After the credit is disbursed, monitoring of the use of credit must continue to be carried out, because if the credit facility is used deviating from the purpose of the application it can cause the credit to become bad, for example a credit application for working capital will become problematic if it is used for investment.

Credit agreements have not been formulated either in the Banking Law or the Draft Law on Credit, therefore there are several opinions regarding understanding the meaning of credit agreements, the subekti states that whatever form the credit is given, in essence what is happening is a loan and borrowing agreement as regulated by the Civil Code Articles 1754 to Article 1769.

For credit that has been approved by the bank and prospective debtor, marketing will create a Credit Approval Letter containing a description of the type of credit, province and administration, other costs such as stamp fees, appraisal fees, insurance and notary fees. Apart from that, the credit approval letter also outlines the conditions that must be fulfilled by the debtor is also a description of how many mortgage rights will be installed. For credit that is rejected, marketing notifies the credit committee's decision along with the reasons for the rejection, and all data that has been received from the prospective debtor must be returned to the prospective debtor.

One of the causes of expiry of building use rights in mortgage rights that have expired before the credit agreement ends is default due to the negligence of the debtor (customer). because the guarantee has ended, the debtor already knows that the guarantee has ended, HGB delete and the mortgage rights are also removed, then what the bank can do is sue you on the basis of breach of contract if you cannot fulfill your obligations under the credit agreement between you and the bank, The credit agreement remains unchanged.

If the HGB expires, is not renewed, and the term has ended, then the HGB is deleted. If the HGB is deleted, the mortgage rights will also be deleted. However, in general the bank will agree in the Deed of Granting Mortgage Rights that the mortgagee (debtor or third party) authorizes the mortgagee (creditor) to save the object of the mortgage, if this is necessary for execution or to prevent it being written off or cancellation of rights which are the object of mortgage rights due to non-compliance with or violation of statutory provisions.

Bearing in mind that collateral is one of the elements of providing credit, if based on other elements it is possible to obtain confidence in the ability of the debtor customer to repay the debt, the collateral can only be in the form of goods, projects or claims financed with the credit in question.

Land whose ownership is in the form of girik, petuk, and other similar things can be used as collateral. Banks are not obliged to ask for collateral in the form of goods that are not directly related to the object being financed, which is commonly known as additional collateral. In addition, banks in providing credit or financing based on sharia principles must also pay attention to the results of analyzes regarding environmental impacts for large-scale and/or high-risk companies so that the financed projects maintain environmental sustainability.

HGB is part of national land law which is regulated through UUPA. In Article 37 of the UUPA it is determined that HGB can occur because:

- a) Determination by the government if the object is land controlled directly by the State;
- b) An agreement in authentic form between the owner of the land concerned and the party who will obtain the HGB if the object is land owned by an individual."

After the Job Creation Law came into existence, PP 18/2021 was issued which revoked PP 40/1996 which regulated HGB, and also amended PP 24/1197 concerning Land Registration. Article 38 PP18/2021 regulates further regarding the occurrence of HGB, namely:

- 1) HGB on State Land is granted with a decision granting rights by the Minister;
- 2) HGB on Land Management rights are granted by a decision granting rights by the Minister based on the approval of the Management Rights holder;
- 3) HGB on freehold land occurs through the granting of rights by the owner of the property rights with a deed executed by the Land Deed Making Official;
- 4) The decision as referred to in paragraph (1) and paragraph (2) and the deed made by the Land Deed Making Official as intended in paragraph (3) can be made electronically."

According to the provisions of Article 25 paragraphs (1 and 2) of the UUPA, the HGB period is 30 years and can be extended for a maximum of 20 years. Meanwhile, according to Article 37 paragraph (1) PP 18/2021, HGB granted on land with Management Rights and State Land is granted for a period of 30 (thirty)

years. year, extended for a maximum period of 20 (twenty) years and renewed for a period of a maximum period of 30 (thirty) years.

Every credit application letter received must be recorded in a special register which is declared complete if it meets the requirements specified for submitting an application according to the type of credit. While the credit application is being processed, the application files must be maintained in the application file. The role of a Notary through the deed he or she makes is to provide legal certainty for the parties, namely the bank as the creditor and the customer as the debtor. This legal certainty guarantees the rights and obligations of each party in the credit agreement as stated in the authentic deed.

UUHT is used as a guideline in making a Deed of Granting Mortgage Rights. After the credit has been approved and signed by the parties, the Bank will make an order letter to the Notary/PPAT to make a credit agreement as well as a guarantee deed in the form of an authorization to place a mortgage or APHT as a guarantee agreement for the existing credit agreement.

According to Badriyah Harun, the main provisions stipulated by Bank Indonesia are:

- a) Providing credit or financing based on sharia principles is made in the form of a written agreement;
  - b) Banks must have confidence in the abilities and capabilities of debtor customers, which is obtained, among other things, from a careful assessment of the debtor customer's character, capabilities, capital, collateral and business prospects;
  - c) The bank's obligation to develop and implement procedures for providing credit or financing based on sharia principles;
  - d) The bank's obligation to provide clear information regarding credit or financing procedures and requirements based on sharia principles;
  - e) Prohibition of banks from providing credit or financing based on sharia principles with different requirements to debtor customers and/or affiliated parties;
- 7) Dispute resolution.

HR Daeng Naja stated that credit agreements have several functions, namely:



- a) The credit agreement functions as the main agreement, meaning that the credit agreement is something that determines whether or not other agreements that follow it are void or not, for example a collateral agreement;
- b) The credit agreement functions as evidence regarding the limitations of rights and obligations between creditors and debtors;
- c) The credit agreement functions as a tool for monitoring credit.

In order for banks to function as expected and ensure their survival, the leadership's skills and creativity are required in managing their business activities, namely how to collect funds as optimally as possible and how to meet the needs of their members in the form of providing credit.

The formulation of Article 1313 of the Civil Code, apart from being incomplete, is also very broad. It is incomplete because it only mentions one-sided agreement. It is very broad because when the word "act" is used, it also includes voluntary representation and unlawful acts. In this regard, it is necessary to make improvements to the definition, namely:

- a) Actions must be interpreted as legal actions.

That is actions aimed at causing legal consequences;

- b) Adding the words "or binding themselves to each other" in Article 1313 of the Civil Code.

So the formulation becomes "an agreement is a legal act, where one or more people bind themselves or mutually bind themselves to one or more people".

### **3.2. Solution if there is a Credit Agreement with Mortgage rights from HGB collateral that have expired before the credit period ends**

In credit activities it can be concluded that there are elements:

1. Trust, namely the confidence of the credit giver that the achievements given, whether in the form of money, goods or services, will actually be received back within a certain period of time in the future;
2. Grace period, namely a period that separates the award of achievements from the counter-achievements that will be received in the future. In this time element, there is an understanding that the premium value of the money that exists now is higher in value than the money that will be received in the future;

3. The risks that will be faced are as a result of the time period that separates the award of achievements from the counter-achievements that will be received at a later date. The longer the credit is given, the higher the risk level. With this element of risk, guarantees arise in providing credit;

4. Achievements, or credit objects, are not only given in the form of money, but also in the form of goods or services.

The conditions of the agreement above are absolute conditions that must be fulfilled for the validity of an agreement, if one of these conditions is not fulfilled then the agreement is automatically void. An agreement can be divided into three parts, namely:

a) *Essentialia*, this part is the characteristics that must be present in the agreement, the characteristics that determine or cause the agreement to be created, such as the agreement between the parties and the object of the agreement;

b) *Naturalia*, this part is an innate or natural characteristic agreement that is tacitly attached to the agreement so as to guarantee that the items sold are not defective;

c) *Accidentalialia*, this section is also an inherent characteristic of the agreement, if it is expressly agreed to by the parties.

In contract law there are also several principles that can be used as guidelines, these principles include, among others, Article 1320, Article 1338 paragraphs 1, 2 and 3 of the Civil Code.<sup>13</sup>

The solution that is taken if you receive building use rights that have expired before the credit period ends, then before granting credit, the prospective debtor must fill out a complete credit application on the form provided by the bank, attaching the data and then analyzing and evaluating it.

Bank solutions that can be implemented to prevent problems that will occur. It can be done before a problem occurs because the function of preventive legal action is to prevent problems from occurring. To prevent the provision of bank financing with building use rights as collateral that have expired before the credit agreement ends, this can be done by:

1) Bank employees must be careful and must be careful in accepting Building Use Rights collateral;

2) *Branch Manager* must have firmness in supervising all the implementation of the duties and authority of his subordinates because the Branch Manager has a very important role in the progress of the bank he leads;

3) Bank employees must really understand their duties so that fatal errors do not occur that could harm the bank. Back officer bank employees must take part in training seriously so that they can carry out their duties and authority well so as not to harm the bank;

4) Back officer bank employees must understand the procedures for receiving building use rights certificates or procedures for receiving building use rights collateral and must understand the procedures for binding collateral for building use rights in providing financing which must be accompanied by binding of mortgage rights.

The binding of mortgage rights must be carried out by a Land Deed Official (PPAT) who is a partner with the bank by making a Deed of Granting Mortgage Rights and registering it with the Land Office so that a Mortgage Rights Certificate is issued which will be held by the bank.

To prevent financing using building use rights as collateral that expires before the credit agreement expires, bank employees need to be careful in reading the building use rights certificate and a collateral binding process is required made by PPAT because the building use rights collateral must be accompanied by the issuance of a Mortgage Rights certificate from the Land Office.

The form of solution given by PPAT to this problem is in the form of making a Power of Attorney to Encumber Mortgage Rights and APHT to overcome the problems that occur, to protect the bank for the financing that has been provided with building use rights as collateral which expires before the credit agreement ends.

Agreements in a Banking Credit Agreement must be made in writing. This provision is contained in the Explanation to Article 8 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking, which requires banks as credit providers to make written agreements. 14 The requirement that banking agreements must be in written form has been stipulated in the main points of banking provisions by Bank Indonesia as intended in Article 8 paragraph (2) of the Banking Law.

In article 1 points 6 and 7 of Government Regulation Number 40 of 1996, two methods are provided which allow the holder of the Building Use Rights which expires before the credit agreement ends to remain the holder of the Building Use Rights, namely through extension of rights and renewal of rights.

On the other hand, if the right to the land in question is renewed, it means that the right to use the building has expired from the beginning and with the expiry of the term of the Right to Use the Building, the right to the land becomes extinguished, causing the mortgage rights to also be extinguished.

In the case of renewal of rights, the original HGB holder is given a new Building Use Rights certificate for the same land but the number must be different from the old certificate. Therefore, a new Mortgage Right or re-imposition must be carried out, because the difference in the new Building Use Rights certificate number certainly causes the principle of specialization of the Mortgage Right itself to not be fulfilled.

#### 4. Conclusion

So the legal protection measures taken by the bank to prevent losses in connection with the expiry of the HGB which is encumbered with Mortgage Rights, namely: extending the term of the Building Use Rights, in this case the debtor gives authority to the creditor to arrange for an extension of his rights if the term of the HGB expires and of course Of course, all costs for these purposes are borne by the debtor. Bank solutions that can be implemented to prevent problems that will occur. It can be done before a problem occurs because the function of preventive legal action is to prevent problems from occurring. To prevent financing using building use rights as collateral that expires before the credit agreement expires, bank employees need to be careful in reading the building use rights certificates and a collateral binding process made by PPAT is required because the HGB collateral must be accompanied by the issuance of an HT certificate from the Land Office.

#### 5. References

##### Journals & Internet:

Dharmanto Adji Lushun, 2016, "*Pembaharuan Hukum*", Volume III, No. 2, hal. 248. <https://jurnal.unissula.ac.id/index.php/PH/article/view/1450/1121>

Hanapiah Yogi, 2018, *Hal-Hal Yang Perlu Diperhatikan Oleh Notaris Dalam Membuat Akta Perjanjian Notarii*, Vol. 5, No.1, hal.114. <https://jurnal.unissula.ac.id/index.php/akta/article/view/2538>

[Http://yuyantilalata.blogspot.com/2012/10/hak-guna-bangunan.html](http://yuyantilalata.blogspot.com/2012/10/hak-guna-bangunan.html)

##### Books:

Abdulkadir Muhammad, 1992, *Hukum Perikatan*, Bandung: Citra Aditya Bakti.

Asikin Zainal, 1997, *Pokok-Pokok Hukum Perbankan Di Indonesia*, Edisi Pertama, Cetakan Kedua, Jakarta: Raja Grafindo Persada.

Daeng Naja H.R, 2005, *Hukum Kredit dan Bank Garansi, The Bankers HandBook*, Bandung: Citra Aditya Bakti.

Diana Halim Koentjoro, 2004, *Hukum Administrasi Negara*, Bogor: Ghalia Indonesia.

Harun Badriyah, 2010, *Penyelesaian Sengketa Kredit Bermasalah*, Yogyakarta: Pustaka Yustisia.

Kusumaatmadja Mochtar, 2006, *Karakteristik Penalaran Hukum dan Konteks Ke indonesiaan*, Jakarta: CV Utomo.

Kusumawati Rahma dan Asyhadie Zaeni, 2018, *Hukum Jaminan Di Indonesia*, Jakarta: Rajawali Press.

Subekti, 1982, *Jaminan-jaminan Untuk Pemberian Kredit menurut Hukum Indonesia*, Bandung: Alumni.

**Regulation:**

Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Rights, Article 1 numbers 6 and 7

Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking, Article 8 paragraph 2

Law No. 4 of 1996 concerning Mortgage Rights on Land and objects related to land

Republic of Indonesia Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration, Article 37 paragraph 1