

## Legal Position of the Insurance Party in the Execution of Lienage Rights with Subrogation Rights

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**Abstract.** *This study aims to determine and analyze the legal position of the insurance party in terms of submitting the execution of mortgage rights which originally held the mortgage rights as a bank as a creditor and the execution of the mortgage rights carried out by the insurance party using the right of subrogation and to analyze the example of the Deed of Granting of Mortgage Rights. This study uses a sociological juridical approach method that uses secondary data as the initial data then continued with primary data in the field or in the community. The research specifications used in this study are descriptive analysis. Based on the research that has been done, it can be concluded that the insurance party has the same legal standing as the bank as a creditor of the Mortgage Right holder so that the execution of the Mortgage Right can be carried out directly by the insurance party with the right of subrogation. In addition, if the insurance party will execute the mortgage rights with the right of subrogation, it can first submit a change in the name of the Mortgage Right holder to the National Land Agency.*

**Keywords:** *Execution; Legal; Mortgage; Position; Subrogation.*

### 1. Introduction

The Preamble to the 1945 Constitution of the Republic of Indonesia, Paragraph II, reads: "And the struggle for the Indonesian independence movement has reached a happy moment, safely and securely leading the Indonesian people to the gates of independence of the independent, united, and prosperous Indonesian state." *sovereign, just and prosperous*". According to the Big Indonesian Dictionary ("KBBI"), "prosperous" means abundant produce, a prosperous population, having everything sufficient and not lacking. This means that it is imperative for the state to guarantee the welfare and prosperity of its citizens in meeting their living needs.<sup>1</sup>

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<sup>1</sup> Sudjana, 2018. "The Essence of Justice and Prosperity as the Foundation of Life in Realizing Resilience to Achieve a Prosperous Society Through National Development Based on Pancasila",

In daily life, every individual and business entity inevitably has needs. These needs can be urgent or non-urgent. Urgent needs require immediate fulfillment, but fulfilling them is often hampered by financial or cost issues.<sup>2</sup> The required funds are sometimes insufficient because the need exceeds the available funds. Obtaining large sums of money is not easy, especially if you raise the funds yourself. This requires a relatively long time.

When faced with a situation like this, one approach most individuals and companies take is to borrow money or take out credit from another party, in this case, a bank. A bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of many people.<sup>3</sup> One of the well-known banking activities is providing loans or credit to its customers. When granting a loan, banks require collateral from the prospective borrower, typically land and/or buildings, secured by a mortgage.

In general, credit guarantees are divided into two types, namely guarantees that arise from laws and guarantees that arise from agreements.<sup>4</sup> Guarantees arising from law are regulated in Article 1131 of the Civil Code (KUHP), which essentially states that all of the debtor's assets, whether in the form of movable or immovable objects, whether existing or will be in the future, even if not submitted as collateral, legally become collateral for all debtors' debts. Furthermore, guarantees arising from agreements, legally only arise after the existence of a principal agreement in the form of a credit agreement.

Collateral in the form of land and/or buildings that are encumbered with mortgage rights becomes the basis for the bank if the debtor is unable and/or unwilling to pay their obligations so that they are declared in default, then the collateral will be executed to fulfill the debtor's obligations to the creditor. In other words, mortgage rights are used by banks to obtain guarantees for the repayment of the debtor's debt. Another problem arises when the debtor defaults and the bank will execute the mortgage rights, requiring a very long time so that the bank's Non-Performing Loan figure increases. Therefore, the bank takes steps to guarantee the credit to a third party, in this case an

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National Resilience Journal, No. 2, Vol. 24, p. 136, in <https://jurnal.ugm.ac.id/jkn/article/view/33573>, accessed on November 28, 2025 at 10:20 WIB.

<sup>2</sup> Gatot Supramono, 2014, *Banking and Credit Problems: A Legal Review*, PT. Rineka Cipta, Jakarta, p. 1.

<sup>3</sup> Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking Article 1 number 2.

<sup>4</sup> See Mariam Darus Badruzaman, *Bank Credit Agreement*, (Bandung: Alumni, 1978) p. 19. See also Sidharta P. Soerjadi, *Legal Aspects of Credit in Indonesia*, Working Paper in the Symposium on Legal Aspects of Credit Problems, (BPHN and Bina Cipta, 1987), p. 11. See also Gatot Supramono, *Banking and Credit Problems: A Legal Review*. Revised Edition. 2nd Printing, (Jakarta: Djambatan, 1996) halo. 44, quoted from Adrian Sutedi, 2018, *Mortgage Law*, Third Printing, Sinar Grafika, Jakarta, p. 26

insurance company, with the aim that if the debtor defaults, the bank can submit a claim to the insurance company.

By paying the credit by the insurance company to the bank, the debtor's credit does not necessarily become paid off and the debtor's obligations become extinguished, but the debtor still has the obligation to pay the credit in cash or by executing collateral. However, the right to collect on the credit has been transferred. Originally the right to collect was with the bank, now it has been transferred to the insurance party, which is called subrogation. Subrogation is the transfer of the right to sue/sue from the insured (bank) to the insurer (insurance) when the full amount of the loss has been reimbursed by the insurance company.<sup>5</sup>.

This research aims to examine and analyze the legal position of insurers in the execution of mortgage rights with subrogation rights along with the execution process that can be carried out by insurers with subrogation rights. Based on the background above, the author conducted a study and research entitled "The Legal Position of Insurance Parties in the Execution of Mortgage Rights with the Right of Subrogation".

## **2. Research Methods**

The research approach used in this thesis is a sociological-juridical research method that utilizes secondary data as the initial data, followed by primary data from the field or community. The research specification used is descriptive analysis, namely describing the applicable laws and regulations linked to legal theories and the practice of implementing positive law related to the above issues. The data collection methods used in this study are interviews and literature studies.

## **3. Results and Discussion**

### **3.1. Legal Position of Insurance Parties in Executing Mortgage Rights with Subrogation Rights**

Creditors provide credit facilities to debtors according to established procedures and provisions. The various types of credit facilities are as follows:

- 1) provision of new credit facilities;
- 2) provision of additional credit facilities for ongoing credit;
- 3) extension or renewal of the validity period of credit that has expired;
- 4) changes to credit facility terms, and so on.

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<sup>5</sup> Aris Prio Agus Santoso et al., 2022, Introduction to Insurance Law, Pustakabarupress, Bantul, p. 14.

The parties involved in the credit facility process are not only the debtor and creditor, but also include insurance companies and notaries/PPATs. The insurance company's role is to provide guarantees to creditors in the event of default by the debtor. This is as stated in the Financial Services Authority Regulation (POJK) Number 20 of 2023 concerning Insurance Products Linked to Sharia Credit or Financing and Suretyship Products or Sharia Suretyship Article 1 number 1 which reads:

*"Insurance is an agreement between two parties, namely the insurance company and the policy holder, which is the basis for the insurance company receiving premiums in return for:*

- a. provide compensation to the insured or policyholder for losses, damages, costs incurred, loss of profits, or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of an uncertain event; or*
- b. provide payments based on the death of the insured or payments based on the life of the insured with benefits of a predetermined amount and/or based on the results of fundraising".*

As for Chapter II of the POJK concerning Insurance Products Linked to Credit by General Insurance Companies and Insurance Products Linked to Sharia Financing by Sharia General Insurance Companies, Article 2 paragraph (1) states "General Insurance Companies can market Insurance products linked to Credit". Therefore, the insurance party can participate as a third party in a credit agreement made and signed by the bank as the creditor and the debtor as the customer of the bank.

The role of a Notary in binding credit aims to provide legal certainty for creditors and debtors and guarantee the rights and obligations of each party as outlined in the credit agreement in the form of an authentic deed. The role of the PPAT in managing credit guarantees or collateral in the form of land certificates is to make a deed of Power of Attorney to Encumber Mortgage Rights and a Deed of Granting Mortgage Rights to then be registered at the local Land Office. Registration of this mortgage right is a manifestation of the principle of publicity and an absolute requirement for the birth of a mortgage right, as stated in Article 13 of the UUHT which explains that the granting of mortgage rights must be registered at the Land Office, no later than 7 (seven) working days after the signing of the APHT, the PPAT is required to send the relevant APHT and other documents to the Land Office so that the Land Office can then record it in the mortgage ledger which is the object of the mortgage right and copy the records on certificate of title to the land in question as stated in paragraph (3) of this article which reads: "Registration of Mortgage Rights is carried out by the Land Office by making a Mortgage Rights land book and recording it in the land book

of rights to the land which is the object of the Mortgage Rights and copying this record on the certificate of title to the land in question."<sup>6</sup>.

The consequence of the agreement made by the parties between the creditor, debtor and insurance party is that the rights and obligations arising from the agreement bind each party and as long as the parties carry out their obligations, it will run smoothly, however, if the debtor is reluctant to fulfill his obligations and is categorized as default, of course the creditor and insurance party will be the ones who suffer losses.<sup>7</sup> If the debtor defaults in carrying out his obligations to the creditor, the creditor can take 2 (two) legal measures, namely using his privilege to execute the guarantee or submitting a claim to the insurance party. Both efforts that can be taken have their respective legal consequences, such as if the creditor uses his privilege to execute the guarantee as regulated in Article 4 of the UUHT, in principle if the debtor defaults (does not fulfill his obligation to pay the debt to the creditor), the creditor holding the mortgage has a position as a privileged (preferred) creditor and can execute the object of the mortgage.

The legal consequence of the second attempt is to submit a claim to the insurance company. The insurance company will pay the amount of money the debtor has not paid when the debtor is declared in default, but with the provision that subrogation applies, namely the transfer of collection rights from the creditor holding the old mortgage to the new creditor, namely the insurance company. So in this case, the next mortgage holder is the insurance company.

Of the two options mentioned above that can be taken by creditors, usually creditors will choose to submit a claim to the insurance company with the consideration that the processing time is relatively shorter than having to execute mortgage rights. If the insurance company has made payment for the claim, subrogation will arise from the debtor to the insurance party, in the form of a transfer of rights to the object of the mortgage right. The discussion this time concerns the transfer of objects of mortgage rights seen from the cessie's point of view<sup>8</sup>.

In other words, based on the things mentioned above, the insurance party has the same position as the bank as a creditor in executing mortgage rights as a subrogation effort if the insurance party has paid its obligations to the bank.

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<sup>6</sup> Indirect interview with Tri Harnanto, S.Sos., MH, Acting Head of the Administrative Section of the National Land Agency (BPN) of the Special Region of Yogyakarta based on letter number B/UP.04.07/415-34.100/v/2024 dated May 28, 2024 regarding Submission of Research Results, page 1.

<sup>7</sup> Yulia Susilawati, 2024, "Legal Protection for Creditors in Credit Agreements for Mortgage Objects If the Debtor Defaults (Case Study at the BRI Majalengka Branch Office)", Thesis, Faculty of Law, Sultan Agung Islamic University, p. 101.

<sup>8</sup> Adrian Sutedi, 2010, Transfer of Land Rights and Registration, p. 71, quoted from Ibid.

### **3.2. Process of Executing Mortgage Rights Carried Out by Insurance Parties with Subrogation Rights**

The implementation of the auction of execution of mortgage rights based on the provisions of Article 6 UUHT in the event of a debtor's default, can be carried out by the creditor as the party who feels disadvantaged to sell the goods used as collateral through mortgage rights in the form of land and/or buildings standing on it in order to fulfill the remaining debt to the creditor that has not been paid. Article 20 paragraph (1) UUHT determines the method of execution of mortgage rights, one of the methods of which is based on Article 6 UUHT, namely "If the debtor defaults, the first mortgage holder has the right to sell the mortgage object at his own discretion through a public auction and take payment of his receivables from the proceeds of the sale."

In practice, the process of selling mortgage objects as collateral in the form of land and/or buildings by creditors is more often carried out through mortgage auction sales compared to direct sales or sales as regulated in Article 20 UUHT, namely conducting sales underhand by agreement between the grantor and the mortgage holder or execution using an Executorial Title which must follow the provisions of the Civil Procedure Code in Article 224 HIR, so that this auction requests the court to execute the mortgage object.

The government agency tasked with carrying out auctions is the State Assets and Auction Services Office (KPKNL). Based on Article 1 number 9 of the Minister of Finance Regulation Number 40/PMK.07/2006 concerning Auction Implementation Guidelines, the KPKNL is positioned within the Directorate General of State Receivables and Auctions (DJPLN), which is currently named the Directorate General of State Assets (DJKN), so that the KPKNL is a vertical agency of DJKN.<sup>9</sup>

In addition to the sale of collateral objects through auction execution of mortgage rights, it can also be done through private sales or direct sales by the owner or holder of mortgage rights. The implementation of the executorial power owned by the mortgage certificate in the execution of the deed that has been made by the notary is still legally binding because the execution of the deed, whether through private sales or through auction, is the same as a court decision that has permanent legal force.<sup>10</sup>

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<sup>9</sup> Taufik Pandan Winoto, 2024, "Reconstruction of Regulations for Auctions for the Execution of Mortgage Guarantees Based on Justice Values", Dissertation, Faculty of Law, Sultan Agung Islamic University (Unissula), p. 114.

<sup>10</sup> Fadhilah Sundah, 2017, "Implementation of Executorial Powers Against Mortgage Rights in the Context of Settling Bad Debts Based on Deeds Made by Notaries", Thesis, Faculty of Law, Sultan Agung Islamic University (Unissula) Semarang, p. 294.

In the case of the insurance party's position changing from being the guarantor to being the party with the right to collect replacing the bank as the creditor if the guarantee has been paid, then 2 (two) forms of rights will arise for the guarantor, namely:<sup>11</sup>:

#### 1) Right of Recourse

The right of recourse is a right that arises because the guarantor has paid the debtor's debt. The legal basis for this is Article 1839 of the Civil Code, which states, "A guarantor who has paid may claim what he has paid from the principal debtor without regard to whether the guarantor was made with or without the principal debtor's knowledge. This reclaim can be made for both the principal and interest as well as costs."

#### 2) Guarantor's Rights

The guarantor's right is to replace the creditor's position due to subrogation. This right is a basic right of the guarantor as stated in Article 1840 of the Civil Code, which states, "A guarantor who has paid his debt in full, by law, replaces the creditor with all his rights against the original debtor."

As a form of subrogation of the mortgage rights carried out by the insurance company as the party replacing the bank as the creditor, it can do the things as explained in the explanation above because the bank as the creditor and the insurance company as the party replacing the bank have the same position. This can be preceded by changing the name of the mortgage holder submitted to the National Land Agency by attaching a request for a change of creditor's name. A change of creditor's name is a change of name due to the creditor as the mortgage holder who changes his name based on evidence regarding the change of creditor's name, for example, Bank Perkreditan Rakyat becomes Bank Perekonomian Rakyat. In addition, the creditor's name can also change due to subrogation, namely the change of the name of the third party creditor who pays off the creditor's debt. The service for changing the creditor's name at the land office can be done through the mortgage transfer service..

As for the steps and procedures for changing the name of the creditor holding the mortgage, these include:

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<sup>11</sup> I Gede Krisna Adi Yasa, Ida Bagus Putra Atmadja and Ida Ayu Suklhana, 2013, "Legal Protection for Guarantor to Obtain Repayment from Defaulting Debtor If Guarantor Has Carried Out His Obligations to Bank BNI Denpasar Branch", Kertha Semaya, Journal of Legal Studies, quoted from Abdul Rahman, 2021, "Settlement of Claims and Subrogation by Surety Company Against Defaulting Principal in Surety Bond Agreement", Thesis of Faculty of Law, Sebelas Maret University, p. 237.



- 1) Submission of application for creditor name change service is carried out by the creditor by selecting the land office according to the location of the land in the electronic mortgage system;
- 2) Creditors upload required documents;
- 3) The creditor checks the uploaded name change application data against the physical document. If it matches, the creditor confirms the name change application.
- 4) The electronic mortgage system will issue a service fee payment order;
- 5) After receiving the deposit order, the creditor is required to make payment through a perception bank no later than 3 (three) days. If payment is not made within this time period, the application file will be automatically cancelled and the creditor can submit a new application.
- 6) After the payment has been confirmed by the electronic mortgage system, the electronic mortgage system will display (preview) a draft of the Electronic Mortgage Certificate and notes that will be attached to the Land Rights Certificate or Ownership Rights for Apartment Units;
- 7) Creditors can immediately check (preview) the draft electronic mortgage certificate and the notes in question and if there are any discrepancies, the creditor can coordinate directly with the land office to make corrections;
- 8) If the draft electronic mortgage certificate and the notes in question are appropriate, the electronic mortgage certificate will be issued no later than the 7th (seventh) day.

The problem that occurs in the field is that not all insurance parties are aware that insurance companies have the same position and can carry out the process of executing the mortgage rights on the collateral object. So when the debtor defaults and the insurance company has made payments to the creditor, the next effort is only to collect from the debtor or wait for the bank to execute the collateral object. However, legally if this happens, the insurance company has been given the authority under the law to be able to carry out the sale or execution of the insured object directly. This needs to be socialized so that insurance companies do not need to wait for efforts from creditors and are expected to immediately reduce the debtor's remaining obligations to the insurance company.

#### **4. Conclusion**

The parties involved in a credit agreement are not only the debtor and creditor, but also the insurance party and involve a Notary/PPAT if there is collateral in the form of land and/or buildings as the object of the mortgage. In the event of a



debtor's default, the creditor will file a claim with the insurance company. After the debtor's obligations are paid by the insurance company to the creditor, the creditor's right to collect is legally transferred to the insurance company, which is called subrogation. In the execution of the mortgage right, the insurance company has the same legal standing as the creditor holding the mortgage right for the debtor who has defaulted if the debtor's obligations to the creditor have been paid by the insurance company. The execution of the mortgage right can be carried out either privately or through an auction at the KPKNL, both of which have the same legal force. As a subrogation step, the insurance company can sell the mortgage right object through this method by first changing the name of the mortgage right holder from the old creditor, namely the bank, to the insurance company by using a private deed and submitted to the local land office where the mortgage right object is located. At the end of this writing, the author suggests that Further outreach regarding the insurance company's rights and authority to sell the mortgaged property as a subrogation measure is needed. This is expected to eliminate the need for the insurance company to wait for the bank to make a sale to receive repayment.

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#### **Regulation:**

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking

#### **Interview:**

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