

Legal Analysis of Cancellation of Deed of Granting Mortgage Rights (APHT) Which Has The Potential to Be Defamatory to Creditors (Study of Semarang District Court Decision Number 11/Pdt.G/2023/PN Smg Jo. 405/PDT/2023/PT SMG)

Laksana Yudha Putra Pambudi

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:

yudha.lypp@gmail.com

Abstract. *The bank as a creditor and holder of the mortgage rights is still under threat when there is a judge's decision that cancels the mortgage rights. The objectives of the study are 1) To analyze the judge's decision in case number 11/Pdt.G/2023/PN SMG Jo. 405/PDT/2023/PT SMG; 2) To analyze the legal consequences that occur in the event of cancellation of APHT; 3) To analyze the legal protection for the banking party as a creditor for the cancellation of APHT. This research method is normative legal research with a legislative approach and a case approach. The data used is secondary data. Data collection uses literature studies and data analysis uses qualitative analysis methods. The results of the study are 1) the decision of the panel of judges in case 11/Pdt.G/2023/PN SMG if based on laws and regulations is appropriate and this is reinforced by decision number 405/PDT/2023/PT SMG but if associated with field facts and the principle of legal certainty, the decision to cancel and delete APHT-SHT is not in accordance with the principle of legal certainty. 2) The legal consequences of the cancellation of APHT are the loss of guarantees of debt receivables for creditors along with the privileges attached because the creditor's position is a concurrent creditor. 3) legal protection that can be received by creditors is in the form of the formation of laws and regulations that protect creditors' rights in the event of cancellation of APHT as preventive legal protection while repressive legal protection is litigation and non-litigation legal efforts that can be carried out by creditors.*

Keywords: APHT; Cancellation; Creditors; Debtors.

1. Introduction

Indonesia is a country that since its founding, has been aspired to be a country based on law by the Founding Fathers. These hopes and ideals were then expressed in a legal regulation that further confirms the position and standing of the Indonesian state as a country based on law. This regulation is the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), especially in Article 1 paragraph (3) which states firmly and clearly that, "Indonesia is a country based on law."(Thaib, 2016)

Indonesia as a country of law is emphasized in the 1945 Constitution, which ultimately brings legal consequences and is also one of the characteristics of a country of law, namely that all social activities of society wherever they are, including the running of government in Indonesia, must always comply with the laws and regulations that have been established. One area of community life that is related to the condition of Indonesia as a country of law is in the economic sector.(Thriyana, 2020).

Economy is one of the fields that has an important role to support the development of a country in order to realize the ultimate goal of providing welfare for the community. Economic development in a country including Indonesia has an important and strategic role to improve the quality of life of the Indonesian people in order to create the welfare of the people as a whole. In order to achieve this ultimate goal, the state as the highest authority continues to seek various ways to improve the country's economy.(Zhadira, 2022).

Banks are present in a country, an indicator of the achievement of a country's economic progress. Banks are financial institutions that exist in every country including Indonesia. One of the functions of banks is to provide credit facilities to debtors as part of an effort to implement the mechanism of economic turnover in a country.(Amalia, 2020).

Mortgage rights are rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), along with other objects that are an integral part of the land, for the settlement of certain debts, which provide a priority position to certain creditors over other creditors. Mortgage rights are used to guarantee the settlement of debts to creditors and must be stated in an authentic deed, namely a deed of granting mortgage rights made by a PPAT(Jufri, 2020).

Granting of Mortgage Rights by making a Deed of Granting of Mortgage Rights by a Land Deed Making Officer is intended to guarantee legal certainty. This is emphasized in Article 23 letter e of Government Regulation Number 24 of 1997 concerning Land Registration, which states that "The granting of mortgage rights is evidenced by a deed of granting mortgage rights hereinafter referred to as APHT."(Andyani, 2020).

The Deed of Granting of Mortgage Rights (APHT) in reality that occurs in the field can be canceled by the District Court (PN) upon a lawsuit from a third party. This is as stated in the decision of case Number 11/Pdt.G/2023/PN SMG Jo. Decision 405/PDT/2023/PT SMG The decision in the case shows that the Deed of Granting of Mortgage Rights no longer has permanent legal force, so this has an impact on the creditor as the recipient of the mortgage rights.

Based on the description, there is a research gap or legal gap where according to Das Sollen in Law Number 4 of 1996 concerning Mortgage Rights it is stated that the creditor as the holder of the mortgage right has the right and position as a preferred creditor in terms of debt repayment if the debtor defaults and this is part of legal certainty. However, according to Das Sein, there is a reality that even though as the holder of the mortgage right, the bank as a creditor is still under threat, one of which is when there is a judge's decision that cancels the mortgage right as in decision number 11/Pdt.G/2023/PN SMG Jo. Decision 405/PDT/2023/PT SMG this can result in losses experienced by the creditor and the creditor's position becomes uncertain.

2. Research Methods

This study uses a normative legal research type. The selection of this normative legal research type is based on the opinion of Peter Mahmud Marzuki who stated that legal research and everything related to this research is always normative, therefore this study uses library research.(Marzuki, 2014). This research uses a legislative approach and a case approach which aims to conduct research analysis using the basis of legislative regulations and using a study of all issues that occur which are contained in court decisions.(Masrukhin, 2014).

This study specifically uses secondary data, namely data consisting of library sources and also laws and regulations. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. This study uses data collection with library research techniques, which means using written studies originating from central sources. The analysis used in this study was carried out qualitatively.(Purwati, 2020).

3. Results and Discussion

3.1. Legal Analysis of Decision Number 11/Pdt.G/2023/PN SMG Jo. Decision 405/PDT/2023/PT SMG

Semarang District Court Decision Number 11/Pdt.G/2023/PN Smg, which is the object of this study, contains a lawsuit filed by the Plaintiffs against the Defendants and Co-Defendants as described in the previous sub-chapter. In the decision, there are several important points that the researcher underlines for further analysis, namely:

- a. There was an act of default between Defendant I and the Defendants regarding the Deed of Sale and Purchase Agreement and the Deed of Peace that had been made by both parties;
- b. There is a decision from the Panel of Judges that Co-Defendant III who is a Notary/PPAT BR must cancel the APHT that has been made and binds Defendant I (debtor) with Defendant II (creditor) as the bank;
- c. There is a decision from the Panel of Judges at the Semarang District Court that Co-Defendant IV must strike out and cancel the mortgage certificate in the name of the rights holder, namely Defendant II;
- d. The decision that the land used by Defendant I as collateral for credit to Defendant II must be returned to the Plaintiffs for further division of the certificate and transfer of the name to the Plaintiffs.

Semarang District Court Decision Number 11/Pdt.G/2023/PN Smg contains several points of judge's considerations that underlie the birth of the decision. This requires an in-depth analysis to determine whether the judge's considerations are in accordance with the principles, theories, and related laws and regulations or not, considering that the resulting decision is very biased and tends to harm the bank, including violating the principle of legal certainty.

In relation to this, the researcher can analyze that the Panel of Judges should not have issued a decision regarding the cancellation and deletion of the mortgage rights over SHM. 04705/Jatisari, even though the cancellation and deletion of this Mortgage Right is indeed permitted according to the Mortgage Rights Law.

According to Article 18 paragraph (10) of the Mortgage Rights Law, mortgage rights are revoked due to the following reasons:

- a. The cancellation of debts secured by mortgage rights;
- b. Release of mortgage rights by the holder of mortgage rights;
- c. Clearance of mortgage rights due to a district court decision;
- d. Elimination of rights to land burdened with mortgage rights.

Based on these provisions, it is indeed regulated that the mortgage right can end when there is a district court decision. So if referring to these regulations, the Semarang District Court's decision in this case can be justified because it is in accordance with the provisions of the law, namely providing a decision to cancel the mortgage right.

Regarding the cancellation, basically the Mortgage Law regulates several things or several reasons behind the existence of a mortgage right that is null and void by law, one of which is written in Article 12 that, "A promise that gives authority to the Mortgage Right holder to own the object of the Mortgage Right if the

debtor defaults, is null and void by law." This means that if the mortgage right is null and void by law, one of which is caused by a court decision, the mortgage right holder, in this case the bank, does not have the right to the guarantee.

The Semarang District Court's decision in case Number 11/Pdt.G/2023/PN SMG, although according to the law it is in accordance and strengthened by Decision 405/PDT/2023/PT SMG with applicable legal regulations, but when viewed based on the facts in the field and the principle of legal certainty, the actions of the Panel of Judges are not appropriate because in fact Defendant II has conducted a field survey and certificate checks, besides that the act of canceling the SHT can harm the principle of legal certainty because the SHT is a legal product that creates legal certainty for the debtor and creditor, with the cancellation there will be legal consequences, especially for creditors and the principle of legal certainty will be lost.

3.2. Legal Consequences Arising from the Cancellation of the Deed of Granting of Mortgage Rights in Case Number 11/Pdt.G/2023/PN SMG Jo. Decision 405/PDT/2023/PT SMG

Mortgage rights are closely related to land ownership rights, this is in line with Article 4 of the UUHT which explicitly states that land rights can be used as collateral for debt, one of which is ownership rights. The object of this research is land, which can be used as collateral for loans burdened with HT, because it has met the provisions where land can be valued with money so that loans will be guaranteed with money and have the right to be registered in the general register as a requirement for passing publicity(Harsono, 2017).

The Grantor of Collateral in this case is the debtor of the credit and an individual who has the authority to do anything to the object of the collateral because his name is on the certificate of ownership, this is in accordance with the provisions of Article 8 paragraph (1) of the UUHT. The Bank as the Holder of Collateral, namely a legal entity that occupies the position as the party providing credit, is in accordance with the provisions of Article 9 of the UUHT, because the bank has provided a loan to the recipient of the loan, where in the credit agreement there is an additional agreement, namely the Agreement for Granting Collateral. Where the collateral must be supported by an agreement between the borrower and the lender in the form of a debt agreement.(Evie Christy, 2020).

There are several legal events that occur related to mortgage rights and involve several parties, including the cancellation of land ownership rights and the cancellation of HT guarantees placed on it, legal events that occur to land owners, and the position of land owners who previously lost their land rights, now regaining their land rights.

The existence of a court decision that has permanent legal force, makes the parties involved also accept the legal consequences to carry out the court

decision. The bank certainly loses the right to the collateral object of HT that it holds. Based on the description, the cancellation of the mortgage contains two aspects, namely absolute nullity and relative nullity.

The cancellation will result in the cancellation of the Mortgage Certificate (SHT) which will cause losses to the creditor. In the case raised in this study, it has been explained that the bank lost the privilege of the HT collateral holder which was initially provided to secure the provision of loans from the bank, so that the right to recover all loan payments from the debtor will lose its legal certainty.

In relation to the above description, if it is linked to the theory of the purpose of law, where, in the theory of legal objectives, it is stated that there are 3 things, namely legal benefits, legal certainty, and justice. In implementing the 3 legal objectives, the principle of priority is needed. Therefore, the cancellation of the mortgage rights carried out by the judge's decision in the case does not fulfill the theory of legal objectives, because the decision does not have justice. This is because the party who benefits the most from this decision is only the Plaintiffs and the most disadvantaged is Defendant II as the creditor. This decision, which does not have balanced justice, is not in accordance with the objectives of the law. Including in relation to legal certainty and legal benefits, the decision does not fulfill legal certainty and also the value of benefits, because this decision only has an impact on the Plaintiffs, including the benefits obtained by the Plaintiffs only.

3.3. Legal Protection for Creditors for the Cancellation of the Deed of Granting of Mortgage Rights in the Decision of Case Number 11/Pdt.G/2023/PN SMG Jo. Decision 405/PDT/2023/PT SMG

Mortgage guarantee is considered the most effective and safe in this context, especially when it comes to land rights. Land ownership rights used as collateral will cause problems in the future, as stated in Article 18 paragraph (1) letter d of the UUHT, mortgage rights will end if the land rights are lost. However, the debt collection and collection agreement between the creditor and the debtor remains valid even though the debtor cannot pay off his debt on the agreed date. This situation can be detrimental to the mortgage holder because the legal protection provided is only general in terms of repayment.

Based on the provisions of Article 51 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, it is stated that a strong collateral institution has been provided and can be imposed on land rights, namely Mortgage Rights as a substitute for the Guarantee Institution whose Mortgage Rights have been recognized for their existence through Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land and make the interests of debtors and creditors get legal protection from the government, the main purpose of the enactment of this Mortgage Rights Law, especially to provide

legal protection for creditors if the debtor commits an unlawful act in the form of default.

The process of imposing mortgage rights is a process that consists of two stages of activity, namely the stage of granting mortgage rights, with the creation of an APHT by the PPAT, which is preceded by a guaranteed debt agreement and the registration stage by the Land Office, which is the moment when the mortgage rights are born and when the mortgage rights are born, there needs to be Legal Protection that follows the provisions of Article 18 paragraph (4) which provides protection to the creditor if the land rights that are the object of the mortgage rights are extinguished.

Legal protection for banks is written in Article 1131 of the Civil Code for the cancellation of the mortgage, namely by transferring the mortgage guarantee to a general guarantee. Article 1131 explicitly states that "all movable and immovable goods owned by the debtor, both existing and future, become collateral for the debtor's individual obligations".

In relation to the above description, if there is a cancellation of APHT, the party that is most harmed is the creditor. Therefore, it is necessary to provide legal protection for creditors. In the theory of legal protection, it is stated that the law provides protection to humans related to the achievement of dignity and honor that should indeed be felt by humanity, consisting of preventive and repressive protection.(Firmansyah, 2013).

There are two types of legal protection that can be given to creditors in relation to the cancellation of APHT, namely preventive legal protection in the form of prevention such as forming a law that bridges the interests of creditors if there is a cancellation of APHT. So far, there has been no law that regulates this problem, so that when the cancellation of the mortgage right occurs, the creditor suffers a loss because there is no legal regulation that protects it.

The next legal protection is repressive legal protection. Legal protection that can be done if there is a cancellation of APHT is the creditor taking legal action either through litigation or non-litigation. For litigation legal efforts, for example, creditors can take other legal efforts such as appeals to judicial review. While legal efforts outside the court that can be done, for example, mediation, negotiation, and so on between creditors and related parties to find the best way out that can accommodate the interests of each party.

4. Conclusion

Legal analysis related to the judge's decision in case number 11/Pdt.G/2023/PN SMG Jo. Decision 405/PDT/2023/PT SMG can be concluded that the decision of the Semarang District Court in case Number 11/Pdt.G/2023/PN SMG, although in terms of legislation it is in accordance with applicable legal regulations and this is reinforced by the decision of the Semarang High Court, but when viewed based

on the facts in the field and the principle of legal certainty, the actions of the Panel of Judges are not appropriate because in fact Defendant II has conducted a field survey and certificate checks, besides the action of canceling the SHT can harm the principle of legal certainty because SHT is a legal product that creates legal certainty for debtors and creditors, with the cancellation there will be legal consequences, especially for creditors and the principle of legal certainty will be lost.

5. References

- Amalia, S. (2020). Factors Inhibiting Community Participation in the Waste Bank Program in Yogyakarta City. *Journal of Administrative Science*, 17(2), 306–323.
- Andayani, Z. (2020). The Role of Private Auction Houses in the Implementation of Mortgage Execution Auctions in Settling Bad Credit. *Sainteks Journal*, 7(3), 702.
- Evie Christy. (2020). Legal Certainty of Preferential Rights of Mortgage Holders in Bankruptcy Cases. *Kanun Journal of Legal Studies*, 22(2), 323.
- Firmansyah, H. (2014). *Legal Protection of Trademarks: A Guide to Understanding the Legal Basis for the Use and Protection of Trademarks*. Medpress Digital.
- Harsono, B. (2017). *Indonesian Agrarian Law History of the Establishment of Basic Agrarian Laws Content and Implementation*. Bridge.
- Jufri, S. (2020). Implementation of Mortgage Rights Execution Auction Through Auction House. *Journal of World Law*, 4(2), 97.
- Marzuki, PM (2014). *Legal Research*. Kencana Prenada Media Group.
- Masrukhin, H. (2014). *Qualitative Research Methodology*. Media Ilmu Press.
- Purwati, A. (2020). *Legal Research Methods Theory & Practice*. Jakad Media Publishing.
- Thaib, D. (2016). *Theory of the Legal State*. Raja Grafindo Persada.
- Thriyana, D. (2020). Settlement of Problematic Credit Disputes in Banking Practices in Indonesia. *Journal of Dialogia Iuridica*, 11(2), 87.
- Zhadira, GR (2022). The Role and Responsibilities of Notaries in the Establishment of Sole Proprietorships Following the Enactment of Law Number 11 of 2020 concerning Job Creation. *Syntax Literate: Indonesian Scientific Journal*, 7(1), 1–13.