

Legal Protection for Creditors Over Mortgage Rights Cancelled by Court Decisions (Court Decision Study) No. 136/Pdt.G/2019 Pn Ckr)

Bagus Triwibowo¹⁾ & Achmad Arifulloh²⁾

¹⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: bagustriwibowo@gmail.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: achmadarifulloh@unissula.ac.id

Abstract. *The Mortgage Law states that land rights that can be used as collateral include Ownership Rights, Cultivation Rights, Building Rights, and Usage Rights over State land, as long as these rights must be registered in accordance with applicable provisions and have a nature that can be transferred to another party. Mortgage rights provide legal certainty for the parties in a credit agreement, especially through the principle of specialization which gives special rights to the mortgage holder to be prioritized in fulfilling performance if the debtor defaults or fails to fulfill its obligations. This research falls into the category of normative legal research, conducted by analyzing library materials or secondary data. This research uses a statute approach, which emphasizes legal material as the primary basis for conducting the research. The research results show that Decision No. 136/Pdt.G/2019/PN Cikarang annulled the Mortgage Right and created legal uncertainty, even though the UUHT should have provided certainty for creditors. This annulment emphasizes the importance of material aspects in the validity of collateral. Bank BTN has carried out credit procedures and the imposition of Mortgage Rights legally, but the debtor's actions (YPR) have given rise to a dispute. Although the debtor's principal obligations remain, the collateral loses legal force. Protection for creditors is repressive through civil lawsuits (Article 1365 of the Civil Code), internal bank mechanisms (PBI No. 7/2/PBI/2005), criminal channels, and the right to demand compensation or alternative collateral.*

Keywords: *Certainty; Court Decisions; Mortgage Rights.*

1. Introduction

Lending and borrowing activities are a vital part of the modern economic system. Banks, as financial institutions, play a strategic role in collecting and distributing funds through credit instruments, as stipulated in Law Number 10 of 1998. In practice, credit is usually accompanied by debt collateral to provide legal certainty for creditors in the repayment of debtor obligations. One of the most widely used forms of collateral is land rights through the Mortgage Right institution, as stipulated in Law Number 4 of 1996 (UUHT).¹

Mortgage rights confer preferential rights (*droit de préférence*) to the creditor holding the mortgage. However, in banking practice, issues often arise when the subject of the mortgage is legally challenged, including when the land used as collateral involves a third party or has administrative defects. This situation creates legal uncertainty for creditors, even if they act prudently.²

This is evident in the Cikarang District Court Decision Number 136/Pdt.G/2019/PN Ckr. The dispute stemmed from overlapping land ownership with the Land Ownership Certificate No. 330/Ciantra. The certificate was used as collateral by Yogi Prayogo Ramadhan (YPR) to Bank Tabungan Negara (BTN) through a valid Mortgage Deed registered with the BPN. However, the court later ruled that the certificate in YPR's name was invalid, thus directly implicating Bank BTN's position as the creditor holding the Mortgage.

This ruling resulted in losses for Bank BTN because the formally valid guarantee was revoked. The lack of sufficient legal considerations to protect creditors' interests demonstrates the weakness of legal protection for banking institutions in similar situations. The existence of mortgage rights should provide legal certainty and protection for both creditors and debtors.

Therefore, this case shows the need for strengthening regulations and implementing a more in-depth principle of prudence, both at the verification stage of collateral objects and in the judge's considerations. Legal protection for creditors holding Mortgage Rights must be given more attention to create a balance between the interests of creditors, debtors, and third parties, as well as maintaining public trust in the national banking system. This study aims to determine and analyze the legal protection for creditors for mortgage rights that were canceled by Court Decision No. 136/Pdt.G/2019/PN Ckr.

¹Fani Martiawan Kumara Putra, *Tanggung Gugat Debitor Terhadap Hilangnya Hak Atas Tanah Dalam Obyek Jaminan Hak Tanggungan*, Fakultas Hukum, Universitas Wijaya Kusuma, p. 4

²Adrian Sutedi, (2012), *Hukum Hak Tanggungan*, Cetakan Kedua, Jakarta : Sinar Grafika, p. 1

2. Research Methods

This research falls into the category of normative legal research, conducted by analyzing library materials or secondary data. This research uses a statute approach, which emphasizes legal materials as the primary basis for conducting the research. Data collection techniques in this study were carried out through two approaches: offline and online literature studies. The data analysis stage is a crucial part of any research, because through this stage the collected data is systematically processed and analyzed to obtain final conclusions. The analysis was conducted qualitatively using a deductive approach, namely outlining general concepts to then be applied in the context of specific problems that are the focus of the research.³

3. Results and Discussion

3.1. Legal Certainty Regarding Mortgage Rights Cancelled by Court Decision No. 136/Pdt.G/2019 PN Ckr.

This case began on April 22, 2010 when Yogi Prayogo Ramadhan (YPR) signed a credit agreement with PT Bank Tabungan Negara (Persero) Tbk in the amount of Rp500,000,000.00 to finance his catering business. As collateral, on September 7, 2010, a Deed of Granting Mortgage Rights (APHT) Number 104/2010 was made by Notary/PPAT Sri Utami, SH, M.Kn., for a plot of land with a Certificate of Ownership (SHM) Number 2. The deed was then registered at the Land Office and gave birth to Mortgage Rights Number 6520/2010 which binds Bank BTN as the creditor.

The land pledged by YPR was obtained through Deed of Sale and Purchase Number 239/2010 dated July 20, 2010 made by PPAT Nyi Raden Kania Nursanti, SH, between Manah Binti Jeding as the seller and YPR as the buyer. However, after the transaction, it was revealed that the same land had actually been transferred to G since July 20, 1999 through Deed of Sale and Purchase Number 189/JB/15/VII/1999 between Manah Binti Jeding and G. This means that when selling the land to YPR, Manah Binti Jeding no longer had ownership rights to the object.

Based on these facts, the transfer of rights and the transfer of land ownership to YPR are deemed legally flawed and invalid. Consequently, all legal acts arising from the transfer, including SHM Number 2 in the name of YPR and Mortgage Rights Number 6520/2010 which served as collateral for Bank BTN's credit, are declared null and void. Cikarang District Court Decision Number 136/Pdt.G/2019/PN Ckr confirms that neither the sale and purchase agreement nor the mortgage rights arising from these legal acts have binding force and do not provide legal protection to the creditor.

³Marzuki Peter Mahmud, (2005), *Penelitian Hukum*, Jakarta : Prenada Media, p. 41

According to Gustav Radbruch in Legal Philosophy, law is a cultural phenomenon linked to values. He emphasized that legal regulations must be based on three basic values: justice, utility, and legal certainty.⁴

- 1) Justice is seen as the primary goal of law, namely the fair and equitable distribution of rights and obligations. Radbruch stated, "Law is the will towards justice."
- 2) Benefit means that the law must provide the greatest possible benefit to society. Law functions as a means of achieving social happiness.
- 3) Legal certainty demands clear, firm and logical rules, so as not to give rise to multiple interpretations or conflicts of norms.

According to Gustav Radbruch, law is a cultural reality based on three fundamental values: justice, utility, and legal certainty. Justice is the primary priority, while utility and legal certainty serve as pillars for harmony in the application of law.

In relation to Court Decision No. 136/Pdt.G/2019 of the Cikarang District Court, issues have arisen regarding the protection of legally registered property rights, particularly mortgage rights under Law No. 4 of 1996 (UUHT). Mortgage rights are normatively *droit de preference* and *droit de suite*, and have executorial power after the certificate is issued by the land office.⁵

However, in this case, the court annulled the valid mortgage, creating legal uncertainty and weakening the creditor's position. This situation has the potential to set a negative precedent for the stability of property security law.

From the perspective of the principle of legal certainty, a valid mortgage certificate should not be revocable unless there is a substantial legal flaw, such as forgery or an unlawful act. Such revocation also contradicts the principle of legal protection as stated by Satjipto Rahardjo.⁶

Ideally, the cancellation of mortgage rights can only be carried out through strict proof and in the event of a clear violation of the law. Additional protection mechanisms are also needed for creditors in good faith to prevent the security system from being threatened by legal uncertainty. When linked to Gustav Radbruch's theory of justice, benefit, and legal certainty, Court Decision No. 136/Pdt.G/2019 of the Cikarang District Court is considered contrary to the principle of legal certainty because it weakens protection of mortgage rights. This occurs for several reasons, which will be further explained as follows:

⁴Anang Fajrul, *Op., Cit.*, p. 32

⁵J. Satrio, *Hukum Jaminan*, (1997), *Hak Jaminan Kebendaan, Hak Tanggungan Buku I*, Bandung : Citra Aditya Bakti, p. 43

⁶Yahya Harahap, (2016), *Hukum Acara Perdata: Gugatan Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Jakarta : Sinar Grafika, p. 421.

1) Conflict between Administrative and Judicial Principles

Administratively, a mortgage is created through an APHT (Deed of Ownership) drawn up by a Land Deed Official (PPAT) and registered at the land office as stipulated in the UUHT (Law on Property Deeds). This registration is constitutive and provides legal certainty for creditors. However, in case No. 136/Pdt.G/2019 of the Cikarang District Court, the court annulled an administratively valid mortgage simply because it deemed the principal agreement invalid, even though there had not yet been a final decision annulling it.

This annulment creates tension between the principles of legal certainty and substantive justice, and ignores the nature of the mortgage as an accessory agreement that is only void if the principal agreement is proven null and void. This decision undermines the principles of *pacta sunt servanda*, good faith, and legal protection for creditors.

The impact is legal uncertainty, potentially undermining the credibility of the land administration system and increasing risks to national financing. Therefore, clear evidentiary standards and cancellation procedures are needed to prevent judges from easily canceling mortgages without any basis for administrative legal flaws. Synergy between the judiciary, land offices, and policy authorities is crucial to ensuring the stability of the property security system in Indonesia.

2) Uncertainty for creditors

According to Gustav Radbruch, one of the pillars of law is certainty. In the context of collateral law, the accessory principle (*accessoir beginsel*) asserts that mortgage rights do not stand alone but rather follow the principal agreement. However, civil law doctrine also teaches that the cancellation of the principal agreement does not automatically invalidate the mortgage rights, unless its formation is proven to be legally flawed. This is because mortgage rights are subject to the constitutive legal regime of land administration, so their validity arises from the deed of grant of mortgage rights (APHT) and registration at the land office.

In case No. 136/Pdt.G/2019 of the Cikarang District Court, the court annulled a valid mortgage on the basis that the principal agreement was deemed invalid. This approach raises serious issues because it blurs the line between civil disputes and the validity of property rights. In fact, in financing practice, mortgage certificates provide creditors with a guarantee of certainty regarding the execution of collateral if the debtor defaults. This decision undermines the principle of legal certainty, as creditors can no longer predict the legal protection of their collateral.⁷

Normatively, the Supreme Court has emphasized that the cancellation of property rights can only be carried out if there is proven legal flaw in the process of creating the right, not solely due to a flaw in the underlying agreement. Therefore, the cancellation of mortgage rights should be pursued through a separate mechanism

⁷*Ibid*, p. 390

that assesses the validity of the APHT or its registration. Cancelling mortgage rights without an administrative basis undermines the principle of *pacta sunt servanda*, undermines public trust in the land system, and threatens the stability of the national financing system.

3) Mortgage Rights as a Legitimate Property Guarantee Institution.

Normatively, the Mortgage Certificate has a very strong position in the Indonesian legal system. Article 14 paragraphs (2) and (3) of Law No. 4 of 1996 emphasizes that a registered certificate has executorial power equivalent to a *grosse aktat* and a court decision with permanent legal force. This means that the creditor can immediately execute the collateral object if the debtor defaults, without having to go through a civil lawsuit. Therefore, the cancellation of the Mortgage Certificate by the civil court, as in the Cikarang District Court Decision No. 136/Pdt.G/2019, creates a disharmony with land administration legal procedures.

Cancellation of certificates, which are administrative products, should be pursued through state administrative law mechanisms, in accordance with the principle of due process of law. The Supreme Court, in various decisions, has also emphasized that the authority to cancel state administrative decisions, including mortgage certificates, rests with the State Administrative Court. If cancellation is carried out by a civil court solely because the principal agreement is deemed flawed, this ignores the accessory nature of mortgage rights, which are not automatically revoked along with the principal agreement, unless there is a legal defect in the deed of grant of mortgage rights (APHT) or the registration process.

The consequence of this practice is the emergence of legal uncertainty (*rechtzekerheid*) and the threat to the principle of good faith (*tegoedertrouw*), the foundation of civil law. In addition to harming creditors who have acted procedurally, this cancellation also has the potential to create a negative precedent where any contractual dispute can be used to annul legitimate property rights. This blurs the line between civil and administrative law regimes and weakens the national financing system, which relies heavily on the legal certainty of mortgage certificates as collateral.

4) Implications for the Stability of the Legal System.

The cancellation of mortgage rights through a civil court decision without following the administrative procedures stipulated in the UUHT and land regulations sets a dangerous precedent. This action not only harms creditors who have met the formal requirements but also creates legal uncertainty in collateral-based credit practices and signals unauthorized intervention by civil courts into the administrative realm.

This uncertainty undermines public trust in the law, banking, and financial institutions. In fact, mortgage certificates issued by the Land Office constitute

authentic evidence with enforceable power. Their cancellation can only be achieved through administrative mechanisms (Ministerial Regulation of the ATR/BPN No. 9/1999), not through civil litigation. Such a decision violates the principles of legality, *pacta sunt servanda*, *rechtszekerheid*, and the principle of *lex specialis derogate legi generali*, considering that the UUHT, as *lex specialis*, must take precedence over the Civil Code.

The practical implications are serious: banks and financial institutions will lose confidence in land as collateral, increasing credit risk, hampering financing for MSMEs and the property sector, and disrupting the stability of the financial system. Furthermore, creditors' positions become vulnerable, as property rights can be arbitrarily revoked even if legal procedures have been followed.

If this practice becomes widespread, the credibility of the land system will be undermined, certificates will no longer be considered the ultimate form of evidence, and the potential for moral hazard in litigation will increase. Therefore, corrective norms are needed through legislation, regulations, and established jurisprudence to clarify the limits of civil jurisdiction in mortgage disputes.

Institutional reform and legal education for judges are also essential to ensure that civil decisions do not undermine the legal structure of land and the national financial system. In conclusion, the cancellation of mortgage rights is only valid through administrative mechanisms as stipulated in the Land and Building Law (UUHT), to maintain legal certainty, protect creditors, and ensure the sustainability of the national financial system.

3.2. Legal Protection for Creditors Regarding Mortgage Rights Cancelled by Court Decision No. 136/Pdt.G/2019/PN Ckr.

According to Satjipto Rahardjo, legal protection is an effort to safeguard individual interests by granting them basic rights and the authority to act in their behalf. In practice, legal protection encompasses steps taken by individuals, the government, and the private sector to ensure security, control, and the fulfillment of well-being in accordance with human rights. Satjipto Raharjo distinguishes two forms of legal protection:⁸

1) Preventive Legal Protection

This mechanism is preventive in nature, namely providing space for the public to express objections or opinions regarding a regulation, thereby encouraging the government to be more careful and wise in formulating policies.

2) Repressive Legal Protection

Repressive legal protection is the resolution of disputes after violations occur through judicial institutions, which affirm the recognition and guarantee of

⁸<http://tesishukum.com/pengertian-perlindungan-hukum/>. Accessed on August 18, 2025, at 10:00 WIB.

human rights and determine the limits of the obligations of society and the government.

The Cikarang District Court Decision Number 136/Pdt.G/2019/PN Ckr dated October 20, 2020, is detrimental to the legal position of PT Bank Tabungan Negara (Persero) Tbk as a creditor, because the encumbrance of mortgage rights on SHM No. 2 which is used as collateral for a credit of IDR 500,000,000 is declared legally flawed and invalid. Even though the mortgage has been registered with the first rank based on the APHT in the name of the debtor YPR. To assess Bank BTN's actions, it is necessary to analyze their compliance with the provisions of obligations and agreements according to Subekti, namely legal relationships that give rise to rights and obligations that must be fulfilled according to the principles of the validity of obligations in civil law.⁹

1) Forms of Preventive Legal Protection

YPR and Bank BTN entered into a debt agreement with a mortgage, requiring both parties to fulfill the agreed performance obligations. To assess the legality of this agreement, it is necessary to review the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code.

a) Agreement

In an agreement, the agreement must be born from free will without flaw, as Article 1321 of the Civil Code states that no agreement is valid if it is obtained due to error, coercion, or fraud. In this case, YPG and Bank BTN made a credit agreement Number 94 (April 22, 2010) and APHT Number 104/2010 (September 7, 2010) before Notary/PPAT Sri Utami, SH., M.Kn., with the object of collateral being SHM land worth Rp500,000,000 which was then registered as Mortgage Right No.6520/2010. Because it was made consciously without flaw of will, the terms of agreement in the agreement have been fulfilled.

b) Skills

Legal capacity is the ability of a person who is legally considered an adult to undertake legal actions, namely 21 years of age according to Article 330 of the Civil Code or 18 years of age according to the Marriage Law. YPR who entered into an agreement on April 22, 2010, was legally capable, as evidenced by his ID card and Taxpayer Identification Number (NPWP). Meanwhile, Bank BTN as a legal entity also has the authority to undertake legal acts, including credit facility agreements with land as collateral.

c) Regarding a particular matter

In contract law, the element of "a certain thing" refers to an object or achievement that must be clear and can be determined as per Article 1333 of the Civil Code. In this case, the main object of the agreement is Credit Agreement Number 94 dated April 22, 2010 worth Rp500,000,000 for working capital for a catering business, while the accessory agreement is in the form of

⁹Subekti, (2002), *Hukum Perjanjian*, Jakarta : Intermasa, p. 17

a mortgage guarantee on land SHM No. 2 measuring 597 m² in Ciantra Village, Bekasi Regency.

d) The existence of a lawful cause

A cause is a legitimate reason in an agreement that must not conflict with law, order, or morality (Article 1335 of the Civil Code). In this case, the Credit Facility Agreement between Bank BTN and YPR, secured by SHM No. 2, was intended to finance a catering business and was made through legal procedures without any indication of a false or prohibited cause. Therefore, the purpose of the agreement can be considered legitimate and in accordance with the principles of legality.

Based on the analysis, the principal and accessory agreements between YPR and Bank BTN have fulfilled the requirements of statutory regulations and are therefore legally valid, while still paying attention to the principles of the agreement.

a) The principle of freedom of contract

The principle of freedom of contract gives the parties the authority to determine the content and form of the agreement as long as it does not conflict with law, morality and public order. In the case of Bank BTN and YPR, the credit agreement and the imposition of mortgage rights fulfill this principle because they were made before a notary, so they are valid according to Indonesian civil law.

b) The principle of consensualism

An agreement is valid and binding upon reaching an agreement. In this case, the agreement between Bank BTN and YPR on April 22, 2010, was outlined in Credit Agreement No. 94 and an accession agreement in the form of a mortgage on SHM No. 2 before a notary, thus fulfilling the principle of consensualism.

c) The principle of pacta sunt servanda

The principle of pacta sunt servanda affirms that a valid agreement applies as law to the parties (Article 1320 of the Civil Code). In the case of Bank BTN and YPR, the Rp500,000,000 credit agreement was valid and executed in good faith, so YPR remained obligated to repay the remaining debt. Rejection without legal basis violates fundamental contract principles, creates legal uncertainty, and harms the creditor.

d) Principles of personality

Agreements must be made voluntarily by the parties. In this case, Bank BTN and YPR voluntarily entered into People's Business Credit Agreement No. 94 without any intervention from any other party.

As a creditor, Bank BTN has implemented financing procedures in accordance with banking laws and regulations, including administrative verification of YPR with the terms of credit limit, tenor, intended use of funds, interest, withdrawal mechanism, repayment schedule, and collateral in the form of mortgage rights.

This compliance reflects the application of the prudential banking principle as stipulated in Article 2 of the Banking Law. In the case of Bank BTN and YPR, no procedural violations were found, so that Bank BTN's legal position is within the corridor of legal protection. This effort is also a form of preventive protection, where Bank BTN applies a creditworthiness analysis through the 5C principle (Character, Capacity, Capital, Collateral, Condition of Economy) as the basis for providing credit facilities.

Based on the credit agreement, Bank BTN has implemented the principle of prudence by analyzing the YPR's feasibility through the 5C principle. Character is verified through the debtor's identity, while Capacity and Capital are reviewed through financial capability documents. Collateral in the form of SHM Number 2 is checked for legality through a clearance system to ensure it is free from disputes and legal burdens, while the Condition of Economy is assessed through a KJPP appraisal to ensure the proportionality of the collateral value to the credit facility. Thus, all 5C principles are met before the credit is approved.¹⁰

In granting credit to YPR, Bank BTN has implemented the principle of prudence by verifying the validity of documents through authorized officials, namely Notaries and PPAT. The land transfer process, credit agreements, and Deeds of Grant of Mortgage Rights (APHT) are all drawn up by public officials in accordance with legal provisions and officially registered to obtain a Mortgage Right number. These authentic deeds guarantee legal certainty, especially for creditors, and fulfill the formal requirements stipulated in the Mortgage Rights Law. Thus, Bank BTN has acted in accordance with legal procedures to protect its interests in the event of a debtor's default.

The procedure for granting a Mortgage Right is regulated in Article 10 of the Mortgage Law concerning direct granting and Article 15 of the Mortgage Law concerning the power of encumbrance. The procedure is as follows:¹¹

- a) The granting of Mortgage Rights must be preceded by a principal agreement, namely a Credit between YPR and Bank BTN in the amount of IDR 500,000,000 for a catering business, evidenced by Credit Agreement Number 94 dated April 22, 2010 by Notary Rika Adrianti, SH
- b) The granting of Mortgage Rights must be made by an authorized official. Credit Agreement Number 94 dated April 22, 2010 was made by Notary Rika Adrianti, SH, while APHT Number 104/2010 dated September 7, 2010 was made and registered by Notary/PPAT Sri Utami, SH, M.Kn., until it was registered as Mortgage Rights No. 6520/2010.
- c) The granting of Mortgage Rights was carried out on certified land in the name of the debtor, namely YPR, based on SHM No. 2 with Measurement Letter No.

¹⁰See Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT), Article 10 and Article 15, Banking Management, Jakarta : Rajawali Pers, 2014, p. 109.

¹¹*Ibid*

10.05.15.01.01291/1997, which was obtained through AJB No. 239/2010 dated July 20, 2010 before PPAT Nyi Raden Kania Nursanti, SH

The procedure for imposing a Mortgage Right according to Article 15 of the UUHT must use a Power of Attorney for imposing a Mortgage Right as follows:

- a) The creation of a Power of Attorney must be done with a notary deed or PPAT deed.
- b) The Power of Attorney made cannot be revoked or cannot be terminated for any reason unless the power of attorney has been exercised or the term has expired.
- c) A power of attorney encumbering mortgage rights regarding registered land rights must be followed by the creation of an APHT no later than 1 (one) month after it is granted.
- d) A power of attorney to encumber mortgage rights regarding unregistered land rights must be followed by the creation of an APHT no later than 3 (three) months after it is granted.

Based on the description above, Bank BTN has made APHT No. 104/2010 dated September 7, 2010 before Notary/PPAT Sri Utami, SH, M.Kn., which was then registered as Mortgage Right No. 6520/2010. The entire process was carried out by authorized officials so that the deed was authentic and legally valid. According to Satjipto Rahardjo, preventive protection provides legal certainty for parties with good intentions, such as Bank BTN, as reflected in the steps taken. From a formal perspective, the encumbrance of the Mortgage Right is in accordance with Law No. 4 of 1996. However, problems arose when the Cikarang District Court in Decision No. 136/Pdt.G/2019/PN Ckr stated that the transfer of rights to SHM No. 2 from Manah Binti Jeding to YPR was invalid and legally flawed, along with all the consequences.

The decision also stated that all derivative rights from SHM No. 2, including Mortgage Rights No. 6520/2010 resulting from APHT No. 104/2010 in the name of Bank BTN, were invalid, legally flawed, and not binding. Thus, the formal aspects that were originally valid lost their legality because the collateral object was null and void. This is in accordance with Article 18 paragraph (1) of the UUHT concerning the abolition of Mortgage Rights.

- a) Debt written off as collateral by a mortgage.
- b) Release of Mortgage Rights by the Mortgage Rights holder
- c) Granting of Mortgage Rights is based on the determination of the ranking by the Head of the District Court.
- d) Elimination of land rights burdened with mortgage rights.

In relation to Article 18 paragraph (1) letter d of the UUHT, the elimination of the Mortgage Right occurred because the land rights in the form of SHM No. 2 in the name of YPR were cancelled by the court, thereby automatically eliminating the

Mortgage Right of Bank BTN. The Cikarang District Court Decision No. 136/Pdt.G/2019/PN Ckr confirmed that Bank BTN had actually acted in accordance with legal procedures without knowing about any unlawful acts by MBJ, YPR, and Hj. L. The trial facts showed that there was a double AJB which caused SHM No. 2 in the name of YPR to be legally flawed.

As a result, APHT No. 104/2010 and Mortgage Right No. 6520/2010 became null and void, so that the accessory agreement was also invalid, even though the principal debt-receivable agreement remained valid (Article 18 paragraph (4) UUHT). This caused Bank BTN to lose its position as a preferred creditor and become a concurrent creditor, without prior rights to debt repayment.

In fact, according to SEMA No. 7 of 2012, mortgage holders who act in good faith should be protected, even if the grantor is not the legal owner. This protection aligns with the purpose of the Mortgage Law to ensure legal certainty for creditors. Based on Article 14 of the Mortgage Law, a Mortgage Certificate has the same enforceable power as a court decision, and can therefore be used as a basis for claiming compensation if the debtor defaults.

Thus, Bank BTN's position as a creditor in good faith deserves legal protection because the losses it experiences arise from legal defects in the collateral object, not due to its negligence. Basically, there are two forms of legal protection that creditors, in this case Bank BTN, can take, namely preventive legal protection as follows:¹²

- a. Bank BTN has implemented preventive legal protection through a Mortgage Right guarantee for SHM 2. However, after the Mortgage Right was revoked, its status was downgraded from preferred creditor to concurrent creditor. Legal protection remains through Articles 1131 and 1132 of the Civil Code, which state that all of the debtor's assets, both movable and immovable, serve as joint collateral for debt repayment. However, this protection is weak because Bank BTN loses its privileges and must compete with other creditors for debt repayment.
- b. According to Article 12A of the Banking Law, if a debtor defaults, the bank can purchase collateral through auction or voluntary transfer/authorization to sell from the collateral owner. The purchased collateral must be immediately liquidated to expedite the debtor's settlement.
- c. Article 1 paragraph (1) of the UUHT provides a special position (*droit de preference*) for creditors as a form of legal protection if the debtor defaults.

2) Repressive Forms of Legal Protection

- a. Articles 6, 7, 11, 14, and 20 of the UUHT stipulate that if the debtor defaults, the first Mortgage Right holder has the right to auction the collateral object

¹²Gunawan Widjaja, (2003), *Hak Tanggungan: Asas, Ketentuan Pokok, dan Masalah yang dihadapi dalam Praktik*, Jakarta : Raja Grafindo Persada, p. 95

and pay off his debt from the proceeds of the sale, provided that the object has been registered and has a Mortgage Right Certificate with the inscription "For the Sake of Almighty God" which provides executorial power.

- b. Based on Book IV of the Civil Code, creditors can sue in court by presenting evidence from litigation related to land under the UUPA. The burden of proof rests with the parties to convince the judge of the truth of the events supporting the claim.¹³

Bank BTN's legal action is to sue YPR in the District Court on the grounds of an Unlawful Act (PMH) related to the cancellation of Mortgage Right No. 6250/2010. Based on Article 1365 of the Civil Code, any unlawful act that harms another party requires the perpetrator to compensate for the loss. This lawsuit can be filed if the elements of PMH are met.

- a) This act is an unlawful act.
- b) There must be a mistake.
- c) There must be a loss incurred.
- d) There is a causal relationship between the act and the loss.

YPR's actions fulfill the elements of PMH because the cancellation of the credit agreement and mortgage right harmed Bank BTN by eliminating the land collateral. The illegal transfer of SHM 2 and its use as credit collateral violates the law, requiring YPR to compensate Bank BTN for its losses.

Based on Article 1131 of the Civil Code, general guarantee provisions are applied as follows:

"All of the debtor's assets, both movable and immovable, both present and future, are collateral for his debts."

So it can be said that the land object SHM 2 which is burdened with Mortgage Guarantee No. 6250/2010 is ranked first in the Deed of Mortgage Encumbrance (APHT) No. 104/2010 dated September 7, 2010. If a dispute occurs that results in the cancellation of the right to the Mortgage Guarantee by a Court Decision. Then Bank BTN can request the replacement of the collateral object/other assets to YPR.

In addition to lawsuits, Bank BTN can seek settlement based on PBI No. 7/2/PBI/2005 through collateral takeover (AYDA) or write-off. Another effort is credit restructuring in accordance with BI Director's Letter No. 31/150/KEP/DIR/1998, which includes rescheduling, reconditioning, and restructuring, provided the debtor demonstrates good faith.

If the debtor does not have good faith or replacement assets, the creditor bears the loss, contrary to Gustav Radbruch's legal principles (Justice, Certainty,

¹³R. Subekti, (2005), *Hukum Pembuktian*, Jakarta : Pradnya Paramita, p. 10-11

Benefit).¹⁴In cases of suspected document or signature forgery, creditors can report the debtor and notary in accordance with Article 378 in conjunction with Article 266 paragraph (1) in conjunction with Article 263 paragraph (1) of the Criminal Code. Criminal measures are intended to provide a deterrent effect, not to compensate the creditor for material losses.

4. Conclusion

Legal certainty regarding mortgage rights that were revoked by court decision No. 136/Pdt.G/2019 PN Ckr. Decision No. 136/Pdt.G/2019/PN Cikarang, which annulled Mortgage Rights, created legal uncertainty for security institutions. In fact, Law No. 4 of 1996 affirms that Mortgage Rights provide certainty and protection for creditors. However, this annulment demonstrates that even if formally valid, Mortgage Rights can still be challenged if the underlying agreement is legally flawed, so the material aspects of the agreement determine its validity. Legal protection for creditors for mortgage rights that were cancelled by court decision No. 136/Pdt.G/2019 PN Ckr. Bank BTN has acted in good faith and carried out all legal procedures from credit assessment to the imposition of mortgage rights. However, the debtor's (YPR) actions gave rise to a dispute that culminated in Decision No. 136/Pdt.G/2019/PN Cikarang, canceling SHM No. 330/Ciantra, Mortgage Rights No. 6250/2010, and APHT No. 104/2010, so that the collateral lost its legal force. However, the debtor's principal obligations remain. Legal protection for creditors is repressive through civil lawsuits (Article 1365 of the Civil Code), internal bank mechanisms (PBI No. 7/2/PBI/2005), or criminal channels if there is falsification of documents/signatures (Article 378 in conjunction with Article 266 paragraph 1 in conjunction with Article 263 paragraph 1 of the Criminal Code), including demanding compensation or alternative collateral.

5. References

Books:

- Adrian Sutedi, (2012), *Hukum Hak Tanggungan*, Cetakan Kedua, Jakarta : Sinar Grafika
- Fani Martiawan Kumara Putra, *Tanggung Gugat Debitor Terhadap Hilangnya Hak Atas Tanah Dalam Obyek Jaminan Hak Tanggungan*, Fakultas Hukum, Universitas Wijaya Kusuma
- Gunawan Widjaja, (2003), *Hak Tanggungan: Asas, Ketentuan Pokok, dan Masalah yang dihadapi dalam Praktik*, Jakarta : Raja Grafindo Persada
- J. Satrio, *Hukum Jaminan*, (1997), *Hak Jaminan Kebendaan, Hak Tanggungan Buku I*, Bandung : Citra Aditya Bakti
- Lili Rasjidi & I.B Wasa Putra, (1993), *Pengantar Filsafat Hukum*, Bandung : Citra Aditya Bakti
- Marzuki Peter Mahmud, (2005), *Penelitian Hukum*, Jakarta : Prenada Media

¹⁴Lili Rasjidi & I.B Wasa Putra, (1993), *Pengantar Filsafat Hukum*, Bandung : Citra Aditya Bakti, p. 53

R. Subekti, (2005), *Hukum Pembuktian*, Jakarta : Pradnya Paramita
Subekti, (2002), *Hukum Perjanjian*, Jakarta : Intermasa
Yahya Harahap, (2016), *Hukum Acara Perdata: Gugatan Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Jakarta : Sinar Grafika

Internet:

<http://tesishukum.com/pengertian-perlindungan-hukum/>. Accessed on August 18, 2025, at 10:00 WIB.

Regulation:

See Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT), Article 10 and Article 15, Banking Management, Jakarta : Rajawali Pers, 2014