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Legal Analysis of the Creditor Agreement as a Legal Basis for Changing Ownership Rights to Land Still Bound by Mortgage Rights from an Individual to a Legal Entity in the city of Cirebon

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Abstract. *Various provisions in Article 7 and the explanation of Article 7, Article 11, Article 13, and Article 14, as well as Article 18 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, emphasize that the creditor's agreement as a legal basis for changing ownership rights on land that is still bound by mortgage rights from individuals to Legal Entities cannot be carried out. However, in reality, in the case of the Cirebon City Science Development Foundation, there has been a transfer of ownership rights over the land object to which the Mortgage Right agreement is attached. The approach method used in compiling this paper is normative legal research (normative legal research method). Based on the research results, it can be seen thatThe provisions in Article 7 and the explanation of Article 7, Article 11, Article 13, and Article 14, as well as Article 18 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, confirm that the creditor's agreement as a legal basis for changing ownership rights on land that is still bound by mortgage rights from an individual to a Legal Entity in the case of the Cirebon City Science Development Foundation is not clearly regulated in the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. The creditor's agreement as a legal basis for changing ownership rights over land that is still bound by mortgage rights from individuals to legal entities in the case of the Cirebon City Science Development Foundation does not have clear and strong legal certainty, this can result in the rights of creditors and debtors being violated, this is because the implementation of changing ownership rights over land that is still bound by mortgage rights from individuals to legal entities in the case of the Cirebon City Science Development Foundation based on the creditor's agreement as a legal basis can result in misbruik van omstandigheden.*

Keywords: *Agreement; Creditor; Land; Mortgage.*

1. Introduction

In order to guarantee legal certainty regarding legal protection for creditors from deviations that may be committed by debtors when transferring ownership rights to land as collateral for HT as a form of default, after being registered, the land object as collateral for HT is then created by the BPN Office as a Mortgage Right land book and the BPN also records it in the land book for land rights that are the object of the Mortgage Right and copies the record on the relevant land rights certificate.

The position of the creditor's rights as the holder of the HT on land as collateral for the HT through the issuance of the HT made by the BPN was then reaffirmed in Article 14 paragraph (4) of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, which states that "unless otherwise agreed, the land rights certificate which has been marked with a note on the encumbrance of the Mortgage Right as referred to in Article 13 paragraph (3) is returned to the holder of the land rights concerned." Based on the various explanations presented above, it can be seen that the debtor cannot register the release of land ownership rights to another party, including a legal entity, without first fulfilling his responsibility to pay off his receivables to the creditor as agreed to in the HT agreement. This is because:

1) Based on Article 7 and the explanation of Article 7 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, it can be seen that after the issuance of the HT issued by the BPN, the creditor's rights are attached to the land ownership rights attached to the HT agreement, so that even though the debtor can release ownership rights to the land to another party through a sale and purchase agreement or through an act of transferring ownership rights to other land, this does not remove the rights of the HT holder to the land attached to the HT agreement. Based on Article 11, Article 13, and Article 14 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, it is also clear that there is an obligation for the debtor as the HT provider to agree and guarantee that the debtor cannot release the land attached to the HT agreement to a third party and the debtor must also absolutely guarantee that the land object as collateral for the HT remains under the authority of the creditor as collateral for the HT, which cannot be transferred by the debtor as long as the debtor's receivables have not been paid off.

The various explanations above show that in the field of receivables law it can be seen that as long as the debtor has not paid off his receivables to the creditor, the debtor's land which is pledged as the object of HT collateral remains held by the HT holder, so that if the debtor wants to transfer ownership rights to his land, this cannot be done, because in the transfer of name to the debtor's land which is pledged as HT collateral, the creditor's rights are still attached so that as long as the receivables have not been paid off, the mechanism for transferring ownership rights to the land must go through roya and roya can only be done to another party when the debtor's receivables have been paid off, in other words the debtor can transfer ownership rights to the land which is pledged as the object of HT to another party when the Mortgage Right has been removed. Article 18 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land states:

1) Mortgage rights are revoked due to the following reasons:

a. cancellation of debt secured by mortgage rights;

b. release of Mortgage Rights by the Mortgage Rights holder;

c. clearing mortgage rights based on ranking determination by the Chairman of the District Court;

d. the elimination of rights to land encumbered by mortgage rights.

2) The cancellation of the Mortgage Right due to its release by the holder is carried out by providing a written statement regarding the release of the Mortgage Right by the Mortgage Right holder to the Mortgage Right provider.

3) The elimination of Mortgage Rights due to the cleansing of Mortgage Rights based on the ranking determination by the Head of the District Court occurs due to the request of the purchaser of the land rights burdened with the Mortgage Rights so that the rights to the land he purchased are cleansed from the burden of the Mortgage Rights as regulated in Article 19.

4) The deletion of the mortgage right due to the deletion of the rights to land burdened with the mortgage right does not result in the deletion of the secured debt.

Based on the provisions above, it can be seen that the transfer of ownership rights to land bound by HT can only be carried out when the Mortgage Right has been extinguished because:

a. cancellation of debt secured by mortgage rights;

b. release of Mortgage Rights by the Mortgage Rights holder;

c. clearing mortgage rights based on ranking determination by the Chairman of the District Court;

d. the elimination of rights to land encumbered by mortgage rights.

Regarding the ownership status of land pledged as collateral, it is not uncommon for the debtor to be a legal entity whose Articles of Association and Bylaws frequently undergo updates and changes, including in terms of asset ownership in the form of land that is also being pledged in a receivables agreement with a HT guarantee with the creditor. Changes to the Articles of Association of a legal entity that then transfer ownership of a legal entity asset can have implications for the legal certainty of ownership of the HT collateral object. This makes the land as the object of HT collateral must have its ownership status changed to avoid disputes over ownership of the legal entity's assets which result in the status of the HT collateral also experiencing legal uncertainty. The problem is that the legal entity's assets that are currently the object of HT collateral can only have their ownership changed when the HT has been extinguished, one of which is done through the repayment of the HT. This situation results in the legal entity's land assets that are the object of HT collateral not being able to have their ownership status changed before the HT is extinguished. The Cirebon City Science Development Foundation, in terms of its university accreditation registration requirements, requires that the existing university land object must have the status of the Foundation's property rights, while the ownership certificate for the university land owned by the Cirebon City Science Development Foundation is being pledged as collateral for Mortgage Rights in one of the Banks in Cirebon City, where the land certificate that is pledged as the object of the HT guarantee is not in the name of the Foundation but in the name of an individual. The Cirebon City BPN, who was asked for their opinion on this issue, said that the land owned by the Cirebon City Science Development Foundation can have its ownership status changed from individual to in the name of the Foundation when the HT holder is willing to have the certificate name changed. The debtor then looked for another bank to submit this willingness, then at the other bank it was approved so that the debtor transferred his receivables to the other bank so that the process of changing the name of the individual certificate to a property rights certificate in the name of the Cirebon City Science Development Foundation can be carried out.[1]

This can be done, however, the legal basis for this series of legal actions has not been regulated in Law 14 of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, so that the creditor's agreement as a legal basis for changing the name of land rights also does not have a guarantee of legal protection for the creditor when the debtor abuses the creditor's willingness to benefit himself, for example by committing embezzlement of certificates, falsification of certificates, or other Unlawful Acts that can harm the creditor.

2. Research Methods

The approach used in compiling this paper is normative legal research (normative legal research method). The normative legal research method is a library legal research conducted by examining library materials or secondary data. By using deductive thinking methods (a way of thinking in drawing conclusions drawn from something of a general nature that has been proven to be true and the conclusion

[1]Interview with HY as Chairman of the Cirebon City Science Development Foundation on May 12, 2025.

is intended for something of a specific nature). Thus, the object analyzed with a qualitative approach is a research method that refers to legal norms contained in legislation.[2]

3. Results and Discussion

3.1. Regulations Regarding Creditor Agreements as a Legal Basis for Changing Ownership Rights to Land Still Bound by Mortgage Rights from Individuals to Legal Entities in the Case of the Cirebon City Science Development Foundation

The Cirebon City Science Development Foundation, in terms of its university accreditation registration requirements, requires that the existing university land object must have the status of the Foundation's property rights, while the ownership certificate for the university land owned by the Cirebon City Science Development Foundation is being pledged as collateral for Mortgage Rights in one of the Banks in Cirebon City, where the land certificate that is pledged as the object of the HT guarantee is not in the name of the Foundation but in the name of an individual. The Cirebon City BPN, who was asked for their opinion on this issue, said that the land owned by the Cirebon City Science Development Foundation can have its ownership status changed from individual to in the name of the Foundation when the HT holder is willing to have the certificate name changed. The debtor then looked for another bank to submit this willingness, then at the other bank it was approved so that the debtor transferred his receivables to the other bank so that the process of changing the name of the individual certificate to a property rights certificate in the name of the Cirebon City Science Development Foundation can be carried out.[3]This can be done, however, the legal basis for this series of legal actions has not been regulated in Law 14 of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, so that the creditor's agreement as a legal basis for changing the name of land rights also does not have a guarantee of legal protection for the creditor when the debtor abuses the creditor's willingness to benefit himself, for example by committing embezzlement of certificates, falsification of certificates, or other Unlawful Acts that can harm the creditor.

Based on the various explanations presented above, it can be seen that the debtor cannot register the release of land ownership rights to another party, including a legal entity, without first fulfilling his responsibility to pay off his receivables to the creditor as agreed to in the HT agreement. This is because:

a. Based on Article 7 and the explanation of Article 7 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, it can be seen that after the issuance of the HT issued by the BPN, the creditor's rights are attached to the land ownership rights attached to the HT

[2]Soerjono Soekanto, 1996, Introduction to Legal Research, UI Press, Jakarta, p. 63.
[3]Interview with HY as Chairman of the Cirebon City Science Development Foundation on May 12, 2025.

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agreement, so that even though the debtor can release ownership rights to the land to another party through a sale and purchase agreement or through an act of transferring ownership rights to other land, this does not remove the rights of the HT holder to the land attached to the HT agreement.

b. Based on Article 11, Article 13, and Article 14 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, it is also clear that there is an obligation for the debtor as the HT provider to agree and guarantee that the debtor cannot release the land attached to the HT agreement to a third party and the debtor must also absolutely guarantee that the land object as collateral for the HT remains under the authority of the creditor as collateral for the HT, which cannot be transferred by the debtor as long as the debtor's receivables have not been paid off.

c. Based on Article 18 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, it is also seen that the transfer of ownership rights to land bound by HT can only be carried out when the Mortgage Rights have been extinguished due to the cancellation of the debt secured by the Mortgage Rights, the release of the Mortgage Rights by the Mortgage Rights holder, the cleaning of the Mortgage Rights based on the ranking determination by the Head of the District Court, and the elimination of the rights to the land burdened with the Mortgage Rights.

Various provisions in Article 7 and the explanation of Article 7 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Article 11, Article 13, and Article 14 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, and Article 18 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, confirm that the creditor's agreement as a legal basis for changing ownership rights on land that is still bound by mortgage rights from individuals to Legal Entities in the case of the Cirebon City Science Development Foundation is not clearly regulated in the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. The creditor's agreement as a legal basis for changing land ownership rights that are still bound by mortgage rights from individuals to legal entities in the case of the Cirebon City Science Development Foundation does not have clear and strong legal certainty, this will result in the violation of the rights of creditors and debtors, this is because the implementation of changes in land ownership rights that are still bound by mortgage rights from individuals to legal entities in the case of the Cirebon City Science Development Foundation based on the creditor's agreement as a legal basis can result in misbruik van omstandigheden. Abuse of circumstances is a civil law doctrine in which one party takes advantage of the weak, dependent, or emergency position of another party to gain unilateral benefits in the agreement, thus causing a defect in will. The misbruik van omstandigheden can be carried out by both creditors and debtors by committing fraud in the form of transferring land ownership rights that are bound by a mortgage agreement with the aim of benefiting themselves. Creditors can easily do this by being strengthened by the existence of viat parate execution authority. Meanwhile, debtors who can change the status of ownership rights to land bound by an HT agreement can deviate from debt responsibilities with HT guarantees if the transfer of ownership rights to the land which is the object of the HT guarantee does not clarify the information regarding the position of the guarantee object in the existing HT agreement. Various existing explanations show The creditor's agreement as a legal basis for changing ownership rights over land that is still bound by mortgage rights from individuals to legal entities in the case of the Cirebon City Science Development Foundation based on the creditor's agreement which has not been regulated in the legal regulations of the HT agreement can harm the principle of legal protection for both creditors and debtors. According to Philipus M. Hadjon, there are two types of legal protection facilities, namely:[4]

a. Preventive Legal Protection Facilities

In this preventive legal protection, legal subjects are given the opportunity to raise objections or express opinions before a government decision is finalized. The goal is to prevent disputes. Preventive legal protection is crucial for government actions based on freedom of action, as it encourages the government to exercise caution in making discretionary decisions. Indonesia does not yet have specific regulations regarding preventive legal protection.Law of the Republic of Indonesia Number 4 of 1996 Concerning Mortgage Rights on Land and Objects Related to Land has not regulated the change of ownership rights on land that is still bound by mortgage rights from individuals to Legal Entities based on creditor approval, especially in the case of the Cirebon City Science Development Foundation. This clearly shows that there is no legal preventive protection in the regulation of receivables law for parties who change ownership rights on land that is still bound by mortgage rights from individuals to Legal Entities in the case of the Cirebon City Science Development Foundation based on creditor approval.

b. Repressive Legal Protection Facilities

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia falls into this category. The principle of legal protection against government actions rests on and stems from the concept of recognizing and protecting human rights. Historically, in the West, the emergence of concepts regarding the recognition and protection of human rights was directed at limiting and establishing obligations for society and the government. The second principle underlying legal protection against government actions is the principle of the rule of law. Linked to the recognition and protection of human rights, the recognition and protection of

[4]Hadjon, Philipus M., Legal Protection for the Indonesian People, Bina Ilmu, Surabaya, 1987, p. 49.

human rights occupy a primary place and can be linked to the objectives of the rule of law. The absence of preventive legal protection in the legal regulations of receivables for parties who change ownership rights over land that is still bound by mortgage rights from individuals to Legal Entities in the case of the Cirebon City Science Development Foundation based on the creditor's approval, is an indication that the material law of receivables with HT guarantees does not provide a legal basis for judges to protect parties whose rights are injured when there is an abuse of circumstances against the parties who change ownership rights over land that is still bound by mortgage rights from individuals to Legal Entities in the case of the Cirebon City Science Development Foundation based on the creditor's approval. This also shows that there are no regulations regarding repressive legal protection in the regulations regarding changes in ownership rights over land that is still bound by mortgage rights from individuals to Legal Entities in the case of the Cirebon City Science Development Foundation based on the creditor's approval.

The various explanations above show that the absence of legal protection for the parties in the matter of implementing changes in land ownership rights from individuals to legal entities where the land object whose ownership rights status has been changed is still attached to HT only on the basis of a creditor agreement that is not legally certain clearly violates the sense of justice. Justice or Ar;al-adl is a characteristic that every human being must have, which is basically a way to realize the truth for anyone in the world, even if it will also harm oneself.[5]Meanwhile, etymologically, "al-adl" means impartial or impartial. It is also closely related to "al-musawah." Furthermore, according to Islamic terminology, justice means equalizing one thing with another, both in value and in measurement, so that there is no bias or partiality between one thing and another. Furthermore, "justice" also means siding with the truth.[6]

Basically, Allah SWT is called "The Most Just and Wise towards His servants, meaning that all human actions will not affect the justice of Allah SWT, good and bad human actions will actually receive their own rewards. This can be seen in the Quran, Chapter 41 Verse 46 which states that "whoever does good deeds, the reward is for himself and whoever does evil deeds, the sin is for himself, and your Lord never wrongs His servants."[7]

Meanwhile, the majority of scholars agree that all of the companions of the Prophet SAW were just and there is no need to discuss the justice of the companions of the Prophet SAW which can be seen in the narration of the Hadith.[8]This can be seen in the story of Umar bin Khattab:[9]

[5]Anonymous, Encyclopedia of Islamic Law, Ichtiar Baru Van Hoeve, Jakarta, 1996, p. 50.
[6]Ibid, p. 51.
[7]Tohaputra Ahmad, Al-Qur'an and its Translation, CV. As Syifa, Semarang, 2000, p. 185.
[8]Ibid, p. 1072
[9]Mohammad Daud AM., Islamic Law: Introduction to Islamic Law and Legal System in Indonesia, Rajawali Pers, Jakarta, 1993, p. 157.

a. In the time of the Prophet and in the time of Caliph Abu Bakar, three divorces could be pronounced at once so that they were considered one divorce, while in the era of Umar, three divorces had to be pronounced in stages;

b. During the time of the Prophet, zakat was also given to Muslim converts; in Umar's era, this was abolished; And

c. In Umar's era, the punishment of hand-holding for thieves as mandated in Surah Al-Maidah Verse 38 was not implemented by Umar for the poor.

Meanwhile, the meaning of justice in Tafsir Al Manar is "something that is maintained with truth, by not relying on anything except from two sides or several sides that are opposite to it or in relation to it".[10]

3.2. Constraint In the Regulations Regarding Creditor Agreements as a Legal Basis for Changing Ownership Rights to Land Still Bound by Mortgage Rights from Individuals to Legal Entities in the Case of the Cirebon City Science Development Foundation

The main obstacle in the regulation related to the creditor agreement as the legal basis for changing the ownership rights of land that is still bound by mortgage rights from individuals to legal entities in the case of the Cirebon City Science Development Foundation is not in the dimensions of legal substance and structure, but is caused by problems in the dimension of legal culture. The problem of the creditor agreement as the legal basis for changing the ownership rights of land that is still bound by mortgage rights from individuals to legal entities in the case of the Cirebon City Science Development Foundation is caused by the parties agreeing without being based on clear statutory regulations. This shows that the problem of the creditor agreement as the legal basis for changing the ownership rights of land that is still bound by mortgage rights from individuals to legal entities in the case of the Cirebon City Science Development Foundation is caused by social legal cultural patterns that deviate from existing positive legal rules. This is more dominated by the debtor's desire to fulfill his unilateral interests. The main cause of debtors committing violations of HT legal regulations in the form of actions to change the ownership status of land attached to HT on it by submitting a request for a creditor agreement is generally driven by economic factors in the form of efforts to transfer the responsibility for receivables to a third party due to being unable to pay off debts, and seeking profits by transferring the responsibility for receivables to a legal entity as a third party in order to develop a business activity that the debtor enjoys the results with capital transferred to the legal entity. The next cause of legal culture is the low legal understanding regarding criminal consequences, as well as weak supervision from the creditor. This action is also triggered by environmental factors (the presence of a receiver/third party) and the

[10]Sri Endah Wahyuningsih and Muchamad Iksan, Reconstruction of the retroactive principle in the Indonesian criminal law code based on the value of religious wisdom, International Journal of Law Reconstruction Volume I, Issue 1, September 2017, p. 182.

desire to avoid collateral execution. The debtor does not realize that the act of transferring collateral is an unlawful act because it is contrary to Article 7 and the explanation of Article 7, Article 11, Article 13, and Article 14, as well as Article 18 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.[11]

4. Conclusion

Various provisions in Article 7 and the explanation of Article 7, Article 11, Article 13, and Article 14, as well as Article 18 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, confirm that the creditor's agreement as a legal basis for changing ownership rights on land that is still bound by mortgage rights from individuals to Legal Entities in the case of the Cirebon City Science Development Foundation is not clearly regulated in the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. The creditor's agreement as a legal basis for changing ownership rights over land that is still bound by mortgage rights from individuals to legal entities in the case of the Cirebon City Science Development Foundation does not have clear and strong legal certainty, this can result in the rights of creditors and debtors being violated, this is because the implementation of changing ownership rights over land that is still bound by mortgage rights from individuals to legal entities in the case of the Cirebon City Science Development Foundation based on the creditor's agreement as a legal basis can result in misbruik van omstandigheden.

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[11]Interview with Lia Amalia as Notary/PPAT in Cirebon City, February 19, 2026.