



## **Juridical Analysis of Legal Protection for Creditors on Mortgage Rights Canceled by Decision**

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**Abstract:** Mortgage is a guarantee in providing credit facilities and aims to protect the interests of creditors and debtors. The creditor can execute the object of Mortgage collateral if the debtor defaults. However, if the object of collateral experiences a dispute and the transfer of rights is canceled by a Court Decision, what are the legal consequences. The research method used is to use normative research that uses primary legal sources consisting of laws and regulations, legal principles, legal principles and legal doctrines on legal systematics related to answering problems in the subject of writing. From the results of the analysis and discussion that Bank BTN Persero is a good faith creditor in granting credit, and has been in accordance with standard operating procedures, and has not violated the laws and regulations, canceled Mortgage Rights by Court Decision does not cause the Debtor's debt to be canceled, the Creditor can take legal action for Wrongful Acts to request compensation for the actions that have been caused and request other assets / assets in exchange for Mortgage Rights that have been canceled previously by Court Decision.

**Keyword:** Mortgage, Credit, Decision.

### **INTRODUCTION**

According to Sukirno, economic growth means developments in the economy that result in increased or increased production of goods and services for the prosperity of the community. (Sukirno Sadono,) A country certainly has a desire to develop its economy as does Indonesia, because it is in accordance with the 1945 Constitution of the Republic of Indonesia. To develop the economy of a country, all elements must take part, not only the government, the community, both individuals and legal entities must be involved. In the implementation of funding in the community that is often used is credit as a very important instrument in development in the economic field because it involves aspects of trade and industry. The definition of credit according to Law Number 10 of 1998 concerning Banking is as follows:

"Credit is the provision of money or bills that can be equated with it, based on an agreement or borrowing and lending agreement between a bank and another party that requires the borrower to repay his debt after a certain period of time with interest".

Article 1754 of the Civil Code stipulates that lending and borrowing is a form of agreement made by one party with another party regarding certain goods and amounts on the condition that the guaranteeing party will return the same amount. This article is a reference related to credit. Apart from being a financing, credit aims to assist the government in order to increase development in various sectors. In obtaining credit, of course, there must be collateralized objects, both movable and immovable objects. This is as a guarantee for the Bank to be confiscated later if the Debtor does not fulfill his/her performance. The provision of credit with immovable property collateral is called Mortgage Rights, which are regulated in Law No. 4 of 1996 concerning Land Rights and Objects Associated with Land. The holder of the Mortgage Rights gets a preferred / special position as a Preference creditor. Which in its repayment takes precedence (droit preference) (Agustina, 2019).

The existence of a mortgage guarantee makes the guarantor unable to do anything with the object of the guarantee and even removes the rights of the guarantor to the object of the guarantee if the debtor is in breach of promise (Prabasari, 2021). Land rights that can be encumbered by mortgage rights are ownership rights, business use rights, and building use rights. Mortgage rights are made to protect the interests of creditors and debtors. Article 6 of the HT Law stipulates that if the debtor is injured, the first holder of the Mortgage Rights has the right to sell the object of the Mortgage Rights on its own power through a public auction and take repayment of the debt from the proceeds of the sale. In practice, there is a problem that the creditor cannot execute the mortgage right, because the land as collateral is in dispute. One of the land disputes that often occurs is the existence of overlapping certificates.

In this regard, the creditor indirectly suffers a loss. According to Supreme Court Circular Letter No. 7 of 2012 in point VIII "The holder of a good faith mortgage must be protected even if it is later discovered that the grantor of the mortgage is an unauthorized person". One way to determine the position of the creditor has been in good faith, by seeing that in the implementation or procedure of the debt and credit agreement. A good creditor must fulfill the applicable provisions in the bank's prudential principles (Simamora, 2022), namely whether the creditor has examined the land that will become collateral in accordance with the legal provisions of the object of Mortgage Rights.

Actually, these cases occur a lot, the Bank suffered losses due to the guarantee being canceled by the Court Decision. as an example is Decision Number 136/PDT.G /2019/PN Ckr, where there is an original certificate in the name of the Debtor that has been pledged to the Bank which was canceled by a Court Decision due to an older AJB. To find out more, it will be explained as follows. The chronology of the case begins that there was a sale and purchase in 1999 with a certificate of ownership No 330/Ciantra between Manah Binti Jeding (hereinafter referred to as MBD) as the seller and Gunawan (hereinafter referred to as G) as the buyer with Deed of Sale and Purchase No 189/JB/1999 Dated July 28, 1999 made before PPAT Drs. H. R. Ayub Hidayat, but after the sale and purchase G has not submitted a name change, but G has fulfilled the payment of annual PBB dues on the disputed object land. It was later discovered that there was a sale and purchase of Title Certificate No. 330/Ciantra between Minah Binti Jeding (MBJ) as the seller and Yogi Prayogo Ramadhan (hereinafter referred to as YPR) as the buyer with Deed of Sale and Purchase No. 239/2010, on July 21, 2010 made before PPAT Drs. H. R. Ayub Hidayat. After the sale and purchase, YPR did a name change so that the certificate of ownership No. 330/Ciantra was issued on behalf of YPR.

Decision No. 136/PDT.G/2019/PN Ckr states that G is the rightful holder of the disputed object. The judge also ruled that the Certificate of Title No 330/Ciantra registered in the name of YPR was invalid and had no binding legal force. On the other hand, Certificate of Title No.

330/Ciantra registered in the name of YPR has become a collateral for Mortgage Credit between YPR and PT Bank Tabungan Negara (hereinafter referred to as PT BTN) with Deed of Granting Mortgage Rights (APHT) Number 104/2010 dated September 07, 2010 made before Notary/PPAT Sri Utami, S.H., M.Kn., and has registered First Rank Mortgage Rights No. 6250/2010 dated October 11, 2010 at the National Land Agency (hereinafter referred to as BPN) under the name of the holder of the mortgage rights of PT Bank Tabungan Negara (Persero) Tbk, where with the existence of APHT and Mortgage Rights that have been registered at BPN, it can be said that the creditor has implemented the prudential principles of the bank.

As a result of the verdict stating that the certificate of ownership No 330 / Ciantra registered in the name of YPR is invalid and has no binding legal force, it causes losses to PT BTN in terms of guaranteeing the repayment of its debts. The decision does not provide consideration for PT BTN as a creditor holding collateral that needs to be protected, because this has an impact on the execution of creditor auctions where YPR has defaulted to PT BTN. Therefore, the purpose of this research is to find out the legal certainty and protection efforts for Creditors against Mortgage Objects that are canceled by court decisions.

## METHOD

In this writing, the author uses normative juridical research that uses primary legal sources, namely consisting of laws and regulations, legal principles, legal principles and legal doctrines on legal systematics related to answering problems in the subject of writing (Marzuki, 2007). The results of the research and discussion are then concluded using the deductive method, which means that the method of drawing conclusions from the general description is narrowed down to a special one, by examining the laws and regulations regarding the legal aspects of the creditor as the holder of the mortgage.

## RESULTS AND DISCUSSION

Agreement is a very important element in life, almost all activities are based on agreements. Especially in the field of law, legal actions such as buying and selling, renting, debt and credit must be based on an agreement to minimize the losses of both parties. The barometer for assessing whether an agreement is considered valid or not is found in Article 1320 of the Civil Code, there are 4 important conditions that must be adhered to in making an agreement. If one of the conditions of the agreement is not fulfilled, the agreement is considered invalid. If it is related to the case that occurred above, the Bank as a financing institution (creditor) must obey and comply with the valid terms of the agreement, because it is an indicator of whether the Creditor has complied with the applicable provisions in carrying out its duties, or even violates what is required in Article 1320.

According to Prof. Subekti S.H, an agreement is an event where one person promises to another or where two people promise each other to carry out a matter, while an engagement is a legal relationship between two people or two parties, based on which one party is entitled to demand something from the other party, and the other party is obliged to fulfill these demands (Subekti, 2005 p.I). To see whether the credit facility agreement made between Bank BTN/Creditor and YPR/Debtor is valid or not, it must look at the valid Terms of Agreement in the Civil Code. Article 132 of the Civil Code stipulates the following conditions for the validity of an agreement:

a. Agreement of those who bind themselves

This means that the parties who want to enter into an agreement must agree or agree on the points being agreed upon. The agreement is invalid if the agreement is given due to oversight. (Simanjutak, 2015, p.287).

b. Capacity to perform legal acts

The meaning of capability is having the ability to perform legal acts. This means that it is feasible to make an agreement. In Article 330 of the Civil Code, a person who is declared capable has reached the age of 21 years. (Destra, 2021, p.4).

c. The existence of the promised motorcycle

The object is something that is promised according to Article 1333 of the Civil Code and the agreement must have an object that is promised. Objects are usually in the form of goods or objects and achievements.

d. Existence of a Halal Causa

The meaning of causa in Latin or referred to as a lawful cause concerns the content of the agreement which is not contrary to the rules. According to Article 1335 of the Civil Code, an agreement without a cause or made for a false or prohibited cause, has no legal force. (Simanjutak, 2015, p.288).

A creditor in good faith must be well aware of Article 1320 of the Civil Code. It must also be ensured that the parties who want to make an agreement have legal standing for the agreement. Credit agreements at banks using immovable property collateral in the form of land objects are usually registered as Mortgage Rights. If a collateral has been registered as a Mortgage, the creditor automatically has a special right to confiscate/execute the object of collateral if the debtor is in default. In terms of the Mortgage agreement, it is specifically regulated in Law Number 4 of 1996.

Article 1 of Law Number 4 of 1996 defines Mortgage Rights as follows:

"Hak Tanggungan is a security right imposed on land as referred to in Law No. 5/1960 on the Basic Agrarian Regulations, including or excluding other objects that form an integral part of the land. For the repayment of certain debts, which gives priority to certain creditors against other creditors".

The provision of credit facilities to Bank BTN / Creditor normatively must be carried out as stipulated in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. As explained as follows:

"Indonesian banking in conducting its business based on economic democracy by using the prudential principle"

The purpose is to avoid risks if the debtor for some reason cannot fulfill his performance as previously promised. If the BTN Bank / Creditor provides credit carelessly, it will suffer losses caused by itself (M. Basan, 2015). This is an effort that must be made, because there are many debtors who have bad faith, applying for credit facilities with the intention of not being paid for certain reasons.

Banks in providing credit facilities have 5 prudential principles, namely Cracter, Capacity (Cpability), Capital, Collateral, Condition of Economy, if the Bank / Creditor in assessing one of the Cs does not meet the requirements, the submission of a credit facility agreement for prospective debtors will be rejected, this is feared that the debtor will experience Unlawful Acts / Default. (Kasmir, 2012). The assessment must be thorough and careful to avoid unwanted events one day.

Article 8 paragraph (1) of the Banking Law also states that:

"In providing credit or financing based on sharia principles, Commercial Banks must have confidence based on in-depth analysis or good faith and the ability and ability of debtor customers to repay their debts or return financing in accordance with what is agreed."

The main purpose of the enactment of the Mortgage Rights Law, hereinafter referred to as UUHT, is to provide legal protection to creditors in the event that the debtor commits an illegal act in the form of default. (Yudha pandu, 2008). Land rights are often used as collateral because land rights have economic value and can be transferred. The main requirement to apply for credit with land rights collateral is to show the original certificate of land title as proof of legal ownership. Registration of mortgage rights must fulfill the following elements:

a. The granting of Mortgage Rights must be preceded by an agreement that the Granting of Mortgage Rights is intended as security for the repayment of certain debts.

b. The granting of Mortgage Rights in a credit facility agreement must be done by an authorized official.

c. Granting Mortgage Rights, namely land rights that are certified in the name of the Debtor.

In the procedure or procedure for encumbering Mortgage Rights according to Article 15 of Law Number 4 of 1996 concerning Mortgage Rights, a Power of Attorney for encumbering Mortgage Rights must be used as follows:

a. Making a Power of Attorney must be with a notarial deed or PPAT deed

b. A Power of Attorney made is irrevocable 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 to impose a hak tanggungan on registered land rights must be followed by the preparation of APHT no later than 1 (one) month after it is granted.

d. A power of attorney to impose a hak tanggungan on unregistered land rights must be followed by the making of an APHT no later than 3 (three) months after it is granted.

Article 18 to Article 19 of Law Number 4 Year 1996 regulates the extinguishment of Mortgage Rights, which has the following provisions:

a. Extinguishment of debt secured by Mortgage

b. Release of Pledge Rights by the Pledge Rights Holder

c. Granting of Mortgage Rights based on ranking determination by the chairman of the District Court

d. Abolition of land rights encumbered by Mortgage Rights

That if the creditor in providing credit facilities is in accordance with what is described above, the creditor has indirectly made a good faith effort in providing credit to the Debtor whose interests must be protected. However, the problem is that in Decision Number 136/Pdt.G/2019PN Ckr, it is known that there was an evil act committed by Minah Binti Jeding, Defendant I, YPR/Debtor (Defendant II), and Hj. Lusiana, Defendant III, who manipulated in such a way as to make a double Sale and Purchase Deed between Minah Binti Jeding, Defendant I, as the seller, and YPR/Debtor (Defendant II) as the buyer of land No. 330/Ciantra, the object of the dispute, without the knowledge and consent of Gunawan/ Plaintiff, even though the land in dispute already belonged to Gunawan/ Plaintiff, as evidenced by Sale and Purchase Deed No. 189/JB/15/VII/1999. 189/JB/15/VII/1999, then in such a way through Notary PPAT Nyi Raden Kania Nursanti / Third Defendant the Certificate of Title (SHM) No. 330/Ciantra was reversed from the name of Minah Binti Jeding / Defendant I to the name of YPR / Debtor (Defendant II).

That the creditor in providing credit facilities to the YPR Debtor was deemed defective because the object of collateral did not belong to YPR but to Gunawan/Plaintiff. This was evidenced by the Deed of Sale and Purchase No. 189/JB/15/VII/1999 which belonged to Gunawan. While the certificate in the name of Yogi Prayogo Ramadhan is a certificate made by fraudulent means as explained above. The legal subject if the Creditor wants to make a credit agreement must be with the owner of the land object that becomes the credit guarantee, not with YPR, and in granting credit facilities the object of collateral must be the Debtor's own land. Bank BTN as the Creditor in this case has registered the Mortgage on the object of collateral which is automatically considered defective and void due to the creditor's ignorance of the YPR certificate of ownership which was made not in accordance with applicable regulations. Because of this incident, the Creditor felt disadvantaged by the loss of the object of credit collateral.

Based on Sema Number 7 of 2012, it states that: "Holders of Mortgage Rights in good faith must be protected even if it is later discovered that the grantor of the mortgage is an

unauthorized person" This is in accordance with the purpose of Law Number 4 of 1996 concerning Mortgage Rights. As legal protection for creditors in the event that the debtor commits an unlawful act / default. In Article 14 of Law Number 4 of 1996, it is stipulated that the Mortgage Rights Certificate as referred to in paragraph (1) contains an irah-irah with the words "DEMI KEADILY BASED ON THE KINGDOM OF THE Almighty" based on the Irah-irah that the Mortgage Rights Certificate legally has executorial power equal to a Court Decision and has permanent legal force. Executorial is the right granted by law to the creditor to execute directly the object of the mortgage collateral if the debtor cannot fulfill his obligations / default. The executorial right is equal to the Court Decision. (Irvan M. Mokoginta).

Article 7 of Law Number 4 Year 1996 states that "Mortgage Rights continue to follow the object in the hands of whoever the object is". In the event of a transfer of rights of the holder of a land right that has been encumbered by a mortgage right, the object of the land right that has been encumbered by the mortgage right remains attached to the mortgage right. This is legal certainty for the holder of the Mortgage Rights. The creditor as the holder of the mortgage right should have legal protection such as the right to sell the object of the mortgage right on its own power if the debtor is in default.

This provision can apply if the encumbrance of the mortgage right can be proven by a certificate of Mortgage Rights. However, in practice there are circumstances that do not allow the removal of mortgage rights. The Mortgage Rights Certificate is nullified due to legal reasons such as in the making of certificates motivated by the criminal act of falsifying documents, ordering to place false information, and false signatures.

The main agreement in the Mortgage Rights is Debt and Receivables while the Mortgage Rights as an additional agreement, if there has been a garnishment of the pledged debt, the Mortgage Rights as an additional agreement is automatically erased, when viewed from the position of the Supplementary Agreement of the Mortgage Rights grantor, the Mortgage Rights that have been erased do not result in the guaranteed debt being erased. This is because the Hak Tanggungan is only an additional agreement (accessoir). This is stated in Article 18 paragraph (4) of Law Number 4 of 1996 concerning Mortgage Rights, which states that "The extinguishment of the Mortgage Right due to the extinguishment of the Land Rights encumbered by the Mortgage Right does not cause the extinguishment of the secured debt."

It is said that even though the object of the Mortgage Collateral has been removed because it was canceled by Court Decision Number. 136/Pdt.G/2019/PN Ckr but YPR's debt with Bank BTN/Creditor is still calculated. The removal of the Mortgage Collateral on Bank BTN / Creditor affects its legal position, so that the position that originally had priority rights (preferred creditor), with the removal of the mortgage rights, Bank BTN / Creditor becomes an ordinary creditor (concurrent creditor). Bank BTN / Creditor as an ordinary creditor loses its special rights to the collateral that has been promised before.

The solution that can be used is that the Creditor can take legal action for a Wrongful Act Lawsuit at the District Court to YPR / Debtor, against the cancellation of the first rank of Mortgage Rights (APHT) by demanding nominal compensation, which is regulated in Article 1365 of the Civil Code that "Every act that violates the law and brings harm to another person, obliges the person who causes the loss due to his fault to replace the loss". In Article 1131 of the Civil Code, the provisions of general collateral are applied, which are regulated as follows "All the Debtor's Assets, both movable and immovable, both present and future, become dependents / guarantees for their debts". That the land object of the Certificate of Ownership (SHM) which has been encumbered by the first rank of the Mortgage Rights Encumbrance Deed (APHT) If there is a dispute that results in canceling the rights to the Mortgage Guarantee by a Court Decision, then the BTN Bank / Creditor can request a replacement of the guarantee object / other assets to the YPR / Debtor.

The problem is when the debtor does not have a good intention to pay off his debts or does not want to fulfill his obligations. Especially if the Debtor has no assets to be applied as collateral to replace the Credit Facility burdened by the previous Mortgage Rights. This will cause the Creditor to bear losses due to the Debtor's actions that are not in accordance with the ideals of law according to Gustav Radbruch, namely Justice, Certainty, and Benefit. (Satcipto Raharjo, 2012). Actually, this can be addressed by Criminal Reporting Article 378 jo Article 266 paragraph (1) jo Article 263 paragraph (1) of the Criminal Code against the Debtor, if the Debtor has indeed committed the alleged Criminal Acts such as Forgery of Documents, Forgery of Signatures, or Ordering Making false statements in authentic deeds. Criminal efforts are taken if it is the last way that can be done, but what must be underlined is that criminal legal efforts cannot compensate for the losses suffered by the Creditor, but rather retaliation in the form of imprisonment, criminal efforts are carried out to provide a deterrent effect on delinquent debtors.

## CONCLUSION

From the results of the discussion in this study, several conclusions can be drawn as the core of the contents of the discussion that have been described in the description of this study, including the following: PT Bank Tabungan Negara (Persero) as a creditor in good faith, because it has fulfilled the legal requirements of the agreement and conducted a Credit Assessment and carried out the Mortgage Encumbrance Procedure in accordance with Standard Operating Procedures with applicable regulations. The actions of YPR/Debtor in committing bad acts resulted in the Court in Decision Number 136/Pdt.G/2019/PN Ckr canceling the derivative (SHM) in the form of Mortgage Deed No. 104/2010 which was detrimental to the Creditor. The cancellation does not eliminate the debtor's debt, the Creditor can file a tort lawsuit under Article 1365 of the Civil Code requesting compensation for the damage caused and requesting other assets / assets of the Debtor to replace the previously canceled Mortgage Rights, or if the Debtor commits the crime of falsifying documents, forging signatures, and ordering false information, the Creditor can take criminal legal action for the alleged crime of Article 378 jo Article 266 paragraph (1) jo Article 263 paragraph (1) of the Criminal Code.

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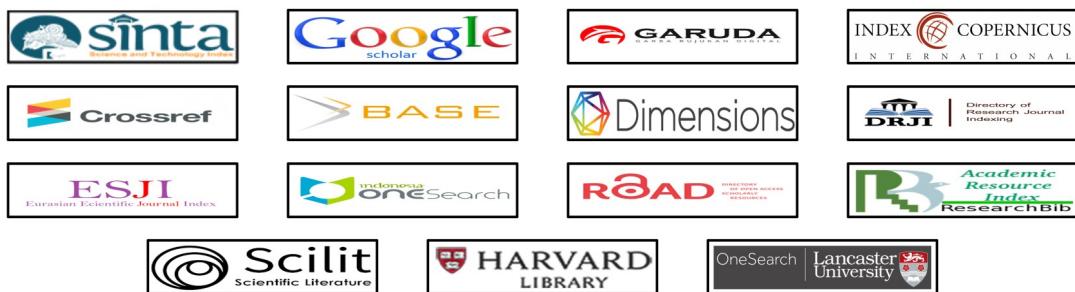
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