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Elimination of Mortgage Rights Over Property Rights Falling to the State Due to Land Procurement for Public Interests

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Abstract: This study aims to analyze the legal consequences of the abolition of mortgage rights released in the public interest, in addition to analyzing the protection of creditors if land rights are used as collateral for debts by debtors. This study uses a normative method which will explain the legal consequences of the abolition of mortgage rights released for public interest against the principal agreement does not eliminate the debtor's obligations in carrying out debt payments, the position of creditors due to the abolition of mortgage rights contained in the Deed of Granting Mortgage Rights (APHT) which is the accessoir agreement is deemed null and void, with the cancellation of the accessoir agreement it cannot cancel the credit agreement which is the principal agreement. and Notary/PPAT Efforts in Making APHT to Anticipate the Elimination of Mortgage Rights Notary/PPAT must continue to carry out the procedure for making a deed as stipulated in the laws and regulations.

Keywords: Mortgage, Land Acquisition, Public Interest

1. Introduction

Land rights are rights that give authority to use the land in question as well as the body of earth and water, and the space on it is only needed for interests that are directly related to the use of said land within the limits according to this law and legal regulations. others that are higher (Article 4, Paragraph 2 of the UUPA).

Property rights are the strongest and fullest rights that people can have over land, taking into account the provisions in Article 6, which state that all land rights have a social function. These property rights can be transferred to other parties.

Land is very important for human life because it has several functions, such as social functions, economic functions, and religious functions. Therefore, land use is regulated based on both customary and national law.

According to A. P. Parlindungan, from land rights, some were erected as buildings for boards (places to live), housing, which is one of the basic human needs. This means that basic human needs will be fulfilled by the existence of the land, and Benhard Limbong gave a similar opinion that land for human life has a very important meaning because most of their lives depend on the land. juridically regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations, which became known as the Basic Agrarian Law (UUPA). Therefore, it is necessary to have a basis for everyone to carry out legal actions related to the ownership and use of land in order to obtain legal guarantees and certainty of rights.

In order to realize legal certainty and legal protection for the community members, it is necessary to have written, complete, and consistently implemented arrangements so as to prevent land disputes from occurring. As we know, prior to the enactment of the Basic Agrarian Law (UUPA), arrangements regarding land were still dual in nature, namely the enactment of agrarian law regulations based on western law in addition to the enactment of provisions originating from customary law. This dualism results in a dualism of land rights.

With the existence of the National Land Law, it is hoped that legal certainty will be created in Indonesia. For this purpose, the government is following up with the provision of written legal instruments in the form of other regulations in the field of national land law that support legal certainty, and then, through the existing regulatory instruments, law enforcement is carried out in the form of effective land registration.

The abolition of mortgage rights occurs, among other things, because the principal agreement ends or the debt has been paid off, the property rights are released voluntarily, the term of the land rights ends and the land turns into state land, or the land is destroyed due to a disaster. At the point where land is transferred to the state, this can be used as an example of how land acquisition for public purposes can have an impact on land that is the object of mortgage rights, because it is very possible that land objects that are in the of roads and bridges.

Therefore, it will be a problem if the object of mortgage rights is transferred to the state because of the public interest. Based on the background of the problems mentioned above, the researcher intends to conduct research with the title "The Elimination of Mortgage Rights on Property Rights that Fall to the State Due to Land Acquisition for Public Interests".

From the description of the incident above, this phenomenon is interesting to study, so the authors formulate the problem regarding What are the legal consequences of the cancellation of mortgage rights that fall on the State due to land acquisition for public purposes? What is the position of the creditor due to the abolition of the mortgage right?

2. Method

The method used in this research is normative-juridical. The normative juridical approach is carried out by studying and reviewing legal principles and positive legal norms, or norms derived from existing literary materials, statutory regulations, and legal provisions related to the practice of implementing laws. sale of inherited land without the knowledge of one of the heirs whose whereabouts cannot be known (afwezigheid) according to the Kuhperdat, statutory approach, and comparative approach. After using the normative legal research method to further obtain information and answers to the problems formulated by the author, Types of Data and Sources of legal materials:

a. Primary legal materials are legal materials that have binding legal force.

b. Secondary legal materials are materials that are closely related to primary legal materials and can help analyze and understand primary legal materials. Secondary legal materials in this research are books, literature, papers, research results, articles, and other scientific works related to this research, such as:

- Research results;
- Scientific works of legal experts;
- Legal reading books or textbooks;
- Journals

c. Tertiary legal materials are materials that provide information about primary legal materials and secondary legal materials. Tertiary legal materials in this study consist of:

- Indonesia Dictionary;
- English-Indonesian dictionary

Data analysis was carried out in a descriptive manner, which was used to examine normative or juridical aspects through a descriptive analytical method that describes the description of the data obtained and relates them to one another to obtain a general conclusion.

3. Legal Consequences Of Deletion Of Mortagage Right Falling To The State Due To Land Acguistion For Public Interest

Loss or erasure of land rights can be caused by several things, whether the form of the land is lost, such as the land being completely buried by other land as a result of a volcanic eruption, being covered by a flood or tsunami, or even being lost due to intentional actions such as closing villages to reservoir construction. Loss of land like this rarely happens, and even if it does, the anticipation of the parties concerned is manifested in the form of insuring the land.

Before discussing the legal consequences of the abolition of mortgage rights, researchers will first discuss the occurrence of mortgage rights in general. Mortgage rights arise because of agreements. Based on this research, which discusses mortgage rights, the initial discussion is regarding agreements. In general, agreements consist of a principal agreement and an accessory agreement. The main agreements are agreements that have an independent basis (welke zdftanding een redden van bestaan recht). Credit is an agreement to borrow money between a bank as a creditor and a customer as a debtor. covers in general the ways creditors guarantee the fulfillment of their bills, in addition to the debtor's general responsibility for his goods. In general, the notion of guarantee can be interpreted as guaranteeing the fulfillment of obligations that can be valued in money arising from a legal agreement. In this agreement, the bank, as a lender, believes that the customer will be returned (paid) in full within the agreed timeframe and accompanied by other obligations, such as interest, compensation, or profit sharing. Therefore, the law of guarantees is closely related to the law of objects.

To find out the ability and willingness of customers to repay loans in a timely manner, the bank needs to review the credit application, namely: "Character (personality); Capacity (ability); Capital (capital); Collateral (collateral); Economic conditions (condition of the economy). Among the five principles, one of them is collateral, which is in the form of goods delivered by the debtor to the bank as collateral for the repayment of the credit he has received. Collateral as a means of protection for the security of creditors, namely certainty over the debtor's debt repayment or the implementation of a performance by the debtor or by the debtor's guarantor, if the debtor is unable to complete all obligations relating to said credit.

Land is the collateral item that creditors are most interested in because it is generally easy to sell, the price keeps increasing, has proof of title, is difficult to embezzle, and can be burdened with mortgage rights that give creditors special rights. Land in a juridical sense is the surface of the Earth, as stated in Article 4 of the BAL, while land rights are rights to a certain portion of the earth's surface that are bounded, dimensioned, and measured in length and width.

Land, as collateral for credit, can be encumbered with mortgage rights. Number 4 of the General Elucidation of the Mortgage Law states the definition of mortgage rights, namely, that mortgage rights are collateral rights over land for repayment of certain debts, which give priority to certain creditors over other creditors. That is, "if the debtor defaults, the creditor holding the mortgage right has the right to sell through a public auction the land that is used as collateral according to the provisions of the law in question, with the right to precede other creditors.

The actual position of the mortgage right is as an additional agreement (accessory) to the main agreement, namely the debt agreement. Thus, the loan agreement and the mortgage are two things that cannot be separated; when a loan agreement is placed, the mortgage will automatically follow it. The Deed of Granting Mortgage Rights (APHT) is a deed in which it is stated that the granting of mortgage rights from the debtor to the creditor is to guarantee the credit facilities received by the debtor. As collateral, the debtor gives mortgage rights to the creditor.

Article 51 of the LoGA states that "Mortgage rights that can be imposed on property rights, usufructuary rights, and building use rights are regulated by law in Article 25, Article 33, and Article 39.". Objects of mortgage rights also include rights to land, including buildings, plants, and works of art "which already exist or will exist, constitute an integral part of the land, and are the property of the holder of the right to the land whose burden is expressly stated in the APHT for the land in question.

Article 1131 BW emphasizes a person's responsibility for the agreement or debt; that is, all the debtor's assets, both movable and immovable, both those that already exist and those that will be there in the future, are borne by all of one's engagements. The provisions of Article 1131 BW constitute guarantees in general or guarantees born from law. Here, the law provides protection for all creditors in the same position. Every creditor enjoys such general guarantee rights; from Article 1131, it is concluded that the principles of creditor external relations are as follows:

a. A "creditor may take repayment of any part of the debtor's assets."
b. Each part of the "debtor's wealth can be sold to pay off creditors' bills."
c. The right to claim "the creditor is only guaranteed by the debtor's property," not by the "debtor person".

Based on the description above, the mortgage rights contained in the Deed of Granting Mortgage Rights (APHT), which is an accessory agreement, are considered null and void, while the cancellation of the accessory agreement cannot cancel the credit agreement, which is the main agreement. This means that the debtor still has an obligation to pay debts to creditors in accordance with the amount of money, interest, or compensation that has been previously agreed upon.

The division and grouping of creditors in general civil law has been regulated in BW, which divides creditors into types, namely preferred creditors and concurrent creditors. Preferred creditors are creditors who have the right to make repayment in advance of other creditors and whose bills take precedence over other creditors' bills. Meanwhile, concurrent creditors are competing creditors, which means that concurrent creditors do not have any privileges so that their positions are equal to each other. These creditors compete with each other to obtain payment from the auction results, so their position is not prioritized in settlement.

Concurrent creditors are creditors who are not privileged and/or are not creditors who were previously agreed upon, so receivables from concurrent creditors are receivables included in the bankrupt bank if the debtor is declared bankrupt by his creditors. As well, the payment must also wait for the results of the remaining settlement or auction of bankruptcy assets, and the remaining settlement must be distributed after previously deducting the obligation to pay receivables to creditors holding collateral rights and creditors with privileges proportionally according to the ratio of the amount of receivables of each concurrent creditor. (pari passu pro rata parte).

In guarantees that are general in nature, all creditors have the same position as other creditors; no creditor is prioritized or privileged over other creditors. Repayment of the debt is divided equally based on the size of each creditor's bill compared to the total debt of the debtor.

Based on several land rights that can be encumbered with mortgage rights, the bank as a creditor will be more considerate and choose land with Freehold status that can be used as collateral for debt because Freehold is a hereditary, strongest, and most complete right that people can have on land. Even though the right of ownership is the strongest land right, it can also be revoked or deleted.

Property rights are deleted if:

a. The land falls on the state

- Due to disenfranchisement

"For the public interest, including the interests of the nation and the state as well as the common interests of the people, rights to land can be revoked by providing appropriate compensation and in a manner regulated by law. The provisions of Article 18 of the UUPA are then implemented by Law Number 20 of 1961 concerning the revocation of Rights to Land and Existing Objects "above it." Regarding this matter, the landowner cannot take any legal action to cancel the implementation of the revocation of rights over land ownership because what has been determined or decided is coercive. The land whose rights have been revoked becomes state land."

- Due to voluntary surrender by the owner

The transfer of rights in this way is carried out after "through deliberation there is an agreement between the parties, the owner voluntarily surrenders the land as in the case of land acquisition for the implementation of development in the public interest or also the release or handover of other forms of rights. If the right is released, then the land becomes state land."

- Because it was abandoned

"Abandoned land is regulated in Government Regulation Number 36 of 1998 concerning the Order and Utilization of Abandoned Land (PP No. 36/1998). Articles 3 and 4 of PP No. 36/1998 regulate the criteria for abandoned land, namely: (i) land that is not properly utilized and/or maintained. (ii) land that is not used in accordance with the circumstances, nature, or purpose of granting the said rights."

- Due to the provisions

of Article 21 paragraph 3 and 26 paragraph 2 of the UUPA Article 21 paragraph (3)

UUPA stipulates that foreigners who acquire property rights due to "inheritance without a will or mixing of marital assets, as well as Indonesian citizens who have property rights and, after the enactment of this UUPA, lose their citizenship, are obliged to relinquish these rights within 1 (one) year from the time the rights are obtained or lose their nationality.

If after that period of time the property right is not relinquished, then said right is nullified by law and the land belongs to the state, provided that the rights of other parties burdening it continue. Then Article 26 paragraph (2) of the UUPA states that every sale and purchase, exchange, gift, gift by will, and other actions intended to directly or indirectly transfer property rights to foreigners, to a citizen who besides his Indonesian citizenship has foreign nationality, or to a legal entity, except for those determined by the government, namely legal entities that can have ownership rights and the conditions thereof, are null and void because the law and the land fall to the State, provided that the rights of other parties burdening them continue and all payments that have been received by the owner cannot be claimed again.

4. Position Of Creditor Due To The Elimination Of Mortgage Right

Limitatively, the provisions in Article 18 UUHT stipulate things that can cause the end or abolition of mortgage rights, namely the abolition of debts guaranteed by mortgage rights, the release of mortgage rights by mortgage holders, the cleaning of mortgage rights based on rating determination by the Chairperson of the District Court, and the abolition of land rights that are burdened with mortgage rights. In accordance with the accessory nature of mortgage rights, the existence of mortgage rights depends on the existence of receivables that are guaranteed for repayment. If the receivable is written off due to redemption or other reasons, the mortgage right in question is automatically deleted as well. In addition, the holder of the mortgage right can release the mortgage right and the land right can be erased, which results in the abolition of the mortgage right. The cancellation of mortgage rights due to the clearance of mortgage rights based on a rating determination by the Chief of the District Court occurred because of the request of the buyer of the land rights burdened with mortgage rights so that the land rights he had purchased were cleared of the mortgage burden. This means that the ranking of the holders of mortgage rights can change.

Land rights can be erased, among other things, because of the things referred to in Article 27, Article 34, and Article 40 of the UUPA. In the event that the usufructuary right, building use right, or usufructuary right that is used as the object of the mortgage expires and is extended based on the application submitted before the expiration of the validity period and is extended based on the application submitted before the expiration of the said period, the said mortgage right remains attached to the land rights in question. The abolition of the mortgage due to the abolition of the land rights burdened with the mortgage does not result in the abolition of the guaranteed debt; therefore, the debtor is still obliged to pay off the debt.

The owner of the certificate or the giver of the mortgage was not present at the signing of the APHT. If the giver of the Mortgage cannot be present at the signing of the SKMHT or APHT, the binding of the Mortgage cannot be carried out and is postponed until the giver and the assignee can be present to sign the SKMHT or APHT. This is because the power of attorney cannot be represented by anyone. To overcome this, the interested parties should really agree on a time that has been determined together so that the process of installing Mortgages can run smoothly and quickly.

The object of the mortgage for making APHT is not in the working area of the PPAT. The existence of land that will be used as Mortgage Rights can be anywhere. While PPAT only has a limited working area. So, if the object of the mortgage to be installed by APHT is not in the working area of the bank partner's PPAT, then the SKMHT certificate must be made in advance by the Notary PPAT whose working area is at the location of the certificate. After the SKMHT is made, it can only be ascertained.

Sociological constraints faced by Notaries in making APHT for creditors and debtors are that the granting of Mortgage Rights on land that has not been certified is carried out in two ways, namely through a Power of Attorney for Imposing Mortgage Rights (SKMHT) and directly with Deeds for Imposing Mortgage Rights (APHT). The use of SKMHT is carried out because the land data is incomplete, both physical and juridical, while those using APHT are carried out because statutory provisions allow it. Considerations The bank accepts land collateral that has not been certified because the laws and regulations and bank internal rules allow it, and other considerations are the character and business prospects of the debtor.

A Power of Attorney for Imposing Mortgage Rights, or SKMHT, is a power of attorney granted by the grantor of Mortgage Rights as the giver of authority to the recipient of a special power of attorney to charge an object with Mortgage Rights. The SKMHT giver here is the owner of the guarantee; it is possible that he is also the debtor, but he may not be the debtor but only the owner of the guarantee. Meanwhile, it is certain that SKMHT recipients are creditors, not individuals who are not creditors. In practice in the field, not a few creditors use the SKMHT for various reasons.

According to Article 15 paragraph (1), UUHT stipulates that SKMHT must be made with a notarial deed or PPAT deed. The reason for making SKMHT with a notarial deed is that, as seen from its position, the object is not limited or national because the location of the land is outside the domicile of the PPAT. That is the reason why it was not made with a PPAT deed. The difference between notarized SKMHT and PPAT SKMHT can be seen from the Position decree, which is stated in the comparison of the SKMHT deed, and from the position stamp or stamp.

Regarding APHT, according to Article 1 Paragraph (5), it is also said that after the principal agreement is held, the granting of Mortgage Rights must be carried out by a Deed of Granting Mortgage Rights (APHT) made by the PPAT in accordance with applicable laws and regulations. So, the APHT is authentic evidence made by the parties before the PPAT in order to provide legal certainty that an encumbrance right has been granted.

Activities related to land issues are never separated from the affairs of the land office. In terms of the implementation of the automatic imposition of mortgages, it must have something to do with the BPN office. In accordance with the UUHT, it is clearly stated that the granting of Mortgage Rights must be registered at the land office no later than 7 (seven) working days after signing the APHT. However, in reality, after registering, sometimes there are still things that need to be taken care of, and that takes time. For example, the mortgage is the result of a sale and purchase, and the original land title has not been reversed by the owner, so the name must be reversed first. Usually, this transfer process can take more than seven working days.

In connection with the large area of the Banyumas district, this can also be used as an excuse for the accumulation of work at the Banyumas BPN office, which hinders the smooth process of checking and registering Mortgage Rights. Indeed, there are not a few certificates that must be processed by the Banyumas BPN office. This is what causes delays in the process of checking and registering Mortgage Rights. In addition, human resources are inadequate.

Overcoming the obstacles faced by Notaries in making APHT for creditors and debtors from the BPN office often occurs in the field; this is usually related to the delay in processing time from registration to issuance of Mortgage certificates. The reasons given by BPN regarding the delay in time are due to the large number of deeds or documents that must be worked on by BPN staff and the limited human resources and infrastructure. Thus, the solution used is to use an accelerated process, even though later the client of this Notary will have to pay more for the smooth implementation of all the impositions of the Mortgage Right.

Overcoming the obstacles faced by Notaries in making APHT for creditors and debtors is to explain to creditors and debtors that the existence of this UUHT is necessary to guarantee legal certainty for interested parties, especially in terms of credit activities. Certified should be tied to SKMHT as well as a certificate made.

In the event that the encumbrance of the mortgage on the collateral object that is still in the process of being converted to the mortgage ownership right does not yet exist or does not exist, it is unlikely that the Land Office will be able to carry out the process of copying and recording the mortgage land book; therefore, a certificate is immediately made by the Bank's notary.

The sociological obstacle faced by the Notary in making the APHT for creditors and debtors is that the granting of Mortgage Rights on land that has not been certified is caused by the Bank not paying attention to the juridical aspect when the debtor defaults. This is because it is often found that the land is still not certified. The community only holds Petok D or Letter C as proof that they own a plot of land, overcoming the obstacles faced by this Notary by explaining to the bank that Petok D or Letter C is not proof of land rights, which in the end cannot be burdened with mortgage rights.

Land registration tasks, which are administrative tasks and technical tasks, Based on Article 19 paragraph (2) of the UUPA, there are administrative tasks related to land bookkeeping, registration of land rights, transfer registration, and the issuance of certificates of proof of rights. While technical tasks consist of:measurement and mapping. According to the provisions in Article 2 of Government Regulation Number 24 of 1997 related to the administrative aspect, it is stated as juridical data, while the technical aspect is stated as physical data. Juridical data means that there is information regarding the legal status of land parcels that are registered, rights holders, and other parties, as well as other burdens that burden them. If it is stated as the legal status of a registered land parcel, it means that there is evidence showing that there is a legal relationship between the person and the land. There is evidence of a legal relationship that is then formalized (not legalized) through land registration activities. It is stated that formalizing is not legalizing because the land registration activities carried out by the National Land

Agency agency are not yet in a position to guarantee the material truth of one's land ownership, but only the justification or confirmation of formal evidence submitted by the party submitting the application for rights to written evidence. issued by an official who is authorized to do so and submitted by the applicant as evidence of the existence of mastery or the basis of rights or legal relations between the person concerned and his land.

The purpose of land registration is to guarantee the legal certainty of land rights. The legal certainty includes:

a. Certainty and protection regarding persons or legal entities who are the holders of rights over a parcel of land, apartment units, or other registered rights, so that they can easily prove themselves as the holders of their rights, are given a certificate as proof.
b. Certainty to provide information regarding the location, boundaries, and area of land parcels to interested parties so that they can easily obtain the necessary data when carrying out legal actions regarding registered land parcels and apartments.

The data stored in the Agrarian office regarding the subject or object of land rights is compiled in such a way as to make it easier to view or find information about the land if needed later. According to Irawan Soerodjo, the registration system used is the registration of rights (registration of title), as used in the implementation of land registration. This can be seen from the existence of a land book as a document containing physical and juridical data that is collected and presented, as well as the issuance of certificates as proof of registered land rights.

5. Conclusion

Legal Consequences of Deletion of Mortgage Released for Public Interest Against Principal Agreement does not eliminate the debtor's obligations in carrying out debt payments. This is because the mortgage right contained in the Deed of Granting Mortgage Rights (APHT), which is an accesoir agreement, is considered null and void by law, whereas the cancellation of the accessoir agreement cannot cancel the credit agreement, which is the principal agreement. This means that the debtor still has an obligation to pay debts to creditors in accordance with the amount of money, interest, or compensation that has been previously agreed upon.

The position of the creditor as a result of the abolition of the mortgage rights contained in the Deed of Granting Mortgage Rights (APHT), which is an accessory agreement, is considered null and void by law; the cancellation of the mortgage agreement cannot cancel the credit agreement, which is the principal agreement. So, the position of the creditor as a result of the abolition of the mortgage right changes its legal status from creditor preference with guaranteed mortgage rights to concurrent creditor who is not guaranteed with certain material rights (mortgage rights).

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