



## LEGAL PROTECTION OF CREDITORS RECIPIENTS OF RIGHTS GUARANTEES RESPONSIBILITY TO THE LAND AND OBJECTS RELATED

Iwan Kurniawan<sup>1)\*</sup>, Mario Yusuf<sup>1)</sup>, Azman Mohd. Noor<sup>2)</sup>

<sup>1)</sup> Universitas Andalas, Indonesia

<sup>2)</sup> International Islamic University Malaysia, Institute of Islamic Banking and Finance, Malaysia

\*Corresponding Author, E-mail: iwan774@gmail.com

### ABSTRACT

**Background.** Guarantee is a translation from Dutch, namely *zekerheid* or *cautie Zekerheid* or *caulie* covers generally how creditors guarantee the fulfillment of their bills, in addition to responsibility for the debtor's general interest in his goods. The object of Mortgage Rights is the right to land by distinguishing between objects movable and immovable, registered and unregistered objects. This research aimed the legal protection of creditors recipients of rights guarantees responsibility.

**Research Method.** This research uses research methods of normative law, and library research, namely researching library materials or secondary materials.

**Findings.** Based on the general explanation of Article 14, the duties stated on the Certificate of Rights Dependency in the provisions in paragraphs 2 and 3 are intended to emphasize the existence of executorial power on the Mortgage Rights Certificate, so that if the debtor breaks the contract, it is ready to be executed as is a court decision that has obtained permanent legal force.

**Conclusion.** Legal protection for recipients or mortgage rights holders starts from making a Deed of Grant of Rights Dependents (APHT) Then Legal protection is also regulated in Article 6 of the Mortgage Rights Law, the preferred position is held by Mortgage Rights holders as preference creditors.

**Keywords:** Collateral, Creditor, Debtor, Mortgage.

### BACKGROUND

Guarantee institutions contained in Law Number 4 of 1996 concerning rights Dependency is a Mortgage Right Land and related objects land which is generally applicable Previously known as upper mortgage land, regulated in book II of the Constitution Civil Law (Civil Code). In business practice, every business investment made somewhere very needs funds. The funds in question are available originating from within or outside the country and are usually channeled through banking institutions or financial institutions. This institution is a financial intermediary (middlemen finance) is an intermediary between the owner of the funds and the borrower of funds. Because of the money lent to the borrower of funds, then for the sake of keeping the refund tied smoothly with Guarantee Rights. The Mortgage Law has provided opportunities for guaranteeing land rights that do not yet have a certificate[1]. This is already happening in mortgage practice. However bureaucratic problems and costs in registration on the ground will be disturbing.

Mortgage Rights Law is hoped that it can provide legal certainty for the community, and to realize implementation of the Basic Agrarian Law and Mortgage Law, often encounter obstacles. Therefore, the Law Agrarian principles to provide justice for the people fought for by the government. In fact, up to now, there are still many people who don't know and don't understand[2].

Considering the importance of the position of funds credit in the development process, already it should be if the credit giver and recipient as other related parties can receive protection from strong collateral rights institutions to be able to provide legal certainty for all parties interested parties as an anticipatory effort the emergence of risks for creditors for a certain period will come. For this business, you can use banking services[3].

In Indonesia, when land is created collateral, which has existed since time immemorial The Netherlands, according to B.W. will be seen and burdened with a mortgage. This remains true throughout Indonesia became independent, and only then changed accordingly Indonesian Basic Agrarian Law (Law Number 5 of 1960), with the promulgation of UUHT Number 4 of the year 1996 concerning Mortgage Rights on Shared Land Objects Related to Land, 1996 with the Rights Guarantee Institution Dependents based on Law Number 4 1996 (Law Number 4 of 1996)[4]. This research aimed the legal protection of creditors recipients of rights guarantees responsibility.

## **RESEARCH METHOD**

This research method used normative legal research, and library research, namely researching materials or secondary materials. To discuss internal issues In this research, the following approaches were used: Legislative Approach (Statutory Approach), Conceptual Approach (Conceptual Approach), and Case Approach (Case Approach)[5].

Researchers carry out data collection by reading, studying, and identifying all data including regulations legislation, literature, and decisions in courts relating to cases existing data is general and then withdrawn or concluded to be special so that the data obtained is related to the problem discussed in this research. Data analysis techniques in research. Data collection step is through study literature, namely all data related to the main problem, the data is arranged sequentially systematically for easier reading and study[6].

## **FINDINGS**

That legal protection is provided Law to recipients of rights Dependents can be seen in the Deed of Gift Mortgage Rights (APHT) and this can be seen in article 11 paragraph (1) UUHT, which determines the content that is mandatory for the validity of the Deed of Gift Mortgage Rights (APHT). If no the matters listed in full mentioned in the Deed of Granting Mortgage Rights, then result in the relevant deed being cancelled by law. The things that must be included in The Deed of Granting Mortgage Rights are:

- a. Name and Identity of Holder and Giver Mortgage Rights, the purpose of this provision determine the contents that are mandatory for the validity Deed of Granting Mortgage Rights.
- b. Domicile of the parties as intended in the letter a, and if there are any of them who are domiciled outside Indonesia, for him. A preferred domicile must also be included.
- c. A clear indication of the debt or debts that are guaranteed as specified referred to in Article 3 and Article 10 paragraph (1); means the designation of debt guaranteed as intended in the letter. This also includes the name and identity of the debtor concerned.
- d. Dependent value.
- e. A clear description of the object of the Rights Dependents; means a clear description regarding the object of Mortgage Rights as intended in this letter includes details regarding the land title certificate concerned or for land that has not been registered must at least contain a description regarding ownership, location, boundaries and the land area.

Then Deed of Grant of Rights Dependents can include promises it is facultative and has no influence regarding the validity of the Deed of Granting Mortgage Rights. With the inclusion of these promises in the Deed Later granting of Mortgage Rights registered at the Land Office, then the promise also has binding force towards third parties.

## **DISCUSSIONS**

With the inclusion of these promises in the Deed of Granting Mortgage Rights (APHT) which is then registered with the office Land, then these promises too has binding force on third parties. Promises as mentioned in article 11 paragraph (2) UUHT, this does not mean a promise like that may be agreed upon by the creditor because the law states so. The law only reminds creditors of the possibility of making promises like that, because in principle

people can promise anything, as long as it's not contrary to the law in nature coercion, manners (decency) and order in general.

Please note that promises have been made offered as specified in article 11 paragraph (2) UUHT to creditors for agreed or not, then the law gives the option to agree to it. According article 11 paragraph (2) UUHT is facultative and limitative, meaning because These promises may or may not be included, either in part or in full. Meanwhile, it is limitative because it can also be promised promises other than promises which has been mentioned in article 11 paragraph (2) UUHT.

In many practices promises are mentioned above can almost be said always agreed by the creditor[7]. Meanwhile in order to make it easier for the parties to make these promises has been printed on the blank APHT form, this clause may be deleted by agreement of the parties from the blank in question. Due to Rights Dependents must be agreed upon, that's the principle there must be an agreement between both parties, meaning if the guarantor agrees or refuses to make such promises.

Mortgage rights have no characteristics that can be divided unless otherwise agreed in the deed of granting Mortgage Rights as follows referred to in Article 2 paragraph (1). In Article 13 It is clear that there are principles of specialization and publicity to bind third parties and provide legal certainty to the parties involved. With the promulgation of Rights These dependents as referred to in article 51 of Law no. 5 of 1960, is a land guarantee institution used as repayment of certain debts[8]. Mortgage rights also provide position principal to certain creditors against other creditors. In other words, if the debtor breaks his promise or defaults, then the creditor holds the Rights Dependents have the right to sell through auction at public face, land used as collateral according to the provisions of statutory regulations in force, with pre-emptive rights other creditors. Article 21 UUHT in the art of this case, the person giving the mortgage rights becomes bankrupt, then the Mortgage Rights holder can do so execution without falling into policemen. This is appropriate with the provisions in the B.W system which is known to be in favor of mortgages and pawnings. In the explanation of the article, this article very clearly establishes the position of the Rights holder Dependents.

Material collateral is a right materiality that is absolute about an object which is the object of collateral. Meanwhile, Jayanti said that material collateral is the act of pledging an object as collateral debt, which can be promulgated at any time for debt repayment. Material collateral arises because of an agreement made between the creditor and the debtor or with a third party[9]. In banking practice material guarantees are more preferred by creditors and on individual collateral (third-party guarantee).

The advantages of material collateral are: because there are certain objects tied inside the agreement then the material guarantee agreement contains some more definite provisions in taking over creditors' receivables. Nature *droite de suite* and *droite de preference* are always there in the material guarantee agreement, so material guarantees are more profitable for the party's creditors rather than individual collateral. Guarantee material things are always closely related to law objects. Because the material guarantee framework is within the legal framework of the object. The Basic Agrarian Law has regulated sections the most important thing is land, so Material collateral for land can rely on provisions of the Basic Agrarian Law. With itself is material security for the land must be within the framework and rationale of Basic Agrarian Law. Article 51 UUPA has mentioned the material security institutions for land, namely Mortgage Rights, which have been realized as law number 4 of 1996 regarding Mortgage Rights. Starting from the basics thinking about the Basic Agrarian Law, then the first thing to pay attention to is the principle underlies the Basic Agrarian Law, namely the principles of customary law, while customary law in land adheres to the principle of separation horizontally[10]. So that's the principle should also be adhered to in Mortgage Rights is the same as the principle adopted by the Basic Agrarian Law, namely the principle of separation horizontally.

Based on the principle of horizontal separation then the buildings and plants are separated or detached and land rights, so that if basic Horizontal separation is applied sequentially

consistent, then the building or plant can burden with material guarantees separately from the land on which the building or plant is located stand[11]. The principle of horizontal separation is fundamental which is most appropriate to be applied in material security for land rights, is very useful for small communities who only have just buildings without land or also just plants just. In this way, small communities can have the opportunity to develop business through bank credit assistance with just guarantee your house. In accordance with the provisions of article 2 paragraph (2) can be agreed in the deed of granting Rights Dependents concerned, that Guaranteed repayment of receivables can be made in installments of the same amount the value of each right to the land that becomes the object of Mortgage Rights, so Rights Encumbrances only encumber the remainder of the object of the right collateral to guarantee the remaining outstanding debt paid off.

## CONCLUSION

The position of Mortgage Rights is one of the guarantee institutions inside regulated guarantee law in Indonesia in Law number 4 of the year 1996 concerning Mortgage Rights, and organized method of imposing mortgage rights according to Law number 4 of 1996 regarding Mortgage Rights implemented through two stages of activity, namely: Stage granting mortgage rights in the deed. Then proceed with the registration mortgage at the registration office land.

## Conflict of Interest

The author declares there is no conflict of interest with the publication of this paper.

## REFERENCES

- [1] Nam T yob, Oh S. Non-recourse mortgage law and housing speculation. *J Bank Financ*; 133. Epub ahead of print 2021. DOI: 10.1016/j.jbankfin.2021.106292.
- [2] Rahmawati S. Internalisasi Nilai-Nilai Pancasila terhadap Pengaturan Hak Pengelolaan Atas Tanah. *AGRIFITIA J Agribus Plant*; 3. Epub ahead of print 2023. DOI: 10.55180/aft.v3i1.718.
- [3] Dewi LGN. Pengaruh keputusan investasi, struktur modal, profitabilitas, dan kebijakan dividen terhadap nilai perusahaan. *Entrep Bisnis Manaj Akunt*. Epub ahead of print 2021. DOI: 10.37631/e-bisma.v2i1.354.
- [4] Efrianto G. Registration of Ownership Rights Over Customary or Customary Land based on Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles. *Int J Soc Serv Res*; 3. Epub ahead of print 2023. DOI: 10.46799/ijssr.v3i7.432.
- [5] Suyanto S. *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan*. Unigres press, [https://books.google.co.id/books?hl=en&lr=&id=Zg2mEAAAQBAJ&oi=fnd&pg=PA16&dq=related:iqKFAloBcDAJ:scholar.google.com/&ots=lfRuZU3Y8R&sig=KYqW2GT6zrCeGd65uJMBogLVF-0&redir\\_esc=y#v=onepage&q&f=false](https://books.google.co.id/books?hl=en&lr=&id=Zg2mEAAAQBAJ&oi=fnd&pg=PA16&dq=related:iqKFAloBcDAJ:scholar.google.com/&ots=lfRuZU3Y8R&sig=KYqW2GT6zrCeGd65uJMBogLVF-0&redir_esc=y#v=onepage&q&f=false) (2023).
- [6] Qomariah SN. Buku Ajar Riset Keperawatan. *Reposytori Univ Gresik*.
- [7] Rizkianti W, Fahrozi MH, Sakti M. Protection againts Creditors Rights Holders Fiduciary Guarantee Post Constitutional Court's No.18/PUU/XVII/2019. *Lambung Mangkurat Law J*; 5. Epub ahead of print 2020. DOI: 10.32801/lamlaj.v5i2.182.
- [8] Budiono I, Bakri M, Fadli M, et al. Legal Implications of the Norms Conflict in the Governance Regulation of the Water Resources. *EU Agrar Law*; 9. Epub ahead of print 2020. DOI: 10.2478/eual-2020-0004.
- [9] Jayanti O, Darmawan A. Pelaksanaan Lelang Tanah Jaminan yang Terikat Hak Tanggungan. *Kanun J Ilmu Huk*; 20. Epub ahead of print 2018. DOI: 10.24815/kanun.v20i3.11830.
- [10] Erwiningsih W. Legal Arrangements and Implementation of State Ownership Rights Over Land in Indonesian Constitution. *Acad J Interdiscip Stud*; 12. Epub ahead of

print 2023. DOI: 10.36941/ajis-2023-0067.

- [11] Suyanto S, Khulsum U. The Principle of the State's Right to Control Land on the Establishment of a Land Bank in Indonesia's Perspective of Agrarian Reform. *J Din Huk*; 22. Epub ahead of print 2022. DOI: 10.20884/1.jdh.2022.22.3.3294.



Copyright and Grant the Journal Right under [Attribution-NonCommercial 4.0 International](https://creativecommons.org/licenses/by-nc/4.0/).

Copyright © 2022 SYNTIFIC PUBLISHER