



Storage Certificate of Land Rights by the Saddled Mortgage Bank Loan for Redemption Legal Certainty in Padang

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Abstract

The current global economic development makes people who have businesses need a lot of capital to achieve profits, this encourages people to borrow money from banks by providing collateral. The guarantee is in the form of a certificate of land title, and the bank will charge a mortgage for the certificate of land title, and the bank will keep the certificate of land title that has been encumbered with the mortgage until the customer's credit is paid off. The bank keeps the certificate of land rights in order to overcome the urgency that will occur if the customer defaults, and the bank will be faster in executing the collateral execution process, therefore the bank keeps the certificate of land title. The bank is also fully responsible for the storage of the land certificate, if the land certificate is lost by the bank, the bank will be responsible for managing the issuance of a new certificate, which in the process must obtain approval from the right holder whose name is recorded in the land book, as well as the parties the bank is responsible for costs incurred in the process of processing the issuance of the new certificate. In accordance with applicable regulations and with interviews that have been conducted with the bank and also the customer. The bank is very careful in settling customer credit and also in the process of storing land title certificates, and the bank has also anticipated default by customers by keeping land certificates as a form of urgency for the bank in settling customer credit, and also the bank is fully responsible for keep the land certificate in the event that the land certificate is lost, the bank is responsible for arranging the issuance of the new certificate.

Keywords: *Storage; Land Certificate; Mortgage; Bank*

Background of Research

The current economic development is inseparable from the role of business actors in running their businesses which are used to improve the economy, both personally and globally, based on the business activities carried out by these business actors, business actors need sufficient capital to run them. business actors take credit loans to banking institutions or banks.

The bank has a strategic position, because the bank functions as a channel of funds and credit provider. In providing or lending by banks, it is usually accompanied by a guarantee as a protection for the bank as a creditor, the borrower of funds as a debtor, and a third party. This guarantee is needed to

protect and minimize the risks that may occur in the future. One of the guarantees can be in the form of a certificate of land title which has a sufficient value to fulfill the credit application by the business actor, by providing a guarantee in the form of a certificate of land title, the bank will immediately complete the credit request from the business actor, by granting a guarantee in the form of a certificate. land rights, then the bank will later charge a mortgage on the certificate of land rights in order to settle the credit proposed by the business actor.

Banks in carrying out their activities provide credit to debtors who have the right to take precedence or priority over others which are called Preferential Rights, based on these rights the bank can impose collateral rights over the certificate of land rights submitted by the business actor or hereinafter referred to as the debtor. Therefore, the bank will keep a certificate of land title that has been encumbered with a mortgage. Based on this, the bank also has executive rights in keeping the certificate of land title encumbered with mortgage rights, which is useful for settling debtors' credit.

In Article 1 of the Mortgage Rights Law hereinafter referred to as UUHT, it is stated that the Mortgage right is a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations hereinafter referred to as UUPA, following or not along with other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors.

A certificate of land rights owned by a debtor who is burdened with mortgage rights, which will be issued a certificate of mortgage issued by the National Land Agency or known as BPN, the certificate of mortgage will be kept by the bank and the certificate of land rights will be held by the debtor accordingly with the Law of Mortgage Number 4 of 1996 Article 14 which reads:

Paragraph (1), as proof of a mortgage, the land office issues a certificate of mortgage in accordance with the prevailing laws and regulations.

Paragraph (2), the certificate of mortgage as referred to in Paragraph (1) contains the words "FOR JUSTICE BASED ON ONE ALMIGHTY GOD".

Paragraph (3), the certificate of mortgage as referred to in paragraph (2) has the same executorial power as a court decision which has obtained permanent legal force and is valid as a substitute for *grosse acte hypotheek* as long as it concerns land rights.

Paragraph (4), unless agreed otherwise, the certificate of land title which has been affixed with a note on the imposition of security rights as referred to in Article 13 paragraph (3) shall be returned to the holder of the land rights in question.

Paragraph (5), certificate of mortgage right is handed over to the holder of the mortgage right.¹

In practice, the storage of a certificate of land title encumbered with a mortgage is not in accordance with the Mortgage Law in which the certificate of land title which is encumbered with security rights is retained or kept by the bank, in the case of the theory of legal sovereignty, it explains that the law originates from existing legal feelings.² In most community members, therefore, the law is obeyed by community members, with the aim of providing a sense of justice to community members. Related to the Positivism Theory, which explains that law is an order that contains decisions that come out of a person in power in the country that must be obeyed.³

¹ Mortgage Law Number 4 of 1996 Article 14

² Satjipto raharjo, 2013, Theory of Law, Genta Publishing, South Jakarta, p. 52

³ Sudikno Mertokusumo, 2012, Theory of Law, Cahaya Atma, Jakarta, p. 42

In practice, the bank keeps the certificate of land title and also holds the certificate of mortgage, in actual fact the bank should only hold the certificate of mortgage because with it the bank already has executorial rights that are as strong as binding court decisions. The deposit of a certificate of land rights by the bank in theory violates the applicable law, in practice the bank always holds both certificates as a sign of guarantee provided by the debtor in terms of credit settlement, if the credit is paid off, the certificate of mortgage will be written off from the land title certificate owned by the debtor.

With the difference between what is implied by law and practice in society, the authors are interested in conducting this research with the title "**Storage Certificate of Land Rights By The Saddled Mortgage Bank Loan For Redemption Legal Certainty in Padang**".

Research Method

In conducting this research, the author uses a juridical empirical approach which relies on primary data or results from field research and secondary data. The juridical approach, namely in making an approach, the principles and regulations that are still in effect are used in reviewing and seeing and analyzing the problems that are the object of research, starting from the analysis of the laws and regulations, namely Law Number 4 of 1996 concerning Mortgage Rights on land and objects related to land and its implementing regulations as well as existing legal knowledge.

While the definition of empirical approach is an approach arising from patterns of thinking in society and then obtained a truth which must be proven through real experiences in the community. This method is used by considering that the problems studied range in the legislation that is the relation of the regulations with other regulations with its application in practice.

Result of Research

The process of Imposing Mortgage Rights is carried out through 2 stages of activity, namely:

a. The stage of granting Mortgage Rights

With the making of the Deed of Granting Mortgage Rights (APHT) by the Official for Making Land Deeds (PPAT), which is preceded by a guaranteed debt and credit agreement.

b. Mortgage Registration Stage

The registration stage of Mortgage Rights by the Land Office, which is the time when the Mortgage Rights are born, which are charged, namely:

- Registration of Mortgage Rights is carried out by the Land Office by making a land title and recording it in the land book of land rights that are the object of the Mortgage Rights and copying the records on the certificate of land title concerned
- The date of the land book of the Mortgage Rights is the seventh day after receipt of complete documents required for registration and if the seventh day falls on a holiday, the land book concerned shall be given the date of the next working day.
- Mortgage Rights are born on the date of the Land Mortgage Book date.⁴

⁴ Bodei Harsono, *Juridical Aspects of the Mortgage Rights Law*, (Jakarta: Djambat, 1996), page 5

According to Article 14 Paragraph (1) of the UUHT that as proof of the existence of Mortgage Rights, the Land Office issues a Certificate of Mortgage Rights in accordance with the prevailing laws and regulations.

The certificate consists of a copy of a land title, a land title, and a copy of the APHT, both of which are made in one document cover. On the cover of the certificate is affixed an irah-irah which reads "FOR JUSTICE BASED ON ONE ALMIGHTY GOD". And thus have the same executorial power as court decisions which have obtained permanent legal force and are valid as a substitute for the grosse acte hypotheek as long as it concerns land rights. So the order listed on the Certificate of Mortgage is intended to confirm the existence of executorial power in the Certificate of Mortgage, so that if the debtor is in default is ready to be executed as is the case with a court decision that has obtained permanent legal force.

The Certificate of Mortgage that has been taken by the Notary / PPAT, then a receipt will be created first to be submitted to the bank, after the Notary / PPAT has finished checking and making the receipt, the Notary / PPAT immediately submits the file to the bank, which where the file is in the form of:

1. Certificate of Land Rights
2. Certificate of Mortgage Rights
3. A copy of the Credit Agreement deeds

The file will later be stored and held by the bank, which in the file kept by the bank includes a Certificate of Land Rights.

According to the applicable regulations contained in the UUHT Article 14 Paragraph (4) actually the Certificate of Land Rights is still held by the owner or by the debtor, and what is held or kept by the bank is only a Certificate of Mortgage Rights, and it turns out that in practice the bank "X", " Y ", nor " Z " in the city of Padang did not follow the recommendations contained in the regulation, the three banks still held and kept the Land Rights Certificate and Mortgage Certificate, while the Mortgage Certificate had a very strong legal force as strong as sentence.

From the results of interviews with three banks in the city of Padang, that the three banks will keep a Certificate of Land Rights and a Certificate of Mortgage with the aim of implementing the principles of prudence and full responsibility, so that problems do not occur in the future.

The bank holds and keeps the certificate of land rights which is useful so that later if the customer defaults, the bank will have no trouble executing the collateral, because if the bank hands over the certificate of land rights to the rights holder, the bank is concerned about obstacles in the execution process. collateral, although in the regulations the land title certificate should be returned to the right holder or the customer, in this case the bank only wants to be safe in its urgency to keep the certificate of land rights in carrying out the customer credit settlement process, besides that the bank is also fully responsible for keeping the title certificate. on land because it is in accordance with the bank's obligations that have been signed by the bank, thus the bank will be very careful in settling customer loans.

A certificate of ownership or a certificate of land title which is used as collateral that is held and kept by the bank in terms of credit settlement is the responsibility of the bank or it is the bank's obligation to keep it secretly and properly so that the certificate is not damaged or until it is lost. If the certificate of land is lost, it will result in obstruction of the process of returning the certificate to the customer, this is the full responsibility of the bank. Therefore, if the certificate is lost, a replacement certificate must be issued.

Reference

Bodei Harsono, *Juridical Aspects of the Mortgage Rights Law*, (Jakarta: Djambatan, 1996), page 5

Satjipto raharjo, 2013, *Theory of Law*, Genta Publishing, South Jakarta, p. 52

Sudikno Mertokusumo, 2012, *Theory of Law*, Cahaya Atma, Jakarta, p. 42

Mortgage Law Number 4 of 1996 Article 14

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