

## LEGAL PROTECTION OF SECURITY GOODS HELD BY THE CREDITOR BASED ON THE DEBT ACKNOWLEDGMENT DEED ACCORDING TO LAW NO. 4 OF 1996 CONCERNING MONITORING RIGHTS

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### Abstract

*The primary purpose of this study is to (1) determine, interpret, and evaluate the extent to which the Deed of Debt Acknowledgment, in accordance with Law no. 4 of 1996 pertaining to Mortgage Rights, provides legal protection for creditors' collateral. (2) processes for ensuring certificates of land title as security for debt. A subset of normative legal research, this study investigates potential solutions to specific issues by analyzing existing legal frameworks. Legal materials used in this research came from a variety of sources, including primary, secondary, and tertiary sources, with research methods including document and literature reviews. The research findings indicate that (1) According to the provisions of Law Number 04 of 1996, which deals with Mortgage Rights on Land and Objects Related to Land, the interests of the creditor, who holds the mortgage rights, and the debtor, who gives them, are on an equal footing. However, there are juridical consequences for a bias in favoring creditors when it comes to providing protection. Mortgage rights holders are meant to be able to easily prove their rights by being issued a certificate during registration activities. Mortgage rights holders are meant to be able to readily prove their rights by issuing a certificate during registration activities.*

### 1. Introduction

Economic development, which is one component of national development that aims to achieve just and prosperous people's welfare, is based on the 1945 Constitution of the Republic of Indonesia and Pancasila. The government and society in general

require large financial resources; as a result, along with increasing development efforts, the demand for accessible funds also increases, and most of this demand comes from credit. Therefore, national development that prioritizes the economy is encouraged. Credit, the practice of borrowing and spending money, is not new; in fact, this term is well-known in both urban and rural areas.

Credit generally functions to ease the burden of running a business. Production companies and private businesses in Indonesia that have grown independently to improve people's living standards are highly dependent on credit. Legal relations will run smoothly if the parties can meet their deadlines reliably. If an error occurs, the credit agreement can be used as evidence by the creditor. By recording a credit agreement in writing through a notarial deed, legal certainty can be increased. A notarial deed must be made before an authorized official, for example a Notary, in the form determined by law, and within the specified time to be valid, according to Article 1868 of the Civil Code ("Civil Code"). the location designated by the notary of the deed. The validity of a deed is threatened if many parties, including Notaries, choose to ignore this clause. In the event that one party cannot fulfill the agreed future commitments, the notarial deed can be evidence that is not flawed. By making this notarial deed, all parties involved can be sure that their previous agreement is legally binding. If the debtor is unable to pay off the creditor on the agreed date and/or amount, the creditor can seize the collateral used as collateral for the debtor. Collateral is usually owned by a mortgage, pawn, mortgage, or fiduciary institution, such as a bank. Creditors are given the ability to seize collateral through these institutions without having to start a legal process to determine the existence of a default. owe money. If the creditor wants to maximize profits from the sale of collateral, they can immediately submit an auction application to the local Auction Office. The collateral can be sold either openly or privately, depending on the agreement of both parties. All of the debtor's assets can be used as collateral for debt repayment if there is no collateral from the debtor. All of a person's assets, both existing and to be obtained in the future, can be used as collateral for debt repayment, according to Article 1131 of the Civil Code. It is clear that the law protects the interests of creditors from the provisions of this article. Many people choose to become self-employed in order to meet these demands. Many people choose to get loans from banks or other lending institutions to cover this initial investment. In accordance with the following, as stated in Article 1 paragraph 11 of Law Number 10 of 1998, an amendment to Law Number 7 of 1992 which regulates banking: "credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between a bank and another party which requires the borrower to repay his debt after a certain period of time with interest."

The trust that the lender has in the borrower is very important in establishing credit. If the debtor meets all the requirements to obtain credit, then the creditor will have more confidence in him. If the agreed time has passed, then the credit given will be returned, according to this trust. In order for this credit to be given, the consent of one party or a legally binding contract is required. The creditor and debtor enter into this legally binding agreement when they agree to use collateral to secure the loan and write it down. In addition to outlining the total amount of debt, the repayment schedule, and the impact of default, this agreement must be made openly and honestly. The

smooth running of a legal relationship depends on the prompt performance of each party's obligations under the agreement. In the event that the relationship does not go according to plan, the credit agreement becomes strong evidence for the creditor. For better legal clarity, have it signed by a notary and made in writing. The official role of a notary includes helping parties in need by acting as legal advisors or advocates. As stated in the Notary Law, namely Law Number 30 of 2004, a notary is authorized to assist his/her client in obtaining legal power by signing deeds that have permanent legal force. According to Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, the main authority of a Notary is to make an original deed. In accordance with what was conveyed. From this problem, a more serious and in-depth study is needed regarding inheritance for daughters by raising the title "**Legal Protection for Collateral Held by Creditors Based on Debt Recognition Deeds According to Law Number 4 of 1996 Concerning Mortgage Rights**".

## **2. Research Methods**

The study of legal principles, legal systematics, the extent of the harmony of vertical and horizontal norms, comparative law, and legal history, are all part of normative legal research or literature, which is based on testing secondary materials or data (Soekanto, 2014: 13). With the ambiguity of the norms that occur regarding collateral held by creditors in the deed of debt recognition based on Law Number 4 of 1999 concerning Mortgage Rights, it will be the main topic of this study. Document research is the process of collecting legal materials. Document research includes collecting relevant legal materials, such as books and articles, as well as reading and recording them to assist in the analysis (Muhaimin, 2020: 56). Information regarding the laws collected later in the research process is analyzed qualitatively, and then used to describe the main problems regarding the content and structure of the law.

## **3. Results and Discussion**

### **3.1 LEGAL PROTECTION OF GUARANTEED GOODS HELD BY THE CREDITOR IS BASED ON THE DEBT ACKNOWLEDGMENT ACCORDING TO LAW NO. 4 OF 1996 CONCERNING MORTGAGE RIGHTS.**

In accordance with the 1945 Constitution of the Republic of Indonesia, especially the Fourth Paragraph of the Preamble, which states that the establishment of the Indonesian state government is necessary to protect all Indonesian people and their homeland and to advance public welfare. The implementation of economic development as part of national development is one way to advance public welfare and achieve just and prosperous people's welfare in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia. Large amounts of money are indeed needed by those involved in economic development, both individuals, groups, and the government. Criminals can use borrowing and lending to fund national development. One of the risky financial instruments is a credit agreement. Credit agreements play an important role in the expansion of the banking economy because they facilitate the transfer of wealth from those with excess funds to those with deficit funds. Credit from financial institutions is not something strange. The fact that both urban and rural areas are aware of this credit is something strange. Financial institutions and social lending institutions are not the only identities that can facilitate borrowing and lending;

members of the community can also do it. Business activities, especially economic activities in Indonesia that seek to improve people's standard of living, are facilitated by the existence of credit. Trust and willingness to help those in need are important components of credit. Debts are commonly used by the public to obtain funds used as business capital. Banks as financial institutions provide these facilities. Collateral is all movable and immovable property owned by the debtor, both existing and non-existent, as collateral for the debtor's obligations. Collateral is a partner of the credit agreement, namely as an element of trust from the bank (creditor) to the credit recipient (debtor), that the credit will be returned within the specified time period with the amount of money that has been agreed upon. Although the guarantee is considered strong by the bank, in practice the creditor always completes the credit agreement with a Debt Acknowledgement Deed. A Debt Acknowledgement Deed is an acknowledgment of a loan transaction of a certain amount of funds/money and evidence of the loan which is stated in the form of a debt acknowledgment agreement which has an executory deed nature. Debt acknowledgment in this transaction is an important document and is useful as evidence that a legal relationship has occurred or has occurred between the creditor and the debtor, and this legal relationship is an event that has aspects of rights and obligations so that it gives rise to achievements and sanctions for both parties. The use of a debt acknowledgment deed is as a form of evidence for the bank if the debtor commits a default which could harm the bank.

Pawn and mortgage are the two most common types of tangible collateral recognized by the Civil Code. The act of pawning involves the transfer of ownership of the pawned item to the creditor, who then uses it as collateral for a loan. Meanwhile, mortgage rights, credit verband, or similar institutions can be used as collateral if the collateral is a fixed object. In a credit or money agreement, the amount of debt is agreed upon, and the mortgage serves to guarantee that debt (Dantes, 2019: 97) The following are some reasons why someone makes a Grosse debt acknowledgement deed in the context of a credit agreement and Grosse credit practice:

1. A deed of debt acknowledgement is a unilateral agreement that can only contain an obligation to pay a certain amount of money. If the debtor defaults, the creditor cannot immediately execute the existing collateral but must first file a lawsuit through the District Court.
2. Credit agreements do not have executory power. You can accelerate the implementation of the guarantee directly without having to sue the debtor first if you make a deed of debt recognition before a notary in accordance with Article 224 HIR / 258 RGB. This means that the deed has the same legal force as a permanent judge's decision.
3. In practice, exercising this executive power is difficult, if not impossible, because debtors often seek legal intervention to stop the execution of the guarantee by challenging the validity of the underlying Grosse deed of acknowledgement of debt.

The deed of debt acknowledgement serves as evidence of debt between the creditor and the debtor; it is a voluntary acknowledgement from the debtor which is stated in an authentic notarial deed. Therefore, if it is associated with the theory of legal protection and legal certainty, then the creditor needs to obtain legal protection to enforce the credit

agreement if the debtor does not pay his debt to the bank. The deed of debt acknowledgement made legally by a notary is a legal requirement that guarantees that the debtor has honestly acknowledged his debt, the method of payment, and the due date as an obligation to the creditor. The debtor is obliged to obey and fulfill this obligation. In the event that the debtor fails to make payments on his debt as agreed, then the creditor can enforce a credit guarantee against the debtor based on the deed of debt acknowledgement made by a notary by a notary in accordance with applicable laws and regulations.

Creditors and debtors are given legal protection from government regulations through Law No. 4 of 1999 concerning mortgage rights on land and objects related to land. This law recognizes the existence of the Mortgage Guarantee Institution. This protects creditors, in particular, in the event of default by the debtor. In accordance with Law No. 5 of 1960 concerning the Basic Agrarian Principles, mortgage rights are material security interests placed on land rights (including or excluding other objects in the property) in order to pay off certain debts, giving some creditors priority over others. The imposition of mortgage guarantees is a legal security requirement that must be recorded at the Land Office (agrarian). This ensures that third parties can easily monitor the collateral object if a transfer occurs, and also meets publicity requirements. A private deed or authentic deed, depending on the law governing the agreement, can give rise to debts whose repayment is guaranteed; this is explained in Article 10 of the Mortgage Law. The credit agreement establishes the legal protection granted to creditors under the Mortgage Law. The evidence and limitations between the parties are provided by the credit agreement in this case. For fixed objects, such as land rights, which are used as collateral for debt repayment, there must be a procedure that can bind the collateral by granting a mortgage. Because of its high and increasing economic value, land rights are often used as collateral. To bind the collateral, the Land Deed Official (PPAT) must make a Deed of Granting a Mortgage which contains a guarantee to protect the creditor. Written debt recognition in practice can be done in two general forms.

1. Debt Recognition is made with a Private Deed A private deed is a deed of agreement signed by the parties themselves, without involving a notary or any witnesses. Usually, the debtor is given a draft of this deed for approval. All terms and conditions proposed by the creditor must be accepted by the debtor if the agreement is in standard form. There are several problems with this private deed so that it cannot function as a guarantee of repayment of receivables to the creditor or provide legal protection in any form.
2. The creditor's promise to the prospective debtor to provide credit before an authorized official is known as an authentic deed. The notary is authorized to make this deed, unless someone else is authorized to do so. The court clerk or civil registrar is another party involved. The notary who reads and signs alongside the eyewitness makes the original deed by recording the facts according to his perception. Everyone involved complies with all legal requirements, as stated in the authentic deed, and all agreements and supervision are carried out. Due to its increasing monetary value, land rights are the most popular form of collateral. Because it is transparent in its application and makes it easy to determine the object of the mortgage, the guarantee institution is considered effective. Regarding the problem of defaulting debtors, the provisions of the following articles of the Mortgage Law are relevant:

1. According to Article 1 number 1 of the Mortgage Law, collateral rights are used to guarantee debt repayment, thus providing preferential treatment for some creditors over other creditors. These rights are imposed on land rights in accordance with Law Number 5 of 1960 concerning Basic Agrarian Regulations. The general interpretation of the Mortgage Law number 4 states that what is meant by "prioritizing debtors" is that creditors holding mortgage rights can sell the land that is pledged without having to compete with other creditors if the debtor fails to fulfill his promise or defaults.
2. As referred to in Article 2 paragraph (2), the mortgage cannot be divided unless both parties agree in a deed of grant of rights. If a guaranteed debt has been paid off, it does not release any part of the object of the mortgage; on the contrary, it continues to burden the entire remaining debt. This means that the mortgage burdensome fully object his debt .
3. In accordance with the provisions of Article 6 and Article 30 which regulate the certainty and ease of implementation, creditors entitled execute object of mortgage if debtor deny promise . Through public auction , judge's decision , or sale individual .
4. Creditors still have power to sell or auction pawned goods although the rights have been transferred to another party as follows referred to in Article 7, because the mortgage follows the goods and can held by anyone . Whoever 49 receives object of mortgage rights , the holder still has the right to exercise his rights .
5. An official deed is used to grant the right to mortgage an asset. The PPAT exercises the mortgage right by making a Deed of Granting of Mortgage Rights (APHT) which is an authentic deed as explained in Article 10 paragraph (2) in conjunction with Article 1 number 4.

### **3.2 PROCEDURES FOR GUARANTEEING LAND RIGHTS CERTIFICATES AS COLLATERAL ITEMS IN DEBT ACKNOWLEDGEMENT DEEDS.**

The availability of complete and easy-to-understand written legal documents and enforced consistently in accordance with their provisions is the main requirement for creating legal certainty in the land sector. If no contradictory evidence is found, then the physical data and legal data listed in the certificate issued by the Land Office in each Regency/City area must be taken based on their nominal value correctly, with the provision that the data listed in the relevant measurement of the letter and land book are also accurate. Land Rights Evidence Letter, or land certificate, is a strong evidence of land rights owned by a party, and is given to him as a result of land registration. In addition to being proof of ownership of land, land certificates also have an important role for the person who owns it. Thus, proving land ownership will be easier for land owners who have strong evidence and clear status, because legal certainty will be guaranteed. Likewise, other parties who have ownership of the property in question will find it easier to obtain accurate data.

Legal certainty is guaranteed through the issuance of land title certificates. Guarantee legal certainty covers various matter :

1. Be sure about the status of ownership rights. Ownership Rights, Cultivation Rights, Building Rights, Usage Rights, and Management Rights are all determined precisely in land registration.

2. Subjectivity regarding property rights is guaranteed. The subject of land rights, both individuals and legal entities, can be known with certainty through land registration.
3. Strong belief in the purpose of property rights. Accurate knowledge of the location, boundaries, and area of a land can be obtained through the land registration process.

A person or organization has requested the government to grant rights to state-owned land, so now the government will make a decision. In response to the request for granting rights, the Head of the National Land Agency of the Republic of Indonesia or an official delegated by the National Land Agency issues a Decree on Granting Rights (hereinafter referred to as SKPH). The government has Decree Number 1 concerning Granting Rights. There are several types of land ownership rights that can be granted, including ownership rights, business use rights, building use rights, use rights, and management rights. The applicant must ensure that the SKPH has been registered before requesting a certificate of ownership from the Head of the District or City Land Office whose jurisdiction covers the land in question. An individual or legal entity may request the Head of the District or City Land Office whose jurisdiction covers the goods in question to issue a Government Decree in order to grant Building Use Rights or Use Rights for Land Management Rights. The Head of the District or City Land Office whose jurisdiction covers the goods in question issues a Decree on Granting Rights after receiving the request for granting rights. The government has Decree Number 1 concerning Granting Rights. To obtain a Building Use Rights or Right to Use certificate for Land Management Rights, the applicant must first register the SKPH with the Head of the District or City Land Office whose jurisdiction covers the goods in question. The following are the main points regarding permanent rights to land :

1. Right of ownership

Remember Article 6 states that "the right to land have function social ", then the right to the most thorough and characteristic land hereditary is UUPA, as stated in Article 20 paragraph (1). What we mean by "hereditary " is that the right to own something can remain with the owner as long as he still alive, and after he dies , these rights can be transferred to anyone who meets the requirements conditions for inheriting it . Compared with the top right other land , ownership rights " Strongest " land is stronger, does not expire , easy maintained from third party interference , and is difficult to revoke .

2. Cultivation Rights

The right to cultivate land directly controlled by the state is referred to in UUPA in Article 28 paragraph (1). The maximum term of the Right to Cultivate is 25 years. The longest term that can be given to the business world is 35 years. The rights holder has the option to request and the company's financial situation will determine whether the term can be extended to 25 years.

3. Building Use Rights 63 The initial term of a building use permit on state-owned property may not exceed 30 years; subsequent extensions may not exceed 20 years; and extensions may not exceed 30 years. The deadline for submitting an extension or renewal is two years before the end of the term of office.
4. Land Use Rights Mortgage Rights can be placed on Land Use Rights over State

land which must be registered and can be transferred by law, in accordance with Article 4 paragraph (2) of the UUHT. The decision to grant land use rights to someone generally determines the time limit for granting said land use rights.

Creditors and debtors as legal subjects are expected to have their rights and obligations protected by all types of legal instruments, both preventive and repressive. In order to achieve justice while maintaining a fair balance. The purpose of UUPA to provide legal protection and guarantee legal certainty for the community regarding land rights, including mortgage rights on land, is reflected in the enactment of UUHT. Mortgage holders enjoy privileges in the form of legal protection provided by law, which include:

1. The principle of priority, or *droit de préférence*, states that earlier property rights will take precedence over later property rights.
2. There is a right of ownership known as "*Droit De Suite*" that attaches to tangible assets; this is a right that remains with the owner even after they have sold or given away the item. With *droit de suite*, creditors know that they can be assured that they will get their money back from the sale of the land or land rights that are the subject of the mortgage if the debtor defaults, regardless of whether the owner sells the property or not. and grants the mortgage to another party
3. Even if the mortgagee declares bankruptcy, the creditor receiving the grant still has full authority to exercise all rights granted by the Mortgage Law. Before the creditor collects his receivables from the proceeds of the sale of the person declared bankrupt by the party granting the Mortgage Right, namely the party who makes his assets as collateral, the bankruptcy law does not regulate the purpose of the Mortgage Right.
4. According to Article 2 paragraph (1) of the UUHT, mortgage rights cannot be divided, thus placing the creditor holding the mortgage right in a special position. This is because mortgage rights cannot be imposed on more than one object (Boedi Harsono, 1999:421).
5. There is no need to go through a time-consuming and money-wasting litigation process if the debtor defaults or breaks a promise; its implementation is simple and certain. Creditors with Mortgage Rights are entitled to certain events as referred to in Article 20 of the Mortgage Law. One of these events is the implementation of their right to sell the object of the Mortgage Rights they own through a public auction, as referred to in Article 6 also called ("*parate execution*").
6. The interests of creditors are protected by ensuring the certainty of the date of birth of the Mortgage Right, the time limit for carrying out various legal acts required to seize the Mortgage Right, and the provisions in Article 13 of the Mortgage Law relating to this matter.

Theoretically, it is said that a gross deed of debt recognition is a quick and cheap shortcut to overcome bad debts/receivables. However, in practice, there are still many problems that can hinder the execution of a gross deed of debt recognition addressed to the court so that often the application for execution of a gross deed of debt recognition 67 even

though the gross deed has met the formal requirements, is rejected by the competent court based on various reasons.

#### **4. Conclusion**

1. According to the provisions of Law Number 4 of 1996 concerning Mortgage Rights Regarding Land and Objects Related to Land, the law takes sides to protect debtors and creditors, whose positions are equivalent as a mortgage holder. rights. in the case of debtor give mortgage default fulfil obligation settlement, then consequence the law manifested in actions that can done creditors to seize the collateral. APHT or Deed of Granting of Mortgage Rights contains provisions that clarify this. Every written or oral agreement between the creditor and the debtor, whether made by hand or before an authorized official, is considered an authentic deed. One of the benefits of this deed is that it can be used to execute a debt if the debtor fails to fulfill his promise or defaults. Its executorial power is comparable to a court judge's decision that has permanent legal force (*incracht*).
2. The mortgage holder is intended to be able to immediately prove his rights by issuing a certificate at the time of registration. According to Article 19 of the UUPA, a certificate is thus a strong evidence. A certificate can be used to prove that the owner of a certain right is in accordance with the legal and physical details recorded in the land registration. The data listed in the certificate, both physical and legal, must be in accordance with the data contained in the land book and the relevant measurement letter. A land title certificate provides protection to its owner from potential legal disputes and guarantees ownership of the land.

#### **5. Recommendation**

1. For the government, it is better to strengthen regulations governing legal protection of collateral in debt recognition deeds. This can involve providing clear sanctions for violations of creditor rights, as well as ensuring that the procedure for confiscation of collateral is carried out fairly and transparently.
2. For legal practitioners, especially Notaries, it is advisable to continue updating their knowledge regarding regulations related to collateral and debt recognition deeds. It is advisable to carefully review each clause in the deed and provide clear advice to their clients regarding collateral. Involve client or person concerned in the preparation deed.
3. For the public, when entering into a binding agreement, they must ensure and fully understand the contents of the clause before signing the contents of the agreement.

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