

Original Article

Reconstruction of Legal Protection toward the Mortgage's Creditor Holder within object of Building Rights Title which the Term was Expired before the Credit Agreement's Due Based on Legal Justice Value

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Abstract

The purpose of this study is to assess and analyze the legal protection practices towards creditors holders of mortgage with the object of Building Utilization which has expired the period before the credit agreement is due, the weakness in the practice of legal protection as well as reconstruct the practice of legal protection against the mortgagee creditor Building Rights object that has been the end of its term before the credit agreement is due based on the value of justice. The research methodology used in this journal is Constructivism with approach method was sociological juridical or socio-legal. The results of this study found that the reconstruction of the value of legal protection against the creditor holding the mortgage with the object of Building Use Right before the due date based on the value of justice is to protect the interests of creditors and debtors in a balanced form: (a.) If the debtor wants to extend the Building Use Rights then the credit agreement is extended. (b.) if the debtor does not extend their Building Right title carried out the sale and purchase of collateral in parate execution. Thus the reconstruction of the law on the provisions of the law that regulate the right of Dependent especially in Article 4 of Law No. 4 of 1996.

Keywords: Legal Protection; Mortgage's Holder Creditor; Payment Due; Justice.

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Introduction

The Indonesia Mortgage Rights Act has provided security to creditors in disbursing loans to debtors. ie with a special guarantee that is material.

In addition, the use of execution institutions of mortgage rights is a way of accelerating the settlement of cash could be receivables that have been issued by creditors can immediately return to creditors (banks), and the funds can be used in the rotation of the wheels of the economy [1].

Under the Indonesia Mortgage Law, the objects that can be burdened with mortgages are land rights and land-related items. In Article 4 of the Mortgage Law, it is explained that the rights to land which can be held by the mortgage are the *Property Right* (PR), *Freehold Title* (FT), *Building Right Title* (BRT), and *Right to Use of State Land* that according to the applicable provisions shall be registered and based on their nature could be transferable and the rights to the land include its buildings, plants and works, which are the unity of the landlord, and the property of the holder of the land rights. In this case the imposition must be expressly stated in the Deed of Granting the Deposit Rights concerned. In the provision of Article

40 of the Basic Agrarian Law. Building use rights due to:

1. The time period expires;
2. Terminated before the term expires because a condition is not met;
3. Discharged by its rights holder before the expiry of his term; (4) Revoked for public interest;
4. Abandoned;
5. The land is destroyed;
6. Provision in Article 36 paragraph (2).

The termination of the right to use the building, let alone the right to the land is being used as collateral for the loan with the burden of the mortgage, will of course have legal effect on the existence of the mortgage right itself, because based on the Letter of Director General of Agraria dated October 27, 1979 Number: Ba.10 / 241 / 10 states that:

"With the abolition of land rights, then the mortgage will be abolished and the land back in state power, whereas the debtor's creditors' debts remain, only the creditor no longer has the position of a preferred creditor."

Concerning the removal of the mortgage, provided for in Article 18 paragraph of the Deposit Rights Act, which states that Deposit right off because of things as follows:

- a. Remove debt secured by mortgage rights;
- b. Disposal of dependent rights by holders of mortgages;
- c. Clearance of mortgage based on ranking by the Chairman of the District Court;
- d. Delete rights to land borne by mortgage rights.

If the tenure period of building rights title has expired as stipulated in Article 40 Sub-Paragraph a of the Basic Agrarian Law and Article 35 paragraph (1) letter a of Government Regulation Number 40 of 1996 whose determined that the decision of grant or renewal or in the agreement granting it. then with the abolition of *Building Right Title* (HGB), then by law, also causes the mortgages land rights contained therein burden also remove. In banking practice, the term of the right to the building is over, while the credit agreement is still running and the debtor is defaulted. A credit agreement is a loan-borrowing agreement between a bank and another party (customer) [2]. A bank credit agreement is a preliminary agreement and a deposit of money. This preliminary agreement is the result of a consensus between the giver and the recipient of the relations between the two. The transfer of money is real, when the money is handed over then apply the provisions

set forth in the credit agreement on both sides. Through the agreement, there is an engagement or legal relationship that creates rights and obligations to each contracting party [3].

According to Gustav Radbruch that law only means as a law if the law is a manifestation of justice or at least an attempt in that direction. Radbruch is elaborates the concept of three basic legal elements, consist of Certainty. Justice and Utility. Radbruch taught the scale of priorities that must be executed. where the first priority is always justice. then the benefit, and finally the legal proof. According Radbruch if there is a conflict between the contents of the rule of law and justice becomes so great. so that the rule of law is not fair. At that time the rule of law may be released [4]. In giving justice to Indonesian citizens, it is also embodied in The Preamble of the 1945 Constitution of the Republic of Indonesia [5].

Legal protection should be obtained by creditors. where there is a certainty that the creditors will be easily obtain their receivables as guaranteed by the Mortgage Act. even though the rights to the land which are burdened by the mortgage as collateral for its term loan expire. Therefore. it is necessary to attempt to reconstruct legal protection efforts against the mortgagee creditor with the object of building rights that expires in time before the credit agreement is due date.

Research Methods

In this study, researchers chose the paradigm of constructivism. The constructivist paradigm is a paradigm that is an antithesis to the notion of putting observation and objectivity in finding a reality or science. This research uses sociological juridical approach based on sociological jurisprudence school. This research is based on the normative legal science (*written law*), it does not examine the norm system in the rule of law, but concern to observes the reactions and interactions that occur when the norm system works in society [6].

This research is descriptive analytical research, because the researcher wish to describe or expose on subject and research object, which then analyze and finally draw conclusion from the research result.⁷ The data used in this research is primary data and secondary data. Secondary data is data obtained from library materials through literature study, and this data is also obtained from agencies / institutions related to the purpose of this study [8].

Data collection techniques contain meaning as an effort to collect data by using a certain data collection tool. Determination of data collection tool in this research based on data type. The data which collected in this study is primary data through field study and secondary data obtained from literature study and document study. Primary data is data obtained from direct interviews conducted by researchers to respondents. Respondents are individuals or individuals who will respond to questions posed by the researcher. Respondents are individuals or individuals directly related to the required data [9]. Whereas secondary data according to Ronny Hanitijo Soemitro is data comprised of primary legal materials, namely in the form of legislation and jurisprudence and secondary legal materials, namely in the form of documents or minutes of the legislation research findings and scientific activities as well as the opinions of jurists and encyclopaedias [10].

The sampling to obtain primary data in field study is done by purposive sampling method. Purposive Sampling is a sampling method that is conducted with consideration on the collection of data in accordance with purpose and objectives of the research [11]. The analysis used in this study is a qualitative data analysis that is a research procedure that produces descriptive analysis data, that is what is obtained from literature research or stated by the speaker in written or oral and also the real behavior, and holistic perspective.

Result of Study and Discussion

1. *The implementation of legal protection of the mortgage creditor with the object of Building Utilization which has expired its term before the current credit agreement On Due Period.*

The Procedure of legal acts Granting or imposing mortgages requires of the following stages:

a. First Stage (Arranging a credit agreement)

The Composement of credit agreement is the first step preceded by a principal agreement in the form of a credit agreement or loan agreement or credit agreement or loan agreement or other agreement that creates a lending and borrowing relationship between the creditor and the debtor. This is in accordance with the nature of the accessoir of the Deposit Rights granting it must be a covenant of the principal agreement of credit agreements or debt agreements or other agreements that generate debt [12]. Based on the result of the research is showed

that the author did with the legal officer (LO), through interviews conducted on January 10, 2016 it can be concluded that the imposition of mortgages which in essence is a legal act on the binding of land rights that have been submitted by prospective borrowers first made a credit agreement which is the principal agreement. This credit agreement can be made notarized (before the notary) or unnotariil (under the hands) in accordance with the internal policies of each bank.

The similar opinion was also declared by a public Notary (Land Dees Authority Officer) with working in Malang Regency according to the interviews conducted, that the imposition of new mortgages can be done if the credit agreement has been made by the bank with the prospective debtor either under the hand or notariilly. The imposition of this mortgage may be made by a Notary as the Acting Deed Officer with the working area in which the guarantee is situated.

Article 10 paragraph 1 of the Law No. 4 of 1996 about Mortgages said that the Grant of Arrangement is preceded by a promise to grant a Deposit Rights as a security for the repayment of certain debt, which pours in and is an inseparable part of the agreement of the related debts or other agreements that generate the debt. The promise to grant the Deposit Rights as a certain debt repayment must be formulated in a credit agreement or debt agreement. The pledge may be formulated in one of the credit service or debt agreements by example: "To further guarantee the loan repayment of both principal, interest and penalties and other costs by the debtor to the Creditor under this credit agreement, including any amendments thereof with this debtor handed over the guarantees in the form of land area of 1000 M², located in Gading Bululawang sub-district Malang Regency, as set forth in the certificate of Property Number 10 Gading on behalf of the debtor issued by the Head of the Land Office of Malang Regency on March 10, 2004 with the Letters number 15/2004 dated January 10, 2004. which will be imposed the Mortgage Rights ".

On the credit agreement, a new pledge to grant mortgages as a guarantee of certain debt repayment while the awarding of mortgages will be done by a separate deed called the Mortgage of Assignment Rights (APHT) made by the Land Deed Authority Officer (PPAT).

The Principal of this agreement in the form of credit agreement or debt agreement or other agreement that creates a debt of its kind may be made by a deed under the means of being made by the creditor and the debtor himself or the authentic deed means made

by and before the public Notary. Credit agreements or debt agreements may be made by persons or foreign legal entities as long as credit is used for the benefit of the Republic of Indonesia. Regarding where the credit agreement can be made inside or outside the country.

b. Second Stage (Making Document of Granting of Mortgage Rights Assignment)

The second stage in the form of Burden of Mortgages which is marked by the making of Document of Granting of Mortgage Rights is made by Land Deed Official which is signed by creditor as recipient of mortgage rights and guaranteed rights owner (debtor or collateral owner but not debtor). Deed of Assignment of Dependent Rights is an authentic deed made by and before the Land Deed Official. This document is a standard form issued by the National Land Agency which is used, by Land Deed Official. Article 10 Paragraph 2 The law No.4 of 1996 about Mortgage rights stated that the granting of mortgages is done by the making of the Right of Provision of Right of Rights by Land Deed Official in accordance with prevailing laws and regulations.

c. Third stage (Granting Mortgage Right's Document Registration in National Land Agency)

The registration of *Deed of Assignment Mortgage Rights* to the local Land Office as mandate with Article 13 paragraph 1 Indonesia Mortgage Law which affirms the granting of the Deposit Rights must be registered at the Land Office. After the Land Office receives the registration from the Land Deed Official within 7 days after the Document of Granting of Mortgage Rights Assignment is signed, the Land Office creates a book on the Land of Mortgage and records it in the land title book which is the object of the Mortgage Right and copies the notes to the relevant land title certificate. As a proof that the Assignment of Mortgage Rights has been registered in the Land Office, which proves the existence of the Deposit Rights, the Land Office will issue a *Certificate of Mortgage Right* [13].

The Certificate of Deposit Rights is granted to the Creditor as the holder of the Deposit Rights. The Mortgage Rights Certificate is a copy of Document of Granting of Mortgage Rights Assignment and a copy of the Land of Mortgage Rights which is sewn together. Thus, if examining the Certificate of Mortgage Rights appears to be the same as Document of Granting of Mortgage Rights Assignment, because passage is *Document of Granting of Mortgage Rights Assignment* part of the Certificate of Coverage.

From the provision of Article 13 The law No.4 of 1996 above, it can be concluded that the registered to the Land Office is the Deed of Assignment Mortgages of Rights accompanied by a certificate of land and other letters as proof of object Mortgage and identity of the parties Creditors and Debtors / owners of the guarantee. While still using the mortgages, the provisions of registration are stipulated in article 1186 of the Civil Code which determines what should be registered: authentic copies of the mortgage deed and two pages of mortgage deeds.

In practices, the guarantees most often given by the debtor and also favored by the bank are land and buildings. Because the land is generally easy to sell, the price continues to increase, has a proof of rights, difficult to embezzle, and can be burdened with the right of lender who gives privileges to the bank as a creditor. However, not all guarantees in the form of land rights granted by the debtor can be used as collateral for loans, especially land titles whose ownership documents are non-existent or not perfect, such as Pipil, Girik, Petok D or the registered SaleBeli deed. If the Debtor submits such collateral, the bank will first consider carefully, as it will bring considerable risk to the safety of the credit to be distributed to the Borrower.

Analyzing legal protection should be narrowed down in scope. The concept of legal protection that the author means here is related to the debtor. In the hierarchy of legislation that the writer previously explained that to analyze the problems arising from the Letter of Agreement on the Right to Use of Building Right Title (SPPI HGB) must be analyzed from the highest regulation.

The highest regulation in Indonesia is the Constitution 1945 of the Republic of Indonesia Article 33 Paragraph (3), which regulates the natural resources including the land therein. In the granting of rights to land it is necessary to have a proof of ownership of rights that contains legal protection for its owner which is not regulated in the 1945 Constitution of the Republic of Indonesia but regulated in the following regulation namely the Basic Agrarian Law in Article 19.

Furthermore, it can be traced further on the implementing regulations of the Basic Agrarian Law which is the Government Regulation. The Government Regulation used is Government Regulation No. 24/1997 on Land Registration as it is in accordance with *Lex posteriori derogat legi priori* principle, so that Government Regulation No. 10 of 1961 concerning Land Registration is no longer valid.

The protection of land rights law under Article 19 of the Basic Agrarian Law No. 5 of 1960 is closely related to the legal certainty of land rights. Based on Article 19 of the Basic Agrarian Law, it is said that the main purpose of land registration is to provide assurance of legal certainty and provide legal protection for holders of land rights. Clearly, the purpose of registration of land rights is contained in Government Regulation No. 24 of 1997 on Land Registration Article 3 states that the purpose of land registration there are three things:

1. To provide legal certainty and protection to the holder of the right to a plot of land, apartment units and other registered rights so as to easily prove himself / holder of the rights concerned.
2. To provide information to interested parties, including the government, in order to be able to obtain the necessary data in holding legal acts concerning the parcels of land and apartment units already registered.
3. For the implementation of the orderly administration of land

2. The Weakness On the Practical Of Legal Protection Against the Creditor Holder of The Mortgage With The Object of the Building Right Holder whose needs an renewal Agreement to consider The expiration period of Building Right That Used As Collateral For The Credit At The Bank

According to the provisions of Article 8 paragraph (1) of Law Number 10 of Year 1998 about Banking, it is explained that before approving the application submitted by the debtor candidate, the bank must conduct a legal and economic analysis of the Debtor candidate. Juridical analysis means that the analysis conducted by the bank concerning whether or not the provisions of Article 1320 of the Civil Code regarding the terms of the validity of the agreement in which there are 4 elements that must be fulfilled in order that the agreement is considered legal according to the law that is agreed, competent, certain things and lawful reason. While the meaning of economic analysis is the analysis related to data, track record of the prospective debtor, such as the character of the customer, the condition of wealth or wealth of customers, the ability of customers to pay if given credit, objects or customer goods that may be seized if customers default. Before the decision is given, the credit analysis should make its principal conclusions and arguments that will be the legal basis for the credit approval decision official to make a decision.

The enactment of Indonesia Mortgage Regulation is considered be able to accommodate the interests of the banks as the creditor, the Act guarantees and provides convenience to the creditors to obtain repayment from the debtor when the debtor breached the pledge, there are 3 kinds of execution execution of mortgage object as regulated in the provisions of Article 20 of the Act No. 4 of 1996, according to that article Execution of Mortgage Rights can be done in three ways [14]:

1. The right of the first mortgagor to sell his / her dependent rights on his / her own power through a public tender as referred to in Article 6. The right to sell the object of liability to his / her own power constitutes an embodiment of the priority position held by the holder of the mortgage or the holder of the first level dependent, in case there are more than one holder of mortgages. The right is based on the pledge given by the mortgagor that if the debtor breaches the pledge, the holder of the mortgage is entitled to sell the object of mortgage through a public tender without requiring the consent of the mortgagor and subsequently to take the settlement of the receivables from the proceeds of that sale first from the creditor - other creditors. The remainder of the proceeds of the sale remains the grantor of the mortgage (see explanation of article 6 UUHT), or
2. Execution of the executorial title contained in the mortgage certificate as referred to in Article 14 paragraph (2). (The head of verdict) which is attached to the certificate of mortgage intended to affirm the existence of an executorial force in the depositary's right, so that if the debtor breaches the pledge, is ready to be executed as the right of a court decision which has obtained permanent legal force, through the ordinance and with using the Prate Executie institution in accordance with civil procedure law, or
3. Execution under the hands, it mean the sale of the mortgage object by the mortgagor, by agreement with the mortgagor, if in this way the highest price will be obtained.

In this study the researcher examines the execution as meant in Article 6 of Law, Number 4 of 1996 on the Rights of Land on Land along with Objects related to the Land, which reads:

"If the debtor breaches the pledge, the first holder of the Insurance Right shall have the right to sell the object of Mortgage right over his/her own power through a public tender and to take out the receivable from the proceeds of sale".

The elements contained in article 6 The Law Of Mortgage consist of :

1. The debtor has breaking the point of agreement ;
2. The first holder of the Deposit Rights shall be entitled;
3. Right to sell the object of Mortgage's right to its own specificity;
4. Terms of sale through public tender;
5. The right of the creditor to take his receivable from the proceeds of sale;
6. The right of the creditors to take out the receipt of the receivables is limited to the right of claim.

Execution procedure under article 6 is better known as Parate Execution, in fact the term parate execution is not explicitly written in the legislation. The term Parate Execution as elaborated in the previous section is etymologically derived from the word "para" meaning ready to come, so the execution parate is said to be a ready-made means. According to the legal dictionary, the execution parate has a direct implementation meaning without passing a court or judge.

The definition of the execution parate according to Sibarani is "self-executed without the help or intervention of the court or judge", while according to Subekti parate execution is "run alone or take itself what is rightfully (in the sense without intermediaries judge)". According Sudarsono understanding of the execution parate is "Implementation directly without litigation, direct execution is usually done in the matter of pledge in accordance with the provisions contained in the agreement". So it can be concluded that the execution parate is the authority possessed by the creditor to execute the object of guarantee of mortgage rights directly without having to go through and without any court intervention.

The partial execution of the execution given by the doctrine, the authority to sell on his own power or the parate of execution, is given the meaning that if the debtor is defaulted, the creditor may execute the object of the guarantee, without having to request the fiat of the Chief Justice, without having to follow the rules of the game in the Law of Events, for that there are rules of his own game. No need to confiscate first, no need to involve bailiffs and hence the procedure is easier and more cost-effective.

According to Sri Soedewi Masejhoen Sofyan, the Parate Executie is "Execution executed without the executor's title (Grosse Notarial Deed or without a judge's decision) through the parate executie (ie the direct execution) of the Mortgage Holders with a promise to sell over self-perpetuation can permit their rights directly without going through a judge's decision or Grosse notarial deed".

The the provisions of Article 20 of the Basic Agrarian Law Number 5 of 1960 concerning Proprietary Right which reads as follows Article 20 paragraph 1: Proprietary Right is the hereditary right, the strongest and most fulfilling rights that people may have on the land, keeping in mind the provisions of Article 6. In paragraph 2: Proprietary Right may be transferred and transferred to another party. In the explanation of the article only explaining the provisions of paragraph 1, while the 2nd paragraph is not explained, the possibility is considered to be clear. Therefore, the authors using the legal approach, namely the approach of the Act (statue approach), historical approach (historical approach) and also using interpretation based on Analogic Law reasoning, the authors conclude that the phrase "by their nature can be transferred" in paragraph (2) Article 4 of the Guaranteed Rights Act Number 4 of 1996 is the same as the sentence in Article 54 paragraph (1) of Government Regulation No. 40/1996, which reads "may be transferred and transferred to another party", also in accordance with the provisions of Article 20 paragraph (2) The Law No.5 Year 1960, which reads "Proprietary Right" can be transferred and transferred to another party. Thus the phrase "by its nature is transferable" is equivalent to the phrase: "may be transferred and transferred to another party".

Then the phrase "by its nature may be transferable" in paragraph (2) of Article 4 The Law no. 4 Year 1996 may also mean "by its nature can be switched and diverted" which has the meaning and meaning as follows:

a. Switch The Land Rights Title

Switch The Land Rights Title means the transfer of Rights to Use of the land from the owner to another party due to a legal event. With the death of the holder of Right to Use, her Legal Rights shall be transferred to her livers as long as her heirs qualify as subjects Right to Use.

The transfer process of Right to use of certified land must be registered with the local Regency Land Office by enclosing the death certificate of the Right Holder made by the competent authority, the certificate of heir as authorized by the authorized official, the proof of the identity of the heirs, the land certificate concerned. The purpose of registering the transfer of Right to Use of this land is to be recorded in the Land Book and change the name of the Holder of Right to Use to the heirs. The procedure for registration of transfer of rights due to the transfer of land rights is regulated in Article 42 of Government

Regulation Number 24 Year 1997 on Land Registration jo. Article 111 and Article 112 Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1997 concerning the provisions of the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

b. Transferred (Transfer of Rights)

Transferred (*Transfer of Rights*) means the transfer of Right to Use of the land from the owner to another party due to a punishment. In the legal act of transfer of rights, the rights to the land concerned are deliberately transferred to another party. The transfer form can be:

1. Sale-purchase,
2. Swap,
3. Grants,
4. Inclusion in company or inbreng,
5. Auction,
6. Inheritance (without will or will).

Such acts are committed when the holder of his rights is alive and constitutes a legal act of transfer of the rights which are cash, except inheritance. That's by doing the legal act, the rights to the land concerned move to another party. In the grant of the will the right to the land concerned shall be transferred to the recipient of the will when the right holder dies. Sale and Purchase, exchange, grant, income in company (inbreng), as well as the implementation of the grant of wills, carried out by the parties before the Land Deed Officer, who is in charge of making the act.

Meanwhile, Building Rights Title on State lands which in accordance with the applicable provisions shall be registered and by their nature transferable may also be borne by the Deposit Rights. The right to use of the land of the State which has a transferable property can also be interpreted as the object of the guarantee agreement, and juridically is the legal certainty for the settlement of the debtor's debt or the performance of the achievement. An object that is the object of a guarantee agreement is also a bend in the trade, whereas objects outside the trade can not be the subject of a guarantee agreement. And the Right to Use on such State land has a liquidity value which means it is easy to cash in the form of money. The right to use such State property if it falls on the subject of the Right or the Right to Build, may be upgraded to a Property or Building Use Rights depending on its use.

Thus the authors conclude the context meaning of

the phrase "*by their nature transferable*" in Article 4 paragraph (2) The Law No. 4 of year 1996 is :

1. Can switch;
2. Transferable / transferable;
3. Can be the object of agreement;
4. Jurisdictionally has legal certainty for debt settlement of debtor or implementation of achievement;
5. Is an object in trade, it can be used and upgraded to become Proprietary Right Title or Building Right Title, if the Right to Use falls on the subject of the law of Ownership or the Right to Build one depending on the use of such Right to Use.

As a manifestation of the principle of publicity the granting of mortgages shall be registered with the Regional Land Office. Registration of grant of mortgages is an absolute requirement for the birth of the mortgage and binding of the right of dependent to third party. At the stage of granting mortgages by the mortgagee to the creditor, the dependent right concerned is not yet born, the right of the dependent is born at the time of posting in the general register at the Land Office. At that time not only determines its priority to other creditors who are also holders of the mortgage, with the same land as its guarantee. Therefore, the certainty of the moment of registration of the mortgage is very important for the creditors.

That's matter is one manifestation of legal certainty, as mentioned in the section weighing on the introduction of Mortgage regulation, namely the existence of the obligation to register mortgages as a manifestation of the principle of publicity. Although the principle is also applied to mortgages, there is a difference with the Deposit Rights. The distinguish contain inside the norm of The Law no. 4 year 1996 is set deadline of the implementation of the registration, ie no later than 7 (seven) days after signing Deed Transfer of Mortgage Rights (Akta Pengalihan Hak Tanggungan). The obligation of registration with the Land Deed Officer (Pejabat Pembuat Akta Tanah), which, if violated, has the effect of administrative law as mentioned in Article 23 The Mortgages Act.

As stated by the Land Deed Authority, such deeds and other necessary warkahs are submitted to the Land Office through its officers or sent by registered mail. To that end, the Land Deed Authority must use the best and safest way by taking into account the condition of the area and the existing facilities, and always be guided by the purpose to register the Mortgage Right as soon as possible. The Land Deed Officer shall be obligated to implement the provisions

of this in his position. sanctions for violations will be stipulated in the laws and regulations governing the position of the Land Acting Authority. The provision requires the alertness of each Land Deed Officer so as not to fail to comply with the provisions.

Registration of Mortgages Rights referred to above is carried out by the Land Affairs Office by preparing the Land of Mortgage's land book and record it in the land title book which is the object of the Mortgage Right and copy the note to the relevant land title certificate. In order to make the book of the Land of Mortgage is not protracted so that it can harm the parties concerned and reduce the guarantee of legal certainty, the Mortgage regulation stipulates a definite date as the date of the land is seventh day is calculated from the day of fulfillment of the requirements in the form of letters for its full registration and if the seventh day falls on a holiday, the book of the land concerned is given the date of the next working day. Thus the Land Affairs Office is obliged to examine and notify the lack of letters required for registration of such Deposit Rights during the time 7 (seven) working days after the date of receipt.

In the event that more than one Deposit Rights registered on the same day, the level of Dependent Rights is determined by the date of granting the mortgage, which has a younger date prior to its registration than the older date (Article 5 paragraph (3) Law No.4 year 1996). Thus, the granting of the levels of Mortgage rights associated with the time of registration, is a logical consequence of the nature of the Material Right, which says that the material rights of the first born have a higher position than those born later. According to Herowati Poesoko in his book entitled "*Parate Executie Object Rescue Rights*" states that the function of registration of Mortgage Rights is as follows [15]:

1. To prove the moment of birth and tie the right of Tangungan against the parties and third parties.
2. To create evidence of the right to the right, that the land has been charged with a Deposit Rights.
3. Early birthright is a higher position than the one born later.
4. To create legal certainty for creditors that when a debtor breaches a pledge, the creditor obtains a pre-emptive right that precedes it from the other creditors.
5. To create legal protection for creditors against third party intrusions.
6. If the deed of burden of Mortgage is registered in the general register, the pledge contained in the

Mortgage Benefit Act implies the power to apply the material and also to the strength of a new holder / owner.

Referring to the registration function of the Insurance Rights above symbolizes that the creditors holding the Mortgage Rights are protected and the legal certainty that the land guaranteed by the insurer to the holder of the guarantee has binding power for the parties and third parties , as well as a proof for the right holder that the land that has been charged with the Mortgage Right has a higher position than the later born. So that the Mortgage Holders are guaranteed and guaranteed by law. Considering Mortgage Act is a regulation concerning the guarantee of the material especially the guarantee of the land, which inherent principle of law of guarantee, which is: absolute principle/absolute, principle droit de suit, principle droit de preference, principle priority, and principle of publicity, then Mortgages Act can legally provide legal certainty for creditor holders of Mortgage Rights.

When this case is associated with the Theory of Legal Protection used as a knife of analysis in answering the issues discussed in this paper, the authors argue that the bank as creditor will obtain legal certainty and strong legal protection in giving credit to the debtor as long as the credit binding and the binding of the jaminan have been done perfectly. The credit agreement made must comply with the provisions of article 1320 of the Civil Code regarding the validity of a treaty and does not contain juridical defects, therefore having a perfect proof of power. Similarly, the guarantee binding contract shall be made in accordance with the provisions of the laws and regulations of binding. the loading of the obligations must be done perfectly so that the certificate of mortgage rights can be issued by the Office of the National Land Agency (Badan Pertanahan Nasional).

If the bank already has a Certificate of Insurance Right, the bank as the creditor shall have the privilege (preferent right) of the guarantee submitted by the debtor of the mortgage certificate as proof of the imposition of the mortgage that contains the "*Atas Nama Keadilan Berdasarkan Ketuhanan Yang Maha Esa*" or in the name of justice based on the almighty god. The form of legal protection to the bank as creditor Because the certificate of the mortgage has the same executive power as the decision of the court which already has permanent legal force. If the debtor is defaulted then the bank based on this mortgage certificate may apply for the execution of the mortgage right to the District Court.

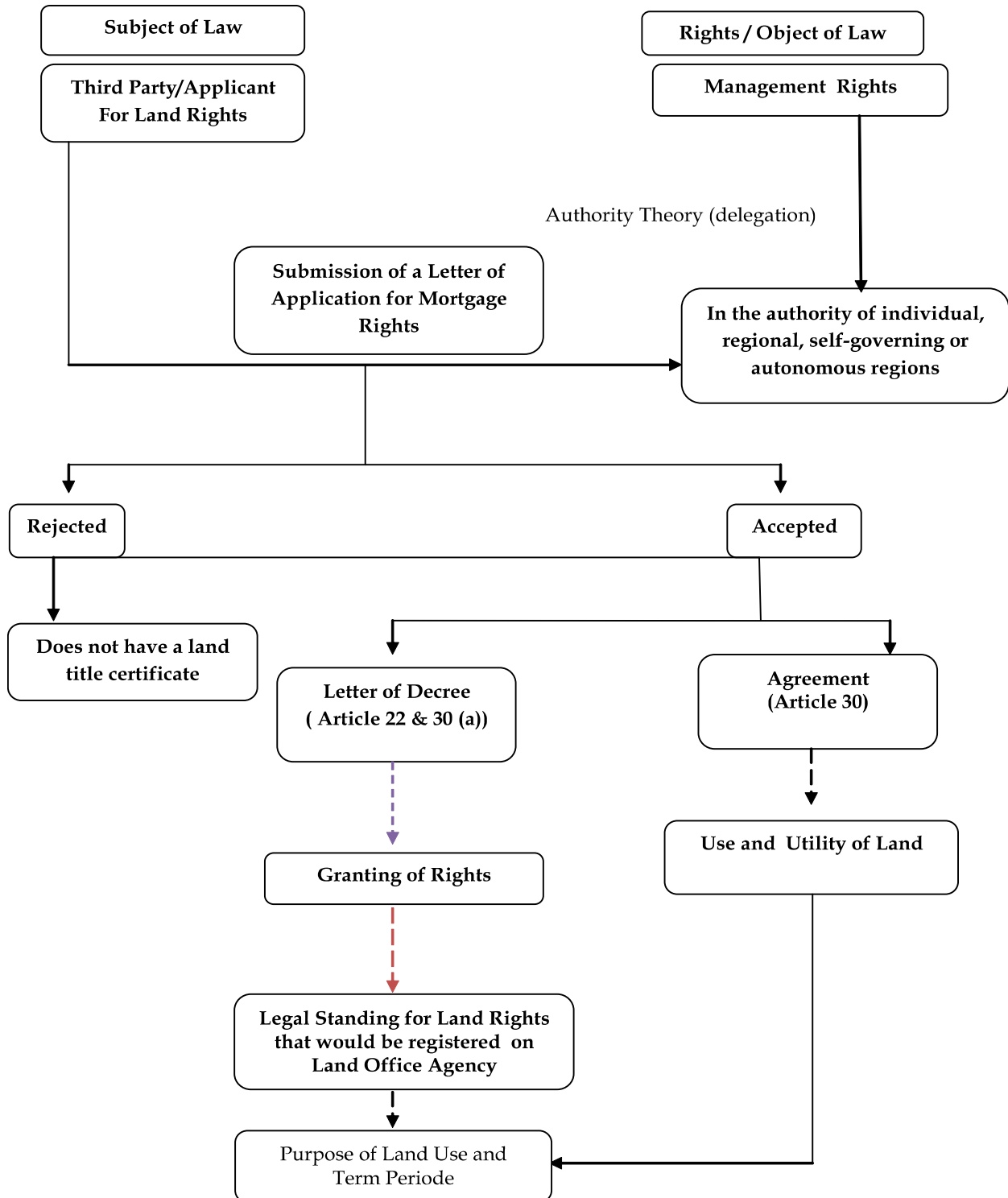
Not so with the imposition of mortgages on

guarantees submitted by the debtor not yet on behalf of the debtor as mentioned above the imposition of the mortgage on this guarantee can not be done directly or can not be done simultaneously with the signing of the credit agreement. The imposition of the mortgage on the guarantee can only be done then when the land title certificate has been processed in

the National Land Agency Office.

3. Legal Reconstruction For Protection To Creditor Holders of Mortgages With Object Building Rights That has ended The Term Before Maturity Based on Value of Justice

Granted legal permission by the Rights holders, hird party/land rights applicant (Building Rights In



Particular) must fulfill its obligation as stipulated in Article 30 of this Government Regulation namely that the holder of building rights is obliged to:

- 1 To pay income money in which the amount and manner of payment is stipulated in the decision to grant the rights;
- 2 Use the land in accordance with its designation and the requirements as stipulated in the decisions and agreements granted;
- 3 Maintaining well the land and buildings on it and preserving the environment;
- 4 Redeem the land granted with the Right of Building to the State, the holder of the Right Holder's Property Rights Right after the Building Use Right is abolished;
- 5 Submit a certificate of Building Use Right that has been deleted to the Head of Land Office Agency.

Referring to Article 30 letter a, the grant of the right (right to land) is based on a decision letter in the form of a permit for the transition of Right of Management, whereas in letter b it is explained that the use / designation, and the requirements are based on the decision and granting agreement.

According to the authors analysisist , based on the description of several articles above, the provision of authority to use the parts of the land of local government management rights to another party (third party) is done by a decision and agreement, in which the decree regulates the granting of its rights, while the agreement provides for the use and appropriation of land will be applied for. In addition to describe the flow of thinking about the use of parts of management rights can be illustrated by the scheme has given on previous page:

In view of the scheme which already described above, that is explain in brief about its arrangement after obtaining a decision and agreement, it shall become the basis for the issuance of the Land Rights Certificate, since the right to such land occurs after /

has been registered by the Land Office. As stated in Article 23, namely:

- i. The granting of Right of Building Use as referred to in Article 22 shall be registered in the List of Land Record Book at the Land Office Agency .
- ii. The Building Right Titles on State land or on the land of Management Right since it was registered by the Land Office Agency .
- iii. As a proof of rights to holders of Right to Use of the Building is given a certificate of land rights.

Paragraph (2) indicates that the authority for registration of Land Rights lies with the Land Office Agency. The Letter of Approval On Sertificate Building Right of Use Permit (SPPI HGB) fulfills the form / contract framework (agreement). It's just that in the Letter of Approval on Sertificate of Building Rights Permit (SPPIHGB) there is a letter number that is more often found in the decree, and in it regulates the permit, which as the author explained earlier above that basically the grant is issued in the form of a decision is not an agreement. It should be noted, however, that in making a treaty / contract, it is known by the principle of freedom of contract as regulated in Article 1338 Paragraph (1) of the Civil Code that all legally-made agreements act as laws for those who make them.

The reconstruction of the value of the legal protection of the mortgagee creditor with the object of Right to Building that ends before the maturity based on the value of justice is to protect the interests of creditor and debtor in the form of:

- a. If the debtor wants to extend the Building Use Rights then the credit agreement is extended.
- b. if the debtor does not memperpajang Hak Guna Bangunan carried out the sale and purchase of collateral in parate execution.

These following of Legal Construction which offered by the authors to overcome the legal protection concerns for lenders of mortgage lenders:

No.	Pre -Law Reconstruction	Weakness	Post Law Reconstruction
1.	Article 4 of Law Number 4 of 1996 about Mortgages reads: (1) The right to land may be subject to rights dependents, Property right, Right to Build, and Right of Business Use	- If the Building Right Title is discharged before the maturity of the credit has not been regulated - if the building right Titlesis exhausted before the due date of credit is not regulated (regarding the granting of power from the debtor to the creditor to extend the right to use the building. - if the building right Titlesis exhausted before the due date of credit is not set about the time limit to extend	Article 4 of Law Number 4 of 1996 reads: (1) The Building Right Titles to land may be borne by the right of liability, Property right, Right of Building, and Right of Business 1A) If the Building right Titles to be finished before the maturity of the credits must be extended the Right to Build or carried out the sale and purchase of the mortgage object by parate of execution

Conclusion

The practice of legal protection against the creditor holder of the mortgage with the object of Building Utilization which has expired the period of time before the credit agreement is due now, In Article 1 number 6 and 7 Government Regulation Number 40 Year 1996 has provided two ways to enable holders of Right to Build whose term expires in order to remain a holder of the Hak Guna Bangunan, through extension of rights and renewal of rights. The extension of the right to extend the rights to the land for which the petition is filed before the right expires.

Conversely, if the renewal of the rights means the Right to Use the Building is from the beginning has expired and with the expiry of the term of the Building Rights, the right to the land will be deleted causing the Mortgage Rights to be abolished. In the case of renewal of rights, the holder of the Right to Use the Building originally given a new Building Utilization certificate of the same land but the number must be different from the old one. Therefore, it must be imposed a new Resident Rights or re-loading, because different numbers of new Building Utilization certificates certainly lead to non-fulfillment of the principle of specialties, from the Rights of the Mender itself. So the only way that can be done to protect the law is by way of renewal of rights, because the regulation has not been regulated about the legal protection so that the holder of the mortgage rights do not get legal protection.

The weakness in the practice of legal protection against the creditor holder of the mortgage with the object of the Building Right Titles , so that it needs to be renewed considering the expiration period of the Building Right Titles which is used as collateral for the credit at the bank. In practice the process of loading new Mortgage Rights to the land with Building Right Titles before the credit maturity does not go well. Sometimes there is a debtor or security owner who is unwilling to sign on deed transfer of mortgage rights (APHT) and an objection is burdened with the cost of imposition of a new Mortgage Right, so no renewal or reinstallation of this right is due to the bank or creditor's view as long as the debtor fulfills his / her obligation to pay the debts and there is no wanprestasi or jammed it does not harm the bank. But if until the occurrence of wanprestasi the only way to renew the right to use the building that has died and repeat the granting of mortgages rights.

The reconstruction of the value of legal protection to the creditor holding the mortgage rights with the object of Building Right Titles that expires before the

maturity based on the value of justice is to protect the interests of the creditor and debtor in a balanced form: (a.) If the debtor wants to extend the Building Use Rights then the credit agreement is extended. (b.) if the debtor does not memperpanjang Hak Guna Bangunan carried out the sale and purchase of collateral in parate execution. So the reconstruction of the law on the provisions of governance regulation that related to the mortgages right.

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