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Legal Status Of Abandoned Land Pursued As Guarantee Under Law Number 4 Of 1996 Concerning Holding Rights

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Abstract: Economic Development is the most important part of National Development which seeks to improve all aspects of community, nation and state life to realize the National Goals of the Republic of Indonesia as stated in the 1945 Constitution of the Republic of Indonesia (1945 Constitution). In realizing National Development, quite a bit of capital is needed. One way to fulfill capital comes from banking sector credit. To provide this capital, banks require collateral to guarantee the return of funds from the credit that has been disbursed. Collateral is required if there is a default on the part of the debtor, then the bank as a creditor can sell the collateral to pay off the outstanding balance of the debtor's loan. The collateral most preferred by banks is usually in the form of fixed assets such as land because they have a fixed value and tend to increase from year to year. In reality, the land pledged by debtors to banks as creditors has the status of abandoned land. Abandoned land is land of rights, land of management rights and land obtained on the basis of land control, which is intentionally not cultivated, not used, not exploited and/or not maintained. As a result, if the debtor defaults, there is no special guarantee for the creditor as the holder of the mortgage rights.

Keyword: Mortgage Rights, Abandoned Land.

INTRODUCTION

The guarantee agreement is an accessory agreement or additional agreement to the main agreement, namely the debt and receivables agreement. Without a principal agreement or debt and receivable agreement, a guarantee agreement will never exist because the guarantee agreement cannot stand alone. A guarantee agreement is a preventive measure to anticipate the debtor's ability if he is unable to pay off his loan. The goods that are used as collateral can be considered as repayment of the amount of money borrowed. The collateral that is often used by banks today is mortgage guarantees, namely collateral rights over land for the repayment of certain debts, which gives certain creditors priority status over other creditors. In other words, if the debtor defaults or is known as default, the creditor holding the

mortgage right has the right to sell through a public auction the land used as collateral according to the provisions of the relevant laws and regulations, with pre-emptive rights over other creditors.

Mortgage Rights are one of the rights attached to land and are not excluded as rights that are removed if the land is declared abandoned by the National Land Agency. This becomes a problem, if the person giving the mortgage rights, namely the debtor, uses land as collateral which is declared by the government to be abandoned land and is then declared as state land and used for the benefit of the community and the state. Thus, if there is a case where land is used as collateral by a party, and later the land which is collateral for the receivables that the creditor has given to the debtor is declared as abandoned land by the National Land Agency, then this will result in the loss of mortgage rights over that land. and the holder of the mortgage right suffers a loss, even though article 18 letter paragraph (4) states "the abolition of the mortgage right because the abolition of the right to land does not result in the abolition of the guaranteed debt".

PP Number 20 of 2021 concerning Controlling Abandoned Areas and Land states that abandoned land objects include land that has been granted rights by the State in the form of Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, and Management Rights, or the basis for control over land that is not cultivated, not used, or not used according to the circumstances or the nature and purpose of granting rights or the basis for control. Based on Article 5 (1) PP No. 20 of 2021 which reads as follows: *Registered or unregistered land which is intentionally not cultivated, not used, not exploited, and/or not maintained, becomes the object of control over abandoned land.*

In line with PP Number 20 of 2021 concerning Controlling Abandoned Areas and Land, Law No. 5 of 1960 concerning Basic Agrarian Principles Regulations states that the legal consequence of land being declared abandoned is that the rights to the land are declared null and void and at the same time severing the legal relationship between the holder of the land rights and the land. However, eliminating the mortgage right does not erase the credit agreement or debts that occurred between the creditor and the debtor. So that land neglect can have an impact on reducing environmental quality, the emergence of social, economic disparities, etc. The object of mortgage rights and the object of controlling abandoned land have similarities in that there are rights to land that have been subject to mortgage rights which are affected by the policy of controlling abandoned land so that the rights to the land are erased. Eliminating land rights also means erasing mortgage rights. In this case, the creditor is the one who suffers more because his mortgage rights are removed. The abandoned land policy does not have certainty about how the credit will be returned because it is not stated in the Mortgage Rights Law or Government Regulations regarding the Control and Utilization of Abandoned Land. Based on the research background that has been explained, the author is interested in conducting research with the title "**LEGAL STATUS OF Abandoned LAND WHICH IS MADE AS SECURITY UNDER LAW NUMBER 4 OF 1996 CONCERNING MONITORING RIGHTS**".

METHOD

This research uses legal research with a normative juridical approach (Soekanto, 2015). This approach is a legal research method carried out through examination of library materials or secondary sources. The data collection techniques used in this research mostly involve literature/library studies. The data analysis technique used is a qualitative juridical method by analyzing without using statistical formulas and presenting it descriptively, which describes the problem as a whole. Analyzing data obtained from literature research related to the problem of abandoned land being used as collateral for mortgage rights.

RESULTS AND DISCUSSION

Mortgage Rights are part of reforms in the agrarian sector, as the main provisions are regulated in the Basic Agrarian Law No. 5 of 1960 (UUPA), where Article 51 states that Mortgage Rights can be imposed on Property Rights, Cultivation Rights and Rights. Building use is regulated by law. Based on these provisions, Law No. 4 of 1996 concerning Mortgage Rights over Land and objects related to land (UUHT) was born. So that after the promulgation of the UUHT, Mortgage Rights is the only institution of security rights over land in the written National Land Law.

According to the provisions of Article 1 paragraph (1) UUHT, what is meant by Mortgage Rights are: *Mortgage Rights over land and objects related to the land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as intended in Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or not including other objects which are an integral part of the land, for the repayment of certain debts, which gives certain creditors a preferred position over other creditors.*

The objects of Mortgage Rights are regulated in Article 4 UUHT, namely Ownership Rights, Business Use Rights, Building Use Rights and Use Rights over State land which according to applicable provisions must be registered and according to their transferable nature can also be burdened with Mortgage Rights. From this definition it can be concluded that the definition of mortgage rights has elements, namely:

1. Gives a priority or precedence position to the holder.
2. Mortgage rights are collateral rights for debt repayment.
3. Mortgage rights can be imposed on land rights, but can also be imposed on other objects which are part of the land.
4. The debt that is guaranteed must be a specific debt.

Debt and receivable agreement that occurs with the guarantee of Mortgage Rights between the recipient or holder of Mortgage Rights, known as the creditor, and the giver of the Mortgage Rights, known as the debtor. Creditors have the right to an achievement, namely payment of receivables made by the debtor. Meanwhile, debtors have obligations for achievements, namely payment of debts to creditors. The mortgage right itself has important elements, namely the main agreement or debt and receivables agreement and additional agreements called *accessoir* agreements. The guarantee agreement is an *accessory*, meaning that the existence or existence of the collateral agreement depends on the main agreement, namely the debt and receivables agreement. Thus, the binding agreement does not stand alone but depends on the credit agreement as the main agreement, so that the debt and receivables agreement must be made first and then the collateral agreement must be tied. The *accessoir* agreement has important legal consequences, including:

1. Its existence depends on the main agreement (accounts payable agreement).
2. Delete it depending on the main agreement.
3. If the main agreement is void, the guarantee agreement is also void.
4. If the main agreement changes, the guarantee agreement also changes.
5. If the main agreement changes due to *cessie*, subrogation then the guarantee agreement also changes without any special assignment.

Based on Article 1131 of the Civil Code, it is stated that all property of the debtor (debtor), both movable and immovable, whether existing or new in the future, is borne by all obligations made by him. This means that all of a person's assets become collateral for all of his debts. If when the debt is due and he fails to fulfill his obligations to his creditors or what is known as default, then that person's assets can be confiscated and auctioned off, the proceeds of which are then used to fulfill obligations or pay debts to his creditors. Based on Article 18 paragraph (1) UUHT, things that can eliminate mortgage rights are stated, including:

1. Elimination of debt secured by Mortgage Rights;

2. Release of Mortgage Rights by the Mortgage Rights holder;
3. Clearing Mortgage Rights based on ranking determination by the Chairman of the District Court;
4. Elimination of land rights that are encumbered with mortgage rights

With the issuance of PP Number 20 of 2021 concerning Controlling Abandoned Areas and Land, the State has the authority to declare that any land is designated as abandoned land. This has an impact on the status of the Mortgage Rights object which is used as collateral by the Mortgage Rights provider, namely the deletion of the Mortgage Rights object. As a result, the status of the land becomes abandoned land which is controlled directly by the State for the benefit of the community. Moreover, the creditor's status, which was previously a preferred or priority creditor, has become a concurrent creditor or one that does not have certain collateral. This becomes an important problem if the debtor does not have good faith in paying off his credit or carrying out his achievements to the creditor. Credit agreements with mortgage rights become problematic if the collateral is abandoned land determined by the National Land Agency (BPN). In practice, in credit agreements, banks prioritize credit secured by mortgage rights over land compared to other collateral. This is because land has eternal properties and is very difficult to destroy, so it is very valuable and can be a source of income and income. Because of its nature, land has become an important thing that cannot be separated from human life, so its value tends to increase from year to year.

Based on Article 18 paragraph (1) letter d UUHT, one of the causes of the abolition of mortgage rights is the abolition of land rights encumbered by mortgage rights. The state as the highest authority has the authority to declare land as abandoned land with the consequence that land rights are extinguished, as well as severing legal relations and confirming it as land directly controlled by the State. The Government's policy to declare a land right abandoned has consequences for the object of the Mortgage Right which is used as collateral by the person giving the Mortgage Rights, namely the elimination of the object of the Mortgage Right. If the land title has a mortgage right placed on it, then the mortgage right will also be forfeited. The elimination of mortgage rights as a material agreement has legal consequences for creditors, namely the change in the position of the mortgage right holder, who was originally positioned as a preferential mortgage holder who has material rights and then becomes a mortgage right holder who has individual rights, which means that the mortgage right holder has equal rights and equality of position with other Mortgage Rights holders regarding the assets of a Mortgage Rights giver so that payment of their receivables cannot be prioritized even if one of them has a claim that was born earlier than the others.

According to Boedi Harsono, state land or land controlled directly by the state is land that is not owned by any land rights. Arie S. Hutagalung stated that state land is land that is still directly controlled by the state and on which it has not been subject to individual rights granted to legal entities, individuals, including government agencies. Meanwhile, according to the provisions of Article 1 paragraph (2) PP No. 20 of 2021 concerning Controlling Abandoned Areas and Land (PP PKTT), what is meant by Abandoned Land is: *Abandoned land is private land, land with management rights, and land obtained based on the basis of land control, which is intentionally not cultivated, not used, not exploited, and/or not maintained.*

The meaning of possession and possession can be interpreted in a physical, juridical, civil or public sense. In a real physical sense, the holder of the right to control the land (land under control). Tenure in the juridical sense is based on "rights" which are protected by law and generally give authority to the right holder to physically control the land to which he has rights. These two things constitute control and control in civil matters, while control and control in the public aspect is reflected in Article 33 Paragraph (3) of the 1945 Constitution of

the Republic of Indonesia which states that "Earth, water and natural resources contained therein are controlled by the state and used as much as possible for prosperity of the people."

The Basic Agrarian Law states that property rights, building use rights, including business use rights can be used as collateral for debts by encumbering them with mortgage rights. Article 27 of the UUPA explains the reasons for the abolition of land rights, including abandonment. The state will act firmly to remove the management rights that have been granted if they are abandoned. Abolition of land rights does not in itself eliminate mortgage rights, mortgage rights remain attached to the land rights that are declared extinguished. If the rights to the land are extinguished, the Mortgage Rights are also extinguished but the burdensome debt remains. So the mortgage provider is still obliged to pay the debt. Receivables between creditors and debtors still exist because the receivables are the principal of an agreement, it's just that the creditor does not henceforth have the position of a preferred or prioritized creditor.

In the event of a default by the debtor, the Mortgage Right holder can immediately execute the collateral object which is used as collateral for the debts of the Mortgage Rights giver. This right is as regulated in Article 20 paragraph (1) UUHT, namely if the debtor is in default, then based on:

1. The right of the first Mortgage Rights holder to sell the Mortgage Rights object as intended in Article 6, or
2. The executorial title contained in the Mortgage Rights certificate as intended in Article 14 paragraph (2), the Mortgage Rights object is sold through a public auction according to the procedures specified in the statutory regulations for repayment of the Mortgage Rights holder's receivables with preemptive rights over creditors. other creditors.

Meanwhile, the execution method can be carried out in two ways, namely: If the debtor breaks the contract, the first Mortgage Rights holder has the right to sell the Mortgage Rights object under his own authority through a public auction and collect the receivables from the proceeds of the sale. (Article 6 UUHT). The Basic Agrarian Law states that property rights, building use rights, including business use rights can be used as collateral for debts by encumbering them with mortgage rights. Article 27 of the UUPA explains the reasons for the abolition of land rights, including abandonment. The state will act firmly to remove the management rights that have been granted if they are abandoned. Abolition of land rights does not in itself eliminate mortgage rights, mortgage rights remain attached to the land rights that are declared extinguished. If the rights to the land are extinguished, the Mortgage Rights are also extinguished but the burdensome debt remains. So the mortgage provider is still obliged to pay the debt. Receivables between creditors and debtors still exist because the receivables are the principal of an agreement, it's just that the creditor does not henceforth have the position of a preferred or prioritized creditor.

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The loss of special rights to preferred creditors creates legal uncertainty for mortgage rights holders. However, by providing legal protection to creditors based on UUHT, the principle of benefit will still be felt by Mortgage Rights holders, namely that Mortgage

Rights remain the main choice as a collateral institution, because UUHT has provided certainty to Mortgage Rights holders in any situation, including if in the future without to the knowledge of the Mortgage Rights holder, the land under the Mortgage Rights is declared abandoned land. In line with this, the Civil Code also provides legal certainty to creditors that if the debt charged by the guarantee of land rights is destroyed, the collateral will be converted into a general guarantee or individual guarantee from the debtor himself

CONCLUSION

The debt and receivable agreement that occurs with the guarantee of Mortgage Rights between the recipient and the giver of the Mortgage, there are two important elements, namely the debt and receivables agreement as the main agreement and the Mortgage Rights guarantee agreement as an additional agreement. A guarantee agreement is an agreement that is additional or accompanying (*accessoir*). This means that the existence of a guarantee agreement cannot be separated from the existence of the main agreement or guarantees arising from the existence of the main agreement. The guarantee agreement serves the main agreement and is entered into for the purposes of the main agreement and provides a strong and secure position for the holder of the Mortgage Rights. In accordance with Article 18 paragraph (4) of the UUHT which states that the abolition of mortgage rights is because the abolition of rights to land which is encumbered with a mortgage right does not result in the abolition of the guaranteed debt.

Mortgage Rights Holders have preferential rights compared to other creditors or are known as preferred creditors. This is because the Mortgage Right holder has guaranteed land rights which have been registered with the National Land Agency (BPN) based on the agreed debt and receivable agreement and with the existence of an additional agreement, namely the land guarantee agreement or known as Mortgage Rights. Thus, in accordance with the description above of the Mortgage Rights Guarantee, by deleting the Mortgage Rights object as an additional agreement as a result of the land under the Mortgage Rights object being declared as abandoned land, it will not erase the main agreement, namely the debt and receivables agreement. The debtor is still obliged to pay his debt to the creditor as the recipient of the mortgage right even though the land pledged as collateral is determined to be abandoned land by BPN. As a result, mortgage rights holders or preferred creditors who have material rights change their position to become mortgage rights holders who have individual rights. Individual rights are rights arising from general guarantees or guarantees that arise from law, as stated in Article 1131 of the Civil Code, namely all of the debtor's assets which are the object of collateral for debts to creditors.

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