

Implementation Analysis of Changes in Building Use Rights for Residential Houses Encumbered with Mortgage into Ownership

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Abstract. *This study aims to analyze: 1) The implementation of the change in Building Use Rights on land for residential houses to become Ownership Rights that are encumbered with Mortgage Rights. 2) The legal consequences of changing the Right to Build on land for residential homes into Ownership Right which is encumbered with Mortgage Rights. This study uses an empirical juridical approach, namely an approach by reviewing the laws and regulations relating to the issues to be discussed, and also a field approach to obtain information as supporting material. The specification of this research is descriptive analytical, which describes the applicable laws and regulations associated with legal theories and practices of implementing positive law regarding these problems. Based on the results of the study obtained the results: 1) The implementation of the change of building use rights on land for residential houses into ownership rights that are encumbered with mortgage rights, namely starting from the Applicant must first obtain written permission from the Bank holding mortgage rights, that there will be changes to rights, namely building use rights will be upgraded to property rights. After receiving from the bank, the applicant or his proxies submits a request to change the Right to Build on the land for a residential house that is being encumbered with a Mortgage into a Property Right at the Land Office of Semarang City by*

bringing all the requirements, after verification, the application file is forwarded to the data processing officer, the abolition of the Building Use Right and the abolition of the Mortgage Right concerned in the land book and certificate as well as other general registers as well as recording the Ownership Rights on the land of the former Building Use Rights by mentioning the decision on which the ownership rights were based. 2) The legal consequence of changing the Right to Build on land for residential homes into Ownership Right which is encumbered with Mortgage Rights is the nullification of the right to use the building to become property rights. However, the abolition of the right to use the building does not result in the abolition of the guaranteed debt. This is in accordance with the nature of the agreement for granting Mortgage, namely as a complementary agreement (accessoir), Article 10 paragraph (1) UUHT.

Keywords: Building; Mortgage; Property; Rights.

1. Introduction

Land has a very important role, meaning in the life of the Indonesian nation or in the implementation of national development which is held as a sustainable effort to create a just and prosperous society based on Pancasila and the 1945 Constitution.¹ Article 1 paragraph (2) of Government Regulation number 24 of 1997, land parcels are part of the earth's surface which is a limited unit of field and that is the only object of land registration in Indonesia.² As for what is meant by state land, namely land that is directly controlled by the state, it means that there is no other party on the land, the land is also called free state land.³

Land rights give the authority to use a certain plot of land in order to meet certain needs. To facilitate the introduction, land rights are grouped into 2 (two) namely primary land rights and secondary land rights. Primary land rights are land rights granted by the State, namely those named as Ownership Rights, Cultivation Rights, Building Use Rights and Use Rights, while Secondary land rights are land rights originating from rights of other parties, including Building

¹Boedi Harsono, (2007), *Hukum Agraria Indonesia, Himpunan Peraturan-Peraturan Hukum Tanah*, Djambatan, Jakarta, p. 70.

²Aga Wigana, Political Directions For Land Law On Land Property Rights For The People, *The 5th International Conference and Call for Paper Faculty of Law 2019*, Sultan Agung Islamic University

³Ambe J. Njoh, Liora Bigon, Erick O. Ananga, Richard A. Ayuk-Etang, Institutional, economic and socio-cultural factors accounting for gender-based inequalities in land title procurement in Cameroon, *Journal of Public Transportation*, p. 116-125, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C>

Use Rights over Ownership Rights, Building Use Rights over Management Rights and Building Use Rights on State Land⁴.

Article 35 of the UUPA states that the Right to Build is the right to construct and own a building on land that is not one's own. With a maximum period of 30 years and can be extended up to a period of 20 years, at the request of the right holder by considering the needs and condition of the building. Building use rights are land rights for a certain period of time, with a given period of time, the building use rights are nullified.

The problem is how to implement the change in Building Use Rights on land for residential houses that are encumbered with Mortgage Rights into Ownership Rights and the legal consequences for creditors with the change in rights, what is the guarantee for creditors for debt repayment. In this context, the laws and regulations have provided security for creditors in channeling credit to debtors, namely by providing general guarantees according to Articles 1131 and 1132 of the Civil Code which stipulate that all debtor assets (materials) both movable and immovable, existing or existing there will be collateral for all of its engagements with creditors. In the event of a default, all of the debtor's assets are sold at auction and divided according to the size of the receivables of each creditor.

Banking funds distributed to the public in the form of credit are not funds owned by the Bank itself, but funds originating from the community, so that the distribution of public funds needs to be carried out with the principle of prudence through accurate and in-depth analysis, proper distribution, good supervision and monitoring, a valid agreement and meet legal requirements, binding strong guarantees and regular and complete credit documentation⁵.

The expiry of the period of Building rights whose credit agreement has not yet matured or the debtor's debt has not been paid off becomes a problem in banking, especially if the debtor defaults, it will harm the creditor. Creditors need legal protection in order to get their credit receivables back. Because the law does not stipulate legal protection for creditors where the Building Use Right as

⁴Supriyadi, (1998), *Hukum Agraria*, Sinar Grafika, Jakarta, p. 64

⁵Sutarno, (2005), *Aspek-Aspek Hukum Perkreditan Pada Bank*, Alfabeta, Bandung, p. 2

credit guarantee has expired, while the credit has not yet matured, the bank can take preventive measures before the credit is given or take anticipatory action.⁶

The author chose the place of research in the city of Semarang, because the city of Semarang which is the capital city of Central Java is currently experiencing very rapid development, especially in housing development so that it affects the Bank in distributing credit, especially housing loans. Based on the background of the problem above, the writer raised this thesis with the title "Analysis of the Implementation of Changes in Building Use Rights (HGB) for Residential Houses Encumbered with Mortgage Rights (HT) to Property Rights (HM) in Semarang City". This study tries to answer the implementation of the change of Building Use Rights on land for residential houses into Ownership Right which is encumbered with Mortgage Rights and the legal consequences of changing Building Use Rights on land for residential houses to Ownership Right which is encumbered with Mortgage Rights.

2. Research Methods

The research method that will be used in this study is an empirical juridical approach. This research is a descriptive analytical research. The types and sources of data used in this study are primary data obtained directly from the field. As well as secondary data that obtained from library research supported by field research. Library research is collecting data by reviewing library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials.⁷ The data analysis method that will be used is a qualitative normative analysis method.

3. Results and Discussion

3.1. Implementation of Changes in the status of Building Use Rights on Land for Residential Houses to Property Rights that are encumbered with Mortgage Rights

⁶E. Herguido Sevillano, J.F. Lavado Contador, S. Schnabel, M. Pulido, J. Ibáñez, Using spatial models of temporal tree dynamics to evaluate the implementation of EU afforestation policies in rangelands of SW Spain, *Journal of Public Transportation*, p. 166-175, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C> <https://www.euredd.efi.int/publications/opportunities-for-improving-land-tenure-and-land-use-rights-in-indonesia>, accessed on March 24, 2022

⁷Hunter, Susan & Bulirwa, Elizabeth & Kisseka, Edward. (1993). AIDS and agricultural production. *Land use policy*. 10. 241-58. 10.1016/0264-8377(93)90018-6.

1. Procedure and Sequence of Activities

- a. The applicant (debtor) submits an application.
- b. Making a Power of Attorney for Imposing Mortgage Rights (SKMHT) by the debtor to the creditor.
- c. The debtor gives a Substitution Power of Attorney to PPAT, to take care of everything in connection with the application for the change of rights.
- d. The creditor gives a letter of approval to the debtor regarding the release of the relevant Building Use Rights to be converted into Ownership Rights, accompanied by:
 - 1) Submission of a certificate of Mortgage by the creditor to the debtor or his proxies.
 - 2) The handover of the certificate of Building rights by the creditor to the debtor or his proxies.
- e. Submission of an application for the change of the relevant Building Use Rights into property rights by the applicant/proxy to the Land Office of the City of Semarang.
- f. Granting the applicant's approval, that the certificate of Ownership will be submitted to the creditor for the purpose of granting a new Mortgage.
- g. Registration of the nullification of Building Use Rights by the Head of the Semarang City Land Office.
- h. Registration of the abolition of Mortgage Rights by the Head of the Semarang City Land Office.
- i. Registration of Ownership Rights resulting from changes to Building Use Rights by the Head of the Land Office of Semarang City.
- j. Submission of the certificate of Ownership as a result of the amendment to the applicant/proxy.
- k. Making APHT before the PPAT, by the creditor who acts as the proxy for the Mortgage Rights holder based on the SKMHT that has been made by the debtor and creditor and for himself.
- l. Registration of Mortgage Rights and its recording in the land book and certificate of Ownership by the Head of the Land Office.
- m. Making Mortgage certificate by the Head of the Semarang City Land Office.
- n. Submission of a certificate of Ownership that has been encumbered with Mortgage Rights accompanied by a certificate of Mortgage by the Head of the Land Office of Semarang City to the applicant or beneficiary and then submitted to the Creditor.

2. The registration process for the Change of Building Use Rights to Ownership Rights and the abolition of Mortgage Rights

- a. Certificate of Building rights which has been checked for validity.
- b. Certificate of Mortgage concerned.
- c. Photocopy of Building Permit, which states that the building is used for residential purposes or a certificate from the Village Head if the Building Permit has not been issued by the competent authority.
- d. Copy of SPPT-PBB last year.
- e. A statement from the applicant that with the acquisition of the Property Rights for which registration is requested, the person concerned will have Ownership Rights on land for residential homes of not more than 5 (five) parcels which entirely covers an area of not more than 5000 M².
- f. Letter of approval from the creditor regarding the approval to the debtor regarding the release of the relevant Building Use Right to be converted into a Ownership Right.
- g. Photocopy of applicant's identity and proxy
- h. Power of Attorney from the applicant to the PPAT.
- i. Paying non-tax state revenue for registration of changes in rights from building use rights to ownership rights based on PP. Number 13 of 2010, amounting to IDR 50,000 (fifty thousand rupiah).
- j. Paying the rate of Non-Tax State Revenue Registration Service for the Elimination of Mortgage Rights based on Government Regulation Number 13 of 2010, amounting to IDR 50,000 (fifty thousand rupiah).

3. Mortgage Encumbrance Process

The Certificate of Ownership as a result of the change in Building rights is then encumbered with a Mortgage Rights for the continuity of credit guarantee based on debts and receivables, the repayment of which was originally guaranteed by the Land Collateral. Hak Guna Bangunan, the implementation of which is imposed through two stages, namely the Stage of Granting Mortgage Rights and the Stage of registration by the National Land Agency.

Examination of the application for registration of land ownership rights for residential houses is carried out as follows:

- a. The juridical data and physical data of the land granted with the Ownership Right are examined by looking at the certificate of the relevant Building Use Rights. For this purpose, it is not necessary to carry out re-

measurements, land inspections or other field inspections, as well as recommendations from other agencies.

b. The use of land for residential houses is checked by looking at the Building Permit which states the use of the building. In the event that a building permit has not been issued/never been issued by the competent authority, a certificate from the village head is required that it is true that the building standing on the land is used as a residence.

c. The identity of the applicant is checked from the relevant National Identity Card or Passport⁸.

The time for completion of registration of changes to Building Use Rights into Property Rights at the Semarang City Land Office is 14 working days. The authority to sign land books and certificates by the Head of the Semarang City Land Office is authorized or delegated to the Head of the Land Rights and Land Registration Section at the Semarang City Land Office based on Power of Attorney or Delegation of Authority Number 479/SK 36.03/IX/2009, dated 07 September 2009, as of September 7, 2009, as of since September 7, 2009 to sign land books and certificates in Land Rights and Land Registration activities, including⁹:

- a. Mortgage right;
- b. Abolition of Mortgage-Roya;
- c. Changes in Rights in the context of Enhancing Rights;
- d. Land Registration Certificate (SKPT);
- e. Announcement in the context of affirmation of Conversion and Recognition of Rights;
- f. Oath in the framework of a replacement certificate due to loss;
- g. Transfer of Inheritance Rights, Grants, Exchanges, Shared Rights;
- h. Splitting of Individual Certificates;
- i. Separation of Individual Certificates;
- j. Merger of Individual Certificates;
- k. Change of Ownership for a residential house by changing the form;
- l. Change of Ownership for residential houses without changing the form;
- m. Change name;
- n. Certificate of Replacement for Blanks and Damaged Blanks;
- o. Village Change Certificate due to Expansion;

⁸ Laura Notess (WRI) , Peter Veit (WRI), Iliana Monterroso (WRI), Andiko (WRI), Emmanuel Sulle (WRI), Anne M. Larson (WRI), Anne-Sophie Gindroz (WRI), Julia Quaedvlieg (WRI) and Andrew Williams (WRI) - July 2018, The Scramble for Land Rights, Reducing Inequity between Communities and Companies, <https://wri-indonesia.org/en/publication/scramble-land-rights>

⁹Ibid.

- p. Land Books and Certificates that are turned off in the context of merging and Registration of Rights.

The creditor holding the Mortgage Rights in the case of giving approval to the debtor for the change of Building Use Rights on land for residential houses that are being encumbered with Mortgage Rights into Ownership Rights, all of the management is delegated to the authorized PPAT with the costs incurred all being the responsibility of the debtor rights holders. This policy was taken for the sake of security and assurance of guarantees that have finished processing the change of Building Use Rights into Ownership Rights and have been encumbered with Mortgage Rights returned to BPR Artha Jaya Semarang, for the continuity of the guarantee for repayment of the debtor's credit holding the rights.

3.2. Legal Consequences of Changing the Status of Building Use Rights on land for residential houses to become Ownership Rights that are encumbered with Mortgage Rights

Based on the Decree of the State Meter/National Land Agency Number 6 of 1998 concerning the Granting of Ownership Rights to land for residential houses, the land rights are nullified and become State land, because the application for the change of Building Use Rights on land for residential houses to property rights also applies as a statement of release land rights to the State so that the rights are nullified and become State Land. The abolition of the land rights resulted in the loss of the Mortgage Rights that burdened him, therefore the creditors who held the Rights objected to the conversion of the Building Use Rights which became the guarantee for the settlement of the debtor's debts into Ownership Rights.

The implementation of changes to Building Use Rights on land for residential houses to become Ownership Rights that are encumbered with Mortgage Rights are changes made at the request of the rights holders with the approval of the Mortgage Rights holders, with a written approval statement accompanied by the submission of the relevant Mortgage Certificate. To eliminate these concerns, it is necessary to provide legal protection for the creditor against the collateral that has been given a dependent and wants to be converted into the debtor's personal property. So that every community has a certificate of right to use their

building which is in the process of getting collateral, it is easy to upgrade the right to private property.¹⁰

Based on the results of research at the Semarang City Land Office prior to the application for a change in the status of Building Use Rights on land for residential houses that are burdened with Mortgage Rights into Ownership Rights to ensure the repayment of debtors' debts to creditors holding Mortgage Rights, then between the holders of land rights and the holders of Mortgage Rights make Power of Attorney for Imposing Mortgage Rights (SKMHT) for Ownership Rights that he obtained before the rights were registered, at the Land Office of Semarang City. The making of the SKMHT is carried out before the PPAT or an authorized Notary with a promise that if the Building Use Right which is the object of this guarantee is converted into a Ownership Right, it will not result in the destruction or cancellation of this deed.

As a form of protection of property rights, human rights principles have provided guarantees for this, namely:¹¹

- a. Everyone has the right to own property, either alone or together with others for the development of himself, his family, the nation and society in a way that does not violate human rights.
- b. No one may be deprived of his property arbitrarily and unlawfully
- c. Property rights have a social function
- d. Revocation of property rights to an object in the public interest is only permitted by compensation for reasonable and immediate losses and its implementation in accordance with the provisions of laws and regulations.

Based on this, if it is related to the context of protection, basically the Mortgage Institution is constructed to continue to guarantee the interests of the Creditor even though the Mortgage itself has been abolished. Protection of the interests of the Creditor without any Mortgage, the position of the Creditor who originally had preferred rights with the Mortgage became a concurrent Creditor. Concurrent creditors do not have a special guarantee from the debtor for the

¹⁰Komang Adhi, Implementation of Changes in Building Use Rights Encumbered with Mortgage Rights into Property Rights for Residential Houses, *Journal of Legal Construction*, Vol. 2, No. 1, January 2021, p.145

¹¹ Adrian Sutedi, (2018), *Peralihan Hak Atas Tanah dan Pendaftarannya*, print.9, Sinar Grafika, Jakarta, p. 21

debts they have made, so that the general guarantee provisions as stipulated in Article 1131 of the Civil Code shall apply.¹²

Protection in the stages/procedures of the application for Renewal of Land Rights is also carried out by the National Land Agency (BPN). The role of BPN in the protection of Mortgage Holders/Creditors in the application for Renewal of Land Rights attached to Mortgage Rights, namely the application of additional requirements for applicants to attach a letter of approval from the Mortgage Holder for the renewal of Rights, as well as a statement of willingness to install Mortgage from the holder of Land Rights. This is to maintain the position of the creditor as the holder of the collateral right, the existence of the mortgage must be protected because the mortgage gives a priority position over other creditors.

4. Conclusion

The implementation of changes to Building Use Rights on land for residential houses to become Ownership Rights that are encumbered with Mortgage Rights are changes made at the request of the rights holders with the approval of the Mortgage Rights holders, with a written approval statement accompanied by the submission of the relevant Mortgage Certificate. The application for change of rights submitted by the right holder is valid as a statement of the release of Building Use Rights and the approval of the Mortgage Rights holders also applies as approval for the release of Building Use Rights provided that the land is given back to the former right holders with Ownership Rights. The application for the change resulted in the abolition of land rights and became state land. Thus, the Mortgage Rights that burden the Building Use Rights are also invalidated by the abolition of the Building Use Rights. The legal consequence of changing the Building rightson land for residential use to become a Ownership Right which is encumbered with a Mortgage Right is that with a change in the right, the land rights are nullified to become State Land paragraph (1) letter d Mortgage Law). Thus the Mortgage Rights that burden the Building Use Rights are also invalidated by the abolition of the Building Use Rights into Ownership Rights. To provide legal certainty to creditors holding Mortgage Rights on the continuity of their loan repayment guarantees.

¹²Ibid.

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