



## Deletion of Mortgage Rights on Certificate of Ownership in the Event That the Mortgage Title Certificate Is Lost in the Kampar Regency

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### **Abstract**

The deletion of mortgage rights or roya, is an administrative action that needs to be done so that data about the land always matches the existing reality. Underwriting Rights Roya is regulated in Article 22 of the Underwriting Rights Act. Roya is crossing out the Mortgage Rights in the book on land rights and certificates. Roya is done if the debt guaranteed in the principal agreement has been paid off. After the debt or debtor's loan has been paid off. Then the mortgage is removed by means of processing it at the District / City Land Office. There are times when in practice the deed of mortgage is lost before it is tried due to negligence of the mortgage right (creditors), theft, scattered, or damaged due to force majeure. The loss of the deed of mortgage is not only when it is in the mortgage right before the debtor's debt is paid off, but it can also occur when it is in the debtor's hands after the debt has been paid off, but has not yet been implemented. The certificate of mortgage is proof of a guarantee agreement against the mortgage that has been registered at the Land Agency. It is also binding on third parties who will have an interest in the object of the mortgage. The loss of the mortgage certificate results in unclear binding of the mortgage and the position of the parties after the debtor's debt is paid off. To explain or provide information regarding the lost Mortgage Certificate, in practice a notary deed is usually made by a notary roya deed of mortgage or mortgage.

**Keywords:** *Mortgage; Certificate of Ownership; Mortgage Title Certificate*

### **Introduction**

In a credit agreement is usually followed by a collateral binding agreement, the credit agreement is principal while the collateral agreement is a follow-up or assesoir meaning that there is and the end of the collateral agreement depending on the principal agreement. A Guarantee Agreement cannot stand alone without a preliminary agreement or principal that precedes it. As an assessor agreement, the existence of a guarantee agreement is determined by the existence and deletion of the preliminary agreement or the principal agreement.<sup>1</sup>

<sup>1</sup> Rachmadi Usman, Civil Security Law, Sinar Grafika, Jakarta, 2016, p. 86.

Another consideration is that the certificate of mortgage has an executorial title, and more important is that the mortgage has been regulated in the law, and the price of land that is the object of the mortgage tends to increase. In banking, credit agreements that are not followed by mortgage agreements will have a high risk to the bank itself (creditors). Creditors holding mortgage rights are separatist creditors who have a preference for the mortgage rights they hold. In the mortgage agreement it is stated that if the debtor defaults, the creditor with his own power can sell the object of the mortgage right, as one of the characteristics and preferences of the mortgage right and is an embodiment of the principle of *droit de preference*. This principle applies to mortgages that have been replaced by mortgage rights as far as land is concerned.

Mortgage rights as the right of control of the land, which contains the authority for creditors to do something about the land that is used as collateral, but not to be physically controlled and used, but to sell it if the debtor is injured and fails to take the results, either in whole or in part as repayment of the debtor's debt to him.<sup>2</sup>

Mortgage Rights depend on the existence of receivables guaranteed by the said repayment. Therefore, if the receivable is written off because of repayment or due to other reasons, the relevant Mortgage right will be written off. The removal of the Mortgage Right has administrative consequences, namely the elimination of the burden of the Underwriting right on the land book and certificates of land rights which are the object of the Underwriting Right by the local Land Office based on a written statement regarding the release of the Underwriting Right from the Underwriting Right Holder to the Underwriter in connection with the payment of the debt by debtor granting Mortgage Rights. The land book and the Mortgage Certificate are withdrawn and declared no longer valid by the Land Office.<sup>3</sup>

There are times when in practice the deed of mortgage is lost before it is tried due to negligence of the mortgage right (creditors), theft, scattered, or damaged due to force majeure. The loss of the deed of mortgage is not only when it is in the mortgage right before the debtor's debt is paid off, but it can also occur when it is in the debtor's hands after the debt has been paid off, but has not yet been implemented. The certificate of mortgage is proof of a guarantee agreement against the mortgage that has been registered at the Land Agency. It is also binding on third parties who will have an interest in the object of the mortgage. The loss of the mortgage certificate results in unclear binding of the mortgage and the position of the parties after the debtor's debt is paid off. To explain or provide information regarding the lost Mortgage Certificate, in practice a notary deed is usually made by a notary roya deed of mortgage or mortgage.

The roya permit / roya concentration deed is one of the authentic deeds made by a notary at the request of the creditor as the party containing the creditor's statement that the creditor's certificate of authority under his authority has been lost. The deed of roya permit / roya mortgage right is a certificate made by a Notary then given to the Land Agency as a substitute for the lost mortgage certificate which is a condition for the roya mortgage process. But if it is seen from the normative point of view, the roya / roya license agreement specifically is not regulated in any Law or regulation.

Even though in practice this roya / roya consent license was found, but only a few notaries, especially those who had made the deed, knew about the roya / roya consent permit. Likewise, many notaries and / or the public did not know about this roya / roya license agreement. Even the position of the roya permit deed is also questionable, whether the roya permit deed is a deed specifically made as a substitute for the loss of certificate of mortgage or it can also be a certificate of loss for other matters. In addition, in practice, it is not easy to ask for a roya license / consent deed if the debtor removes the deed

<sup>2</sup> Boedi Harsono, Indonesian Agrarian Law History of the Establishment of the Basic Agrarian Law, Content, and its implementation, Djambat, Jakarta, 2008, p. 24.

<sup>3</sup> Irwansyah Lubis et al., Notary Profession and Acting Officer for Land Deed, Media Discourse Partner, Sinar Grafika, Jakarta, 2018, p. 76.

from the debtor, because this deed was made at the request of the creditor. Based on the description above, the authors are interested in conducting research with the title Deletion Of Mortgage Rights On Certificate Of Ownership In The Event That The Mortgage Title Certificate Is Lost In The Kampar Regency.

### **Research Method**

This study uses an empirical legal research method which is a legal research that obtains its data from primary data or data obtained from the public<sup>4</sup>The specification of this study is analytical descriptive research, which is a form of research expected to be able to provide a detailed, systematic and comprehensive picture of all matters relating to the Crossing of Mortgage Rights on Ownership Certificates in the Case of a Lost Mortgage Certificate in Kampar Regency. This research is analytical only to the level of description, which is to analyze and present facts systematically so that it can be more easily understood and concluded. Research with descriptive analytical decomposition specifications, intended to provide as detailed data as possible about a situation or other symptoms.<sup>5</sup>

### **Discussion**

#### *1. Legal Consequence of the Lost of the Mortgage Right to the Abolition of the Mortgage Right in Kampar Regency*

In the provisions of Article 22 paragraph (4) of the UUHT it is explained that the written off of mortgage is done at the request of the interested parties by attaching a certificate of Mortgage that has been given a note by the creditor that the Mortgage has been paid off or a written statement from the creditor that the Mortgage has been written off because of the guaranteed receivables guaranteed the settlement with the Underwriting Right has been paid in full or because the creditor relinquished the said deletion Right.

The registration of deletion of mortgage / roya rights is done by:<sup>6</sup>

1. Cross out the notes about the mortgage rights in the land book and the certificate of rights encumbered by the mortgage rights, then provide a note that reads: "Based on ... Mortgage Rights Number: .... Date: ..... deleted", date and mark the hands of the Head of the Land Office or appointed officials.
2. Provide a note on the mortgage right book that the mortgage right has been deleted and that the mortgage right book is no longer valid.
3. Withdraw the mortgage certificate, provided that if the mortgage certificate cannot be withdrawn, in the land book the mortgage right is given a note that the certificate cannot be withdrawn.

If the Mortgage Certificate is lost, it does not mean that it will be replaced with a new Mortgage Certificate, as stipulated in the regulation concerning the loss of the certificate of land rights. According to the provisions of Article 59 of Government Regulation Number 24 of 1997, if certificates of land rights are lost, upon application of the holder of land rights, a new certificate is issued as a replacement for the lost certificate. Before being replaced with a new certificate, one must post an announcement once in the

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<sup>4</sup> Mukti Fajar and Yulianto achmad, *Dualism of Normative and Empirical Law Research*. Student Library, Yogyakarta, 2010, p.153.

<sup>5</sup> Soerjono Soekanto, *Introduction to Legal Research*, University of Indonesia, Jakarta, 2005, p.10.

<sup>6</sup> Interview with Mr. Khairul Salam, SH., Head of Subsection for Maintenance of Land Rights Data and Development of PPAT of the Kampar District Land Office, October 3, 2019.

newspaper, then the request for replacement of the lost certificate must be accompanied by a statement under oath from the person concerned before the head of the Land Office. For certificates of Mortgage rights that are lost cannot be reached in the manner as mentioned above. If the Mortgage Certificate is lost, the relevant party must take the loss certificate to the local police office for further use as a basis for making a notary deed roya by a notary.<sup>7</sup>

The loss of a mortgage right can be detrimental to both parties, for debtors unable to request a write off of a mortgage right (roya) against a certificate of land rights they own, and cannot take other legal actions against the certificate. As in the case of Mr. Sajin, who was going to sell his land, where the certificate of title to the land had not been crossed, the certificate of mortgage had been lost due to his negligence. Even though the debt was fully paid in 2008. As a result of its negligence, the buying and selling process has been hampered. Many processes must be carried out including having to face a Notary and bank officials. The bank must verify the data and search for his file. And of course it will take quite a long time considering that your credit was fully paid 11 years ago.<sup>8</sup>

However, in practice, the loss of a mortgage right affects the subsequent legal actions that will be carried out by the land rights holder, whether the transfer of rights or the imposition of a new mortgage, because for this reason, the deletion of the mortgage rights must be done. The loss of the mortgage certificate, by the Kampar District Land Office was followed up with an administrative settlement by making a roya deed.

## *2. Making Roya Concentration Deed as a Substitute for the Lost Mortgage Certificate in Kampar Regency.*

Stages that must be passed by the owner of the certificate of land rights that will make a request for deletion of mortgage rights at the Kampar District Land Office who do not have a mortgage right certificate (the mortgage certificate is lost), namely :<sup>9</sup>

1. Make a certificate of loss of mortgage rights to the local police office.
2. Make a Roya Concentration Deed before a Notary.
3. If all the conditions have been completed, then the applicant can submit an application for deletion (roya) mortgage rights to the land office.

After the certificate of loss of the mortgage rights certificate from the local police is made, then the applicant goes to the Notary to ask for a Roya Concentration Deed. For making a Roya Concentration Deed, it can be made by a notary appointed by the debtor or creditor, not to the notary who made the credit deed at that time. This is because if you continue to use a Notary who makes a deed of credit agreement as well as a Land Deed Making Officer (PPAT) who performs collateral binding, it is likely to be difficult even more so if the Notary has moved to another area or dies. The Land Office also does not prohibit making a Roya Concentration Deed at any Notary's office.

In some of the cases that the author pointed out above, the debtor prefers to face the same notary public when the contract of loading of mortgage rights at the bank, this is to facilitate the tracking of debtor files. The exception is the case of Mr. Sajin who at the time of the 2005 mortgage agreement was

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<sup>7</sup> Interview with Mr. Khairul Salam, SH., Head of Subsection for Maintenance of Land Rights Data and Development of PPAT of the Kampar District Land Office, October 3, 2019.

<sup>8</sup> Interview with Mr. Sajin, Client of Notary Office / PPAT H.ALI ARBEN, SH., MH., MKn., 11 October 2019.

<sup>9</sup> Interview with Mr. Khairul Salam, SH., Head of Subsection for Maintenance of Land Rights Data and Development of PPAT of the Kampar District Land Office, October 3, 2019.

carried out by Mr. Syafrijon, SH. But for the making of a roya concentration deed submitted to Mr. H.ALI ARBEN, SH., MH., MKn., Notary / PPAT of Kampar Regency, with consideration because the certificate will be carried out in the name transfer process through the Notary / PPAT office Mr. H.ALI ARBEN, SH., MH., MKn., And at the moment he is a partner notary at Riau Riau Islands Bank.

The stages that must be passed in the process of making the Roya Concentration Deed are as follows:<sup>10</sup>

### I. Preparation for making Roya Concentration Deed

Requirements that must be completed by the applicant, namely:

- a. Original Certificate of Loss from the local police.
- b. Photo copy of Land Rights Certificate.
- c. Photo copy of National Identity Card (KTP) of Land Rights holders (owners).
- d. Photo copy of the repayment letter and letter of introduction from the Roya mortgage holders (creditors).

All photocopies of the above documents must be checked again in accordance with the original. If the holder of the land certificate is the holder of the land right, then the Notary will contact and / or go to the mortgage holders together with the land rights holder to notify them of the reasons for the making of the roya consent certificate and ask to complete the following documents:

- a. Photo copy of Resident's Identity Card (KTP) of Mortgage Holder (representative bank official).
- b. Photo copy of Decree or appointment letter of a bank official.
- c. Photograph copy of the articles of association and their amendments and their decree.

### II. Making Roya Concentration Deed

After all the documents have been received and their validity and authenticity checked, the Notary then draws a Roya Concentration Deed. The making of the deed is based on the authority of the notary as stated in article 15 paragraph (1) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the position of Notary (hereinafter abbreviated to UUJN), which reads:

"The notary has the authority to make an authentic deed regarding all deeds, agreements and stipulations required by legislation and / or that is desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, giving grosse, copy and quotation Deed, all of that as long as the drafting of the Deed is not also assigned or excluded to other officials or other people determined by law.

### 3. *Deletion of Mortgage Rights Based on the Roya Concentration Deed at the Kampar Regency Land Office.*

Deletion of mortgage rights (roya) is included in the maintenance of land registration data. In appendix II of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010 concerning Service Standards and Regulation of Land on January 25, 2010 it is stated that the requirements that must be attached to the process of deleting mortgage rights are as follows:

<sup>10</sup> Interview with Mr. H.ALI ARBEN, SH., MH., MKn., Notary / PPAT Kampar Regency, 7 October 2019.

1. The application form that has been filled out and signed by the applicant or his attorney on stamp duty is sufficient.
2. Power of Attorney if authorized
3. Photocopy of the applicant's identity (KTP, KK) and power of attorney if authorized, which has been matched to the original by the ticket window clerk
4. Copy of Deed of Establishment and Legalization of Legal Entity that has been matched with the original by the ticket window clerk, for the legal entity
5. Land certificate and certificate of mortgage and / or consensus if the mortgage certificate is lost
6. Letter of Roya / Statement of Settlement / Repayment of Debts from Creditors
7. Photocopy of KTP of HT (debtor), HT recipient (Creditor) and / or proxy that has been matched to the original by the ticket window clerk

For roya requests that enter Kampar Regency Land Office can be seen in the following table :

**Table II**  
**List of Roya Requests at the Land Office**  
**Kampar Regency in 2015-2019**

No.	Year	Number of Requests
1	2015	3.517
2	2016	3.834
3	2017	4.362
4	2018	4.793
5	2019 (s/d. September)	3.582

From the table above, it can be seen that there has been an increase in mortgage demand rights from year to year at the Kampar District Land Office. However, the exact figure of the roya application data cannot be known by using the roya concentration deed, because all roya applications are included in the roya application data report.

The Process of Implementing Roya Registration Rights Coverage with the Roya Concentration Deed at the Kampar Regency Land Office is:<sup>11</sup>

1. The applicant carries the application requirements for roya mortgage rights, namely:
  - a. Original Certificate of Land Rights or Ownership Rights in Flats.
  - b. Roya Permit Or Roya Concentration Rights Mortgage as a substitute for the mortgage right certificate.
  - c. A letter of introduction for a roya application from the bank (Lunas or Letter of Payment).
  - d. Resident Identity Card (KTP), the Underwriter (Debtor), the Underwriter (Creditor) and / or his attorney.
  - e. Fill in the Application Form that has been determined in the format by the Land Office and is signed by the applicant or his proxy.
  - f. Power of Attorney if authorized.

<sup>11</sup> Interview with Mr. Khairul Salam, SH., Head of Subsection for Maintenance of Land Rights Data and Development of PPAT of the Kampar District Land Office, October 3, 2019.

2. The ticket window clerk accepts by physically examining the application documents, if the incomplete file is returned to the applicant.
3. If the application is deemed complete, the entry officer will input the Roya Mortgage application data on the Land Office Computerized Application (KKP) and is given a Document Receipt (STTD) and a Deposit Order (SPS) to the applicant. Furthermore, the Applicant pays a sum of money from Non-Tax State Revenues (PNBP) to the treasurer / PNBP Receipts as stated in the SPS. This payment is made by transferring through Bank BNI, Bank BRI and Bank Riau Kepri, by entering the billing / PNB code.
4. After the payment is made by the applicant by showing proof of the transfer, then a receipt is printed to be recorded in the questionnaire 306 while sending an application for Mortgage Rights on the KKP application to the Legal and Land Relations Section. Subsection Maintaining Land Rights Data and Development of PPAT Kampar District Land Office.
5. The ticket window clerk sends the request file to the Land Rights Data Maintenance and PPAT Maintenance Subsection to record the application's entry file.
6. Next, take the Registration Number Number (DI) 208 and DI 307. The DI appears by continuing the request sent from the Counter starting from the Executing Level user, Kasubsi Preservation of Land Rights Data and Development of PPAT, then the application is returned to the Executing User / Kasubsi .
7. The application file is submitted to the Land Book Certificates to be included in the land book.
8. The Land Book Officials submit the application file to the typing officer for typing in the Land Rights Certificate, Land Rights Land Book, Land Rights Mortgage Book. Then the typing officer does the following:
  - a. cross out the notes regarding the Underwriting Right in the land book of the encumbered rights and certificates, accompanied by the inclusion of the note that reads: "Based on the Application Letter Roya Dated ..... Number ..... .. This Underwriting Right is deleted", date and signature of the Head Land Office or designated official.
  - b. put a note in the Underwriting Right land book that the Underwriting Right has been deleted and include a note that the certificate of Underwriting Right cannot be withdrawn because it has been lost.
9. Staff at the Implementing Level checks and makes corrections to the application file and typing results.
10. Kasubsi Maintenance of Data on Land Rights and Development of PPAT, corrects and signs on the Land Book Certificate of Mortgage Rights and Land Book on Land Rights and Land Rights Certificate, after that submit documents to the monitoring officer.
11. After the process of deleting mortgage rights (roya) is complete, the certificate of land rights is returned to the counter to be returned to the applicant.

## **Conclusion**

1. The loss of a mortgage right has no legal effect on the abolition of the mortgage. The deletion of the mortgage account (roya) is an administrative action that is needed so that the data regarding the land always matches the reality and does not have any effect on the debt that has been written off. If the certificate of mortgage is not included with the certificate of land rights and a letter of application for roya, then this does not preclude the process of deleting the process of recording the mortgage right (roya). The certificate of mortgage is proof of the existence of mortgage, because the mortgage certificate is a document issued by the Land Office, so when the credit is paid off and the process of deleting the mortgage rights (roya), then the mortgage certificate is withdrawn by the Land Office. However, in practice, the loss of a mortgage right affects the subsequent legal actions that will be carried out by the land rights holder, whether the transfer of rights or the imposition of a new mortgage, because for this reason, the deletion of the mortgage rights must be done. The

disappearance of the mortgage certificate, by the Kampar District Land Office was followed up with an administrative settlement by making a roya deed.

2. Making the Roya Concentration Deed as a substitute for the Mortgage Certificate in the process of deleting the mortgage right as required in appendix II of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010 concerning Service Standards and Arrangement of Land on January 25, 2010, but the existence of the deed This roya concentration within the scope of the mortgage rights has not been explicitly regulated in UUJN, UUHT and other regulations, but the notary may be authorized to make this deed according to Article 15 paragraph (1) of the UUJN. The Roya Concentration Deed can be made by a Notary appointed by the debtor or creditor, not necessarily to the Notary who at that time made his credit deed. This is because if you continue to use a Notary who makes a deed of credit agreement as well as a Land Deed Making Officer (PPAT) who performs collateral binding, it is likely to be difficult even more so if the Notary has moved to another area or dies. The Land Office also does not prohibit making a Roya Concentration Deed at any Notary's office. Making a roya concentration deed is the will of the parties and not the wishes of the notary, this deed was made because it is related to land, namely for the process of deleting / roya mortgage rights and this deed is classified as a deed made before (ten overstaan) notary (party deed / partij deed) , where this deed contains statements of parties that are made to be used as evidence of statements / statements from the parties.
3. Deletion of mortgage rights (roya) based on the roya consensus deed at the Kampar District Land Office, The deletion process is the same as ordinary roya, only the documents attached are roya consent deeds as a substitute for the mortgage certificate. This is done solely by an administrative action undertaken for the sake of administrative order in the land sector. The position of the roya concentration deed is only as a substitute for the mortgage right certificate in terms of the process of deleting my mortgage rights (roya). The roya deed can not be used as a substitute for a mortgage right that has an executive power.

### ***Suggestion***

1. It is expected that all parties related to deletion / roya of mortgage rights, namely: giver of mortgage, recipient of mortgage, Notary / PPAT, and the Land Office, can play an active role and implement the precautionary principle both in the storage of documents and in the implementation of duties and his authority.
2. There needs to be special rules governing the roya concentration deed, so that the interested parties can obtain clear and accurate information, and the Notary who made the deed has guidelines in making the roya concentrate deed.
3. The Land Office is expected to be able to issue a new policy related to the loss of the mortgage certificate, so that the mortgage rights process can be carried out quickly to tie the importance of the roya mortgage rights to the certificate of land rights that are encumbered with mortgage rights. Besides that the certificate of mortgage rights issued by the Land Office is only a copy while the original is in the land rights document in the land office, this should make it easier to process the roya mortgage rights because the land office can check the land book directly.



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