

## Legal Implications Of The Certificate Revocation Decision By The Court Toward The Creditors

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### ABSTRACT

This study aimed to analyze and to explain the legal implications of the court decision which stated that the certificate of ownership was revoked, furthermore it became the mortgage right toward the bank as the holder of the mortgage right in the Home Ownership Credit Agreement. The research method used was normative legal research with a statute approach and a case approach. The results of the research showed that with the court's decision, the certificate of ownership rights which became the mortgage rights was no longer legally enforceable, namely 60 (sixty) working days after the court decision has obtained permanent legal force as referred to in Article 116 paragraph (1) of The Administrative Court Law. The decision was accepted if the Defendant did not fulfill his obligations. This also applied regardless of whether or not a revocation request was made to the Head of the local Land Office. Then automatically the mortgage rights also did not have legal force anymore, although this was not regulated in the provisions of the UUHT. However, the credit agreement did not become nullified or canceled, then there was a shift in the position of the bank from the original creditor which was prioritized to be a concurrent creditor.

**Keywords:** Has no legal force anymore; Concurrent Creditors; General Guarantee

### INTRODUCTION

#### Research Background

In making credit agreements, it is often assumed juridically that the debtor is the weak party. Yet if we are objective, the debtor is not always a weak party. The debtor could be weak juridically, but in reality it is the bank that is the weak party, so that once credit is launched, even banks have to beg for the credit to be repaid by debtors. What is known as bad credit is a "monster" that is very feared by banks<sup>1</sup>. Thus, financial institutions such as banks, in terms of providing or channeling credit,

should be able to provide legal protection both for the bank itself and for customers/debtors. Other interested parties must also receive protection through a legal guarantee institution.<sup>2</sup>

Due to the general guarantee does not provide a sense of security and guarantees for banks in extending a loan, in its development, the bank prefers special guarantees, with one of the conditions in the main agreement, a special guarantee must be agreed upon, after which it is followed by making a guarantee agreement that is *accessoir*<sup>3</sup>. Special guarantees that are often

<sup>1</sup> Munir Fuady, *Hukum Perkreditan Kontemporer*, PT. Citra Aditya Bakti, Bandung, 1996, p. 4.

<sup>2</sup> M. Bahsan, *Penilaian Jaminan Kredit Perbankan Indonesia*, Rejeki Agung, Jakarta, 2002, p. 55.

<sup>3</sup> *Ibid.*

requested by bank creditors in extending or providing a credit are collateral for immovable objects or land, because from an economic point of view land has a high value and will never experience depreciation in terms of its value from year to year.<sup>4</sup>

At this time, special guarantees in the form of immovable objects or land are regulated through legal instruments, namely institutions of mortgage rights. One of the privileges of security rights is that if the debtor is in default, legally the bank creditor is protected by his interests as referred to in Law Number 4 of 1996 concerning Mortgage Rights (hereinafter abbreviated as UUHT), with the intention that if the debtor defaults and cannot pay off certain debts, then the party bank creditors are given priority over other creditors to execute the guarantee of a certificate of land rights for the settlement of debtor debts through the mechanism regulated in the UUHT.<sup>5</sup>

In its implementation, unexpected legal problems can also occur. If in the granting of credit, the certificate of land that has been guaranteed and charged with a mortgage is disputed / sued by another party, then it is declared canceled and revoked as well as written off from the Land Book at the land office by a court decision which has permanent legal force (*inkracht*

*van gewijsde*), while the credit agreement is still in progress or not yet paid off, this will certainly have legal implications for the bank creditors as the holder of the mortgage rights.

There are examples of cases that are relevant to represent the problem regarding a certificate of land that has been guaranteed and subject to security rights declared null and void and removed from the Land Book in the land office by a court decision, while the credit agreement is still ongoing or has not been paid off and will be developed into a legal issue. One of them is the decision of the Supreme Court of the Republic of Indonesia Number 111 PK/TUN/2019.

Furthermore, the object of dispute in the example case is the certificate of ownership rights issued by the Defendant (Head of the Palembang City Land Office), which is 75 (seventy five) certificates, as for the total objects of the dispute and which are still on behalf of Defendant II Intervention 1 (developer as seller) totaling 18 (eighteen) certificates, of which a mortgage and a subsidized housing loan agreement (KPR) with Bank BTN (Defendant II Intervention 2), totaling 57 (fifty seven) certificates of right property, but there are 2 (two) ownership certificates that do not yet have an SKMHT ("power of attorney to impose mortgage rights") and the principal agreement for housing ownership credit.

Then at this time the case has been decided by the court and has obtained

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<sup>4</sup> Habib Adjie, *Hak Tanggungan Sebagai Lembaga Jaminan Atas Tanah*, Mandar Maju, Bandung, 2000, p. 2

<sup>5</sup> See the provisions of Article 1 paragraph (1) of Law Number 4 of 1996 concerning Mortgage Rights.

permanent legal force, as for the consideration of the panel of judges in deciding the case due to a procedural defect in the issuance of the certificate issued by the Defendant and in essence the verdict of the Panel of Judges for Reconsideration was to declare null and void against 75. (seventy five) disputed object certificates and obliged the Defendant (Head of the Palembang City Land Office) to revoke and write off the Land Book at the Palembang City Land Office on 75 (seventy five) certificates that were the object of the dispute issued by the Defendant.

Regarding the example of the case raised, the credit provided by Bank BTN is the subsidized housing loan (KPR). In the KPR concept, the main financing is for the house and at the same time is used as collateral for mortgage rights, of course it is different from other loans. So that in this case the bank has the potential to experience a bad condition and a weak position, because the object to which it is dependent is canceled by a court decision, considering that the object financed is the main guarantee in its credit concept, and of course the decision has legal implications for mortgage rights and position of the bank.

### **Formulation of The Problem**

What were the legal implications of the certificate revocation decision by the court for creditors?

### **RESEARCH METHODS**

This research was a normative legal research using the statute approach and the case approach. Sources of legal materials used in this research were primary legal materials consisting of statutory regulations, the secondary legal materials used were references related to the issues discussed, either in the form of legal references (legal books / textbooks) or articles or news obtained via the internet, and the tertiary legal materials used included *KBBI* (Big Indonesian Dictionary) and encyclopedia. The method of collecting legal materials used in this research was the Document Study Method. Processing of legal materials was carried out by systematizing and classifying all legal materials that have been collected according to the aspects of the assessment. Analysis of legal materials was carried out in a qualitative juridical manner, which was guided by legal norms contained in court decisions and various laws and regulations, then in order to facilitate grammatical interpretation of legal materials, a descriptive analysis approach based on the legal theory used in this research was performed.

### **RESULTS AND DISCUSSION**

At the State Administrative Court in terms of verdicts, as stipulated in Article 97 paragraph (7) of Law Number 5 of 1986 concerning State Administrative Courts (hereinafter referred to as the Administrative Court Law), essentially a court decision can be in the form of: a. The

lawsuit is rejected; b. The lawsuit was granted; c. Lawsuits are not accepted; d. The suit is off. Then in the event that a lawsuit is granted, the Court's decision can determine the obligations that must be carried out by the State Administrative Body or Official issuing the State Administrative Decree.<sup>6</sup> said, if in the decision the State Administration Decree issued by the TUN Agency / Official is declared null and void, with or without compensation and / or rehabilitation, the obligation is in the form of:<sup>7</sup>a. Revocation of the relevant State Administrative Decree; or b. To revoke the relevant State Administrative Decree and issue a new State Administrative Decree; or c. Issuance of a State Administrative Decree in the event that the lawsuit is based on Article 3.

If you read the verdict of the dispute which is used as an example of a case in this research, namely, in essence, the verdict of the Panel of Judges for Review, namely declaring 75 (seventy five) certificates of dispute object to be canceled and obliging the Defendant (Head of Palembang City Land Office) to revoke and crossed out from the Land Book at the Palembang City Land Office the 75 (seventy five) certificates that were the object of the dispute issued by the Defendant.

Then how is the implementation or

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<sup>6</sup> See Article 97 paragraph (8) of the Administrative Court Law.

<sup>7</sup> See Article 97 paragraph (9) of the Administrative Court Law.

execution of the decision, which invalidates 75 (seventy five) certificates of disputed objects, most of which have become dependent rights in the Home Ownership Credit Agreement (KPR) from Bank BTN, is it immediately when the decision is read out the certificate that becomes the right the dependency becomes canceled, or there is another mechanism to cancel the certificate.

Basically, the execution of a decision is nothing but the realization of the obligations stated in the decision. In order to realize the obligations stated in the decision, the court must observe and do so based on the provisions that specifically regulate it. Basically, the verdict of the State Administrative Court consists of two verdicts, namely: the verdict declaring invalid and the verdict declaring invalid.<sup>8</sup>

In the Administrative Law in Article 116 paragraph (2) it is stated that if there is a verdict containing the obligations as referred to in the provisions of Article 97 paragraph (9) letter a, the execution of the decision, namely 60 (sixty) working days after the court decision has been obtained. Permanent legal force as referred to in Article 116 paragraph is accepted, the Defendant does not carry out its obligations, the disputed State Administration Decree no longer has legal force. If seen from this provision, the

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<sup>8</sup> H. Supandi, *Hukum Peradilan Tata Usaha Negara*, Second Edition, 1st Edition, PT. Alumni, Bandung, 2016, p. 225.

nature of the execution of the State Administrative Court is automatic.

Thus for a decision to be canceled there is no need for execution, because by being declared null and void, then the State Administration Decree that is being challenged is legally binding, so immediately both the Defendant's legal action and the consequences arising from the Defendant's legal action are manifested in the form of a Decree. Juridical State Administration never existed, and the situation would return to the time before the Defendant issued the State Administrative Decree.<sup>9</sup>

Cancellation of land rights is the cancellation of land rights, proof of rights and other general registers relating to these rights.<sup>10</sup> Whereas the cancellation of a certificate is a cancellation of proof of rights and other general registers relating to these rights, and nota cancellation of the rights to the land.<sup>11</sup>

On October 22, 2020, it was published and promulgated in the State Gazette of the Republic of Indonesia Year 2020 Number 1369, namely the Regulation of the Minister of Agrarian and Spatial

Planning / Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning the Handling and Settlement of Land Cases, which re-regulates the definition of cancellation, namely a decision canceling a legal product<sup>12</sup> due to administrative defects and / or juridical defects in its issuance or to implement court decisions that have obtained permanent legal force.

The cancellation of legal products is carried out by the authorized official because: a). administrative and / or juridical disabilities; b). implementation of court decisions that have permanent legal force<sup>13</sup>. In the event that a legal product is canceled as a follow-up to the implementation of a court decision that has permanent legal force, it must still be implemented<sup>14</sup>. The implementation of the court decision is based on a petition with an interest which is followed up with a land administration action in the form of the issuance of a

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<sup>9</sup> *Ibid*, p. 226.

<sup>10</sup> See Article 24 paragraph (2) of the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 concerning Settlement of Land Cases.

<sup>11</sup> See Article 24 paragraph (3) Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 concerning Settlement of Land Cases.

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<sup>12</sup> Legal products of the Ministry of Agrarian and Spatial Planning / National Land Agency, Regional Office of the National Land Agency, Land Office according to their authority, hereinafter referred to as Legal Products are decisions of State Administration officials in the land sector (see Article 1 number 13 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases)

<sup>13</sup> See Article 29 paragraph (1) of the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning the Handling and Settlement of Land Cases.

<sup>14</sup> See Article 37 paragraph (1) Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases.

decision to cancel legal products<sup>15</sup> in accordance with the provisions of laws and regulations.<sup>16</sup>

If connected with the legal provisions regarding the cancellation of the certificate mentioned above with the verdict of the State Administrative Chamber of Judges.

Review Board which is used as a case example in this study, namely, in essence, declaring the cancellation of 75 (seventy-five) certificates of the object of dispute and obliging the Defendant (Head of Office Land of Palembang City) to revoke and to write off from the Land Book at the Palembang City Land Office on 75 (seventy-five) certificates that are the object of the dispute issued by the Defendant, it can be concluded in this land case or dispute, it is limited to the cancellation of the certificate in the sense of cancellation of proof of rights and other general registers related to rights because the decision in its consideration states that there was a procedural error in the issuance of the first land title registration and not the cancellation of the land rights.

Then if it is related to the nature of the Mortgage Rights, namely as an

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<sup>15</sup> One of the legal products referred to includes registration of land rights for the first time in the form of a certificate of land rights as referred to in Article 38 paragraph (2) letter b of the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Case Handling and Settlement. Land.

<sup>16</sup> See Article 38 paragraph (1) Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases.

additional agreement (*accessoir*) of the main agreement which will be canceled if the main agreement, namely the credit agreement is paid off. However, the Mortgage Rights can also be written off or ends even before the debtor's debt is paid off in full, that is, one of them is as stipulated in Article 18 paragraph (1) letter d of the Mortgage Rights Law, due to the abolition of land rights that are encumbered with mortgage rights. As in the elucidation of the provisions of the regulation, which states that the abolition of land rights in question is partly due to matters as regulated in the provisions of Article 27, Article 34, and Article 40 of Law Number 5 of 1960 concerning Basic Agrarian Principles. (hereinafter referred to as *UUPA*) or other laws and regulations.

As for this dispute, which relates to property rights, if it is related to the provisions of the *UUPA* above, the provisions relating to the abolition of Mortgage rights relating to the abolition of land rights regarding property rights are regulated in Article 27 of the *UUPA* which states that:

Property rights are deleted if:

- a. the land falls to the State:
  1. because of revocation of rights under article 18;
  2. because of voluntary surrender by the owner;
  3. because of neglect;
  4. because of the provisions of Article 21 paragraph (3) and Article 26 paragraph (2).
- b. the land was destroyed.

Furthermore, if it is based on the above legal provisions, then with a court

ruling stating the cancellation of the certificate of ownership rights which is the right of the mortgage, this is not included in the category of provisions in Article 18 paragraph (1) letter d of the *UUHT* which explains that the mortgage is nullified because the abolition of landrights that are encumbered with mortgage rights, because in the context of the cancellation of the certificate of ownership rights from the decision of the State Administrative Court, namely that the cancellation does not remove the land rights but only the cancellation of the certificate, namely the cancellation of proof of rights and other public registers relating to that right only.

Therefore, in case related to the decision of the State Administrative Court, if seen from the legal consequences of the State Administrative Decree in the form of a certificate of ownership rights issued by the State Administration Agency/Official (in casu the Head of the Palembang City Land Office) which is declared null and void by Court decisions that have obtained permanent legal force, then the legal consequence for 75 (seventy five) certificates which become the object of the dispute including part of the object of the dispute that has been guaranteed with mortgage rights, becomes non-binding or has no legal force since the time it is canceled, if the decision such cancellation is carried out by Government Officials and/or Superior Officials by stipulating and/or making new Decisions and/or

Actions of Government Officials based on Court orders due to requests from interested parties as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases. However, regardless of whether or not a petition from an interested party submits a cancellation request because the execution of the decision of the State Administrative Court is automatic, then in 60 (sixty) working days after the court decision has obtained permanent legal force as referred to in Article 116 paragraph (1) Acceptance of the Administrative Court Law, the Defendant did not carry out its obligations, then the State Administrative Decree referred to in this case is the certificate of ownership rights which is the object of the dispute and which has become a Mortgage Rights no longer has legal force.

Furthermore, if the 75 (seventy-five) certificates that are the object of the dispute and as many as 57 (fifty-seven) certificates of the disputed object have been guaranteed with mortgage rights that no longer have legal force, it will clearly also have a legal impact on the mortgage rights, so legally the mortgage right also does not have legal force anymore, and the mortgage right no longer needs to be asked for the cancellation of the mortgage to the court, because seen from the characteristics of a mortgage right is a security right

imposed on land rights, in this case, a certificate of ownership, then if the object is which is the right of the dependent does not have legal force, automatically the right of the mortgage is the same, although this is not regulated in the provisions of the *UUHT* namely regarding the abolition of mortgage rights due to the cancellation of land title certificates, in practice, the mortgage rights can also be legally canceled due to this.

Due to the legal consequences of the cancellation of the certificate of ownership rights which are the mortgage and it does not have legal force, then of course has a domino effect in the form of legal implications for the position of the bank as the creditor of the mortgage rights holder, which the characteristics of the mortgage right give priority to the holder (*droit de preference*), namely to the creditors, in this case, the bank rather than other creditors, but after a court decision declares the certificate cancellation which is the right of the guarantee and has legal consequences for the same security rights. does not have legal force, in the sense that legally the bank as the creditor no longer has a special guarantee in the form of a certificate that has been subject to a mortgage, then the legal implication for the position of the bank in question is that there will automatically be a shift in the position of the bank as a creditor which previously, his position took precedence over other creditors (*droit de preference*), now he is a concurrent

creditor, that is, his position is the same as other creditors who collectively receive general guarantees, as stipulated in Article 1131 and Article 1132 BW. However, this does not necessarily imply that the credit agreement between the bank and the customer is also canceled because basically, the mortgage right is only an additional agreement to the principal agreement on accounts payable.

If seen from the results of the research analysis that has been stated above, it is as if the decision of the State Administrative Court does not provide legal certainty for justice seekers, especially in the case of land disputes, because in terms of authority the State Administrative Court only decides concerning the cancellation of objects of State Administrative Decrees issued by State Administrative Bodies/Officials in terms of public law, namely the products of state administrative decisions in the form of certificates of land rights issued by the Land Office as State Administrative Bodies/Officials both in terms of authority, procedures and the substance.

Land disputes are disputes of 2 (two) faces in which there are aspects of public/administrative law which are the domain of the State Administrative Court and aspects of civil law which are the domain of the General Court. Land disputes as a genus for settlement of disputes are concurrent authority between the State Administrative Court and the General



Courts, in terms of species of land disputes, there is a limit of authority between the State Administrative Court and the General Courts which do not enter into each other.<sup>17</sup>

Land disputes as a genus are linked to the limits of the authority of the State Administrative Courts and General Courts according to the doctrine, judicial policy, and jurisprudence of the Supreme Court, so using a species-based mindset does not result in a joint power (concurrent authority) to try them, because each judicial institution has a different object, for example, the General Court has the authority to judge related to ownership disputes, while related to decrees of State Administrative Bodies or Officials is the authority of the State Administrative Court.<sup>18</sup>

Although the State Administrative Courts and the General Courts have their limits of authority and objects of dispute, their implementation in practice to determine the limits of the authority of the judiciary in land disputes is not easy. In judicial practice, the limits between the two legal systems are vague and difficult to enforce firmly.<sup>19</sup>

Therefore, it is necessary to establish a judicial institution that specifically handles land disputes, because of the nature

of land disputes which have 2 faces as previously explained. Whereas with the establishment of a special court for land disputes in the form of a Land Court with the composition of the Panel of Judges, which consists of 1 Judge from the State Administrative Court, 1 person from the District Court, and 1 person from ad hoc judge who understands the ins and outs of selected land disputes, such as ad hoc judges of corruption, then the concurrent authority to try it will no longer occur between the State Administrative Court and the General Court but with the establishment of a Land Court in the future so that it can protect parties against arbitrary actions of judges in the judicial process regarding the examination of land disputes, both aspects of the legal order that are public, it seems like the cancellation of certificates and decrees relating to land in terms of authority, procedure and substance as well as aspects of the civil law order regarding the ownership rights of the right to land rights. This is intended so that justice seekers have more legal certainty regarding the results of court decisions and land disputes faced are resolved only through the Land Court, and it is also intended that a land dispute can be resolved effectively and efficiently, and the principles fast trial can be realized, simple and low cost.

Thus, this will also provide legal certainty for the banking sector as the creditor holding the mortgage of the

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<sup>17</sup> Ibid.

<sup>18</sup> Dani Elpah, Ibid, p. 61.

<sup>19</sup> Sarjita and Hasan Basri Nata Menggala, *Pembatalan dan Kebatalan Hak Atas Tanah (Edisi Revisi)*, Tugujogjapustaka, Yogyakarta, 2005, p. 78, in Ibid p. 62.

certificate canceled by the State Administrative Court, if through the Land Court it can also determine whether the administrative legal aspects regarding the authority, procedure, and substance of the issuance of a certificate and also determine the civil aspect regarding ownership of the disputed land rights.

## **CLOSING**

### **Conclusion**

The certificate of ownership rights is no longer legally enforceable, namely 60 (sixty) working days after the court decision that has obtained permanent legal force as referred to in Article 116 paragraph (1) of the Administrative Court Law is accepted, if the Defendant does not carry out his obligations. This also applies regardless of whether or not a cancellation request is made to the Head of the local Land Office. Then automatically the mortgage rights also do not have legal force anymore, although this is not regulated in the provisions of the *UUHT*;

- a. The credit agreement between the bank and the customer is not null or cancel because basically, the mortgage right is only an additional agreement to the principal payable agreement;
- b. The position of the bank as a creditor that previously took precedence or priority over other creditors (*droit de preference*) changes to become a concurrent creditor.

## **Suggestion**

It is necessary to establish a judicial institution that specifically handles land disputes, namely the Land Court, because of the nature of land disputes have 2 faces in which there are aspects of public/administrative law which are the domain of the State Administrative Court and aspects of civil law which are the domain of the General Court. This is aimed at providing legal certainty for the banking sector as the creditor holding a certificate that has been canceled by the State Administrative Court because from the point of view of its authority, the State Administrative Court itself cannot test from its civil aspect regarding ownership of land rights in dispute.

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