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Legal Protection of Banks for the Cancellation of Land Certificates Due to Overlapping which are Being Broken with Guarantee Rights

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ABSTRACT

The provision of credit by banks should receive legal protection for both creditors and debtors. One of the conditions for granting credit is the existence of a guarantee that functions to provide a sense of security for creditors against returning credit funds in the event of default or default. The problem in this study is the cancellation of property rights certificates burdened with mortgage rights due to overlapping. The protection given to banks in the event of cancellation of collateral objects in this writing is carried out by collecting library materials and also interviews with empirical normative methods. Empirical normative legal research is research conducted by examining literature and laws and regulations related to problems and information obtained based on interview results. The results of this research are expected to be useful and useful for the development of legal science, especially Civil Law, as well as the fields of Banking Law, Guarantee Law, and Agrarian Law. This research is expected to be used as a source of knowledge, especially how to protect banks in the event of cancellation of collateral objects and the settlement mechanism and preventive efforts made by the Land Agency of the City of South Tangerang to prevent overlapping certificate problems

INTRODUCTION

Bank comes from the word Banco, which means a bench or a banker. Benches or bank actors are bankers who serve bank operational activities to customers. One of the main functions of banking is to channel funds to the public in the form of credit, this has also been written in Article 3 of Regulation Number 7 of 1992 concerning Banking. One of the conditions for granting credit by banking financial institutions is the existence of a guarantee, this guarantee functions to create security for creditors when providing credit or capital loans to debtors and not to worry about returning credit funds in the event of default or default. Credit guarantees or guarantees are also included in the credit agreement. If there is a default or default, the bank can execute collateral and collateral to repay bad debts from the debtor.

This guarantee is also classified into 2 (two), namely general guarantees and special guarantees. General guarantees are guarantees that are born because of statutory regulations. This general guarantee is addressed to all assets belonging to the debtor, both assets that existed before and after the credit agreement was agreed. While special guarantees are guarantees that occur if specifically agreed by the creditor and debtor. The practice of extending credit by banks also usually uses an anticipatory mechanism, namely by using additional security in the form of a special guarantee. This special guarantee can be in the form of material guarantees in the form of land for both consumptive and productive credit. Guarantee of Land Rights is considered as the safest guarantee because of its high economic value. Besides that, the mortgage right also has executorial power.

The object of this research is the Supreme Court's Decision Number 31K/TUN/2020, where the decision says the cancellation of the Certificate of Ownership is still being charged with Mortgage Rights to Bank BRI. The cancellation of this certificate was initiated by a lawsuit by the legal owner of the land named Afifi Ahmad Taudjidi (the plaintiff) who suspected that there was overlapping of the Property Rights Certificates. Afifi Ahmad Taudjidi is the owner of a plot of land with a

Freehold Certificate Number: 344/Desa Cipayang, which was issued on May 20, 1983. The defendants in this case are the Head of the Land Office of South Tangerang City, PT Bank Rakyat Indonesia (Persero) Tbk and Qalam Tedy Filianda. The problem that will be examined is the cancellation of property rights certificates that are being burdened with mortgage rights due to overlapping. This can happen because of the inaccuracy of the South Tangerang City Land Office which causes the Certificate of Ownership to be declared null and void by law due to administrative defects in its issuance.

Cancellation of land rights due to administrative legal defects through an application from the interested person shall be submitted directly to the Minister or the appointed Official or through the Head of the Land Office, namely the National Land Agency at the Regency/City level (Land Office). Meanwhile, the cancellation of land rights due to administrative legal defects without going through a request by authorized officials are carried out if it is known that there are administrative legal defects in the process of issuing decisions on granting rights or certificates without any application and cancellation of land rights due to a court decision, namely cancellation of land rights due to carrying out a court decision that has obtained legal force remains issued at the application interested parties, where the application is submitted directly to the Minister or Head of the Regional Office or through the Land Office.

The overlapping problem occurs due to several factors, namely, the land registration system in Indonesia adheres to an active system, meaning that the land owner is active in carrying out land registration and vice versa if the land owner does not register his land then the government will not process it. The next factor is the lack of knowledge regarding the importance of the benefits of land registration and so far the community considers that land registration costs a lot and the process tends to be convoluted and overlapping can also occur due to invalid data owned by the National Land Agency, making this double certificate This also happens because the National Land Agency is still more concerned with

administrative evidence, even though it should be noted that administrative evidence that is not original also contains many weaknesses .

Article 45 of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration stipulates that the Head of the Defense Office has the right to refuse to carry out a Transitional Registration or Encumbrance of Rights if the Certificate or Statement regarding the condition of land rights is no longer in accordance with the list available at the land office. That in the same location a Certificate of Ownership Number: 344/Cipayung was issued on May 20, 1983. With this condition, the Head of the Land Office for the City of South Tangerang should refuse to carry out the Transitional Registration or Registration of Rights process because at the same location there was already a Property Rights Certificate .

This research will discuss legal protection for banks, because in this case the bank as a creditor with good intentions is of course greatly disadvantaged because the bank has provided a credit loan of Rp. 1,500,000,000.- (one billion five hundred million rupiah), while the mortgage rights have been canceled by the court and the Supreme Court while the court decision does not further regulate protection for banks as creditors regarding the fate of collateral and whether or not the bank can carry out the execution process collateral object. This research will also discuss the efforts that can be made by the National Land Office to prevent the problem of overlapping ownership certificates that are used as Mortgage Rights.

Considering that the Supreme Court Decision number: 31K/TUN/2020 does not contain a ruling providing protection in the event of cancellation of the collateral object due to administrative defects to a bank with good intentions, based on the description above, the problem can be formulated as follows:

1. What is the legal protection for banks against canceling certificates of ownership rights due to overlapping that are being burdened with mortgage rights based on Supreme Court decision Number 31K/TUN/2020?

2. How can the National Land Agency apply the principle of accuracy to prevent overlapping certificates of ownership rights to land burdened with Mortgage Rights based on Supreme Court decision Number 31K/TUN/2020?

In line with the problems described above, the purpose of this writing is:

1. Knowing the form of legal protection for a bank in the event of cancellation of a certificate of ownership right that is being burdened with a mortgage based on Supreme Court decision Number 31K/TUN/2020.

2. Knowing the application of the principle of accuracy that should be carried out by the National Land Agency as an effort to prevent problems arising with certificates of ownership rights to land burdened with Mortgage Rights based on Supreme Court decision Number 31K/TUN/2020.

METHODS

Research on Legal Protection for Banks for Cancellation of Property Rights Certificates Due to Overlapping Encumbered with Mortgage Rights (Supreme Court Decision Number 31K/TUN/2020) uses this type of research in an empirical normative manner. Empirical Normative Legal Research is research conducted by examining literature and secondary data and supplemented by information obtained based on interview results. Another name for normative legal research is doctrinal legal research, literature research or document study . Normative research usually uses legal sources in the form of laws and regulations, court decisions, contracts/agreement/ contracts, legal theory, and opinions of scholars .

The research used is research norms empirical because it is in accordance with the problems to be discussed in this study regarding Mortgage Rights, which are related to written legal norms, namely the Civil Code, Law Number 5 of 1960 concerning the Basic Agrarian Law, Law Number 4 1996 concerning Mortgage Rights on Land and Objects Related to Land, and Law Number 10 of 1998 concerning Banking. This research will also discuss the thinness principle that should be applied by the National Land Agency to prevent overlapping problems in the future.

Data collection is an important stage and cannot be separated from the research process, this is because the data obtained will provide a clear picture of the problem under study making it easier for researchers to draw conclusions. The data collection method used in this paper is divided into 2 (two), namely: library research and interviews. Literature study is carried out by studying and analyzing laws and regulations related to the problems discussed in this research. Library materials will be collected, read, grouped systematically and then analyzed in order to obtain guidelines or instructions for obtaining solutions to the problem formulation. Interviews were conducted to obtain data and information that would serve as a companion to primary legal materials. The results of the interviews are a type of qualitative data. The interview will be carried out by giving structured questions to the interviewee regarding the problem of protection for the bank in the event of cancellation of the certificate of ownership due to overlapping which is being burdened with mortgage rights.

The data and information that has been obtained from the literature study and interviews will then be analyzed using a descriptive analysis technique using a qualitative approach. Primary legal materials in the form of laws and regulations will be analyzed by means of content analysis and interpretation which are grouped systematically according to their qualifications and correctness and will be followed up with qualitative analysis so that the issues discussed can be more detailed and clear.

The data were analyzed by interpretation using theories and concepts obtained from literature studies and primary legal materials in the form of legislation and jurisprudence. The author will draw conclusions that have been grouped with a qualitative approach, namely an approach that primarily aims to understand the symptoms under study.

RESULTS AND DISCUSSION

1. Legal protection for banks against cancellation of certificates of ownership due to overlapping that are being burdened with mortgage rights

In practice, banking as creditors with good intentions often feel disadvantaged and do not receive adequate legal protection in the event of default in extending credit. Distribution of credit to debtors must also be

accompanied by collateral objects in order to motivate and guarantee debtors in carrying out their obligations. However, in some cases, there is an cancellation of the mortgage rights attached to the collateral object. Banks as institutions that provide convenience and comfort and play a role in supporting the country's economy through credit facilities should be given guarantees of legal certainty and equal legal protection in credit agreements, both to the creditor as the mortgage holder and the debtor as the mortgage provider.

The issue of canceling the land ownership certificate began with a lawsuit being filed at the Serang State Administrative Court with decision number: 33/G/2018/PTUN-SRG, then another appeal was filed at the Jakarta High Administrative Court with decision number: 205 /B/2019/PT.TUN.JKT, and cassation with decision number: 31 K/TUN/2020. The case in this case study is Afifi Ahmad Taudjidi (plaintiff) as the holder of the Certificate of Ownership 344/Desa Cipayung issued on May 20, 1983, Head of the Land Office of South Tangerang City (defendant 1), PT. Bank Rakyat Indonesia (Persero) Tbk (defendant 2) as the creditor holding the Mortgage Number 6648/2017 and Qalam Tedy Filianda (defendant 3) as the owner of the Freehold Certificate Number: 3082/Desa Cipayung issued on 5 August 2014 and divided into 3 (three), namely: Freehold Certificate Number: 3594/Cipayung Village, Property Rights Certificate Number: 3595/Cipayung Village and Property Rights Certificate Number: 3596/Cipayung Village issued on January 31, 2017.

Afifi Ahmad Taudjidi (Plaintiff) is the holder of a Freehold Certificate Number: 344/Desa Cipayung with a land area of 500 Meters² (five hundred square meters) which was purchased with Supardi based on a sale and purchase deed on April 19, 1983 with number: Ctc.031./04 /1983 before the notary Chusu Nuduri, S.H which is Customary Land C. On 1 February 2018, the plaintiff wanted to make a plank on his land but it turned out that there was already a house building on his land, and then plotting was carried out on his land and it turned out that the land owned by the plaintiff had issued a new title certificate on behalf of another person. After learning

that there was overlapping land ownership certificates on October 8 2018. On September 20 2018, the plaintiff submitted an official letter to the South Tangerang City National Land Agency Office (Defendant) requesting a copy of the certificate document. The plaintiff then received a letter regarding a copy of the warkah certificate on November 5, 2018 with number: 1172/600.13.36.07/X/2018. The letter also explained that 4 (four) ownership certificates had been issued above the Property Rights Certificate Number: 344/Desa Cipayung which had become the object of the dispute. The 4 (four) certificates of ownership are:

1. Property Rights Certificate Number: 3082/Cipayung Village, issued on 5 August 2014, with Measurement Letter Number: 00185/Cipayung/2014, dated 5 August 2014, Area 500 Meter² (five hundred square meters), on behalf of Muhammad Elief who has divided into 3 (three) certificates with Property Rights Certificate Number: 3594/Cipayung Village, Property Rights Certificate Number: 3595/Cipayung Village and Property Rights Certificate Number: 3596/Cipayung Village.
2. Property Rights Certificate Number: 3594/Cipayung Village, issued on January 31 2017, with Measurement Letter Number: 691/Cipayung/2016, December 30 2016, Area 165 Meter² (one hundred and sixty five square meters), on behalf of Qalam Tedy Filianda;
3. Property Rights Certificate Number: 3594/Cipayung Village, issued on January 31 2017, with Measurement Letter Number: 692/Cipayung/2016, December 30 2016, Area 165 Meter² (one hundred and sixty five square meters), on behalf of Rusman, Bachelor of Economics, burdened with Mortgage Number: 6648/2017, on behalf of PT. Bank Rakyat Indonesia (Persero) Tbk;
4. Property Rights Certificate Number: 3596/Cipayung Village, issued on January 31 2017, with Measurement Letter Number: 693/Cipayung/2016, December 30 2016, Area 170 Meter² (one hundred and seventy square meters), on behalf of Rusman, Bachelor Economy, which is burdened with Mortgage Number: 4467/2017, on behalf of PT. Bank Rakyat Indonesia (Persero) Tbk.

The decision of the Serang State Administrative Court is as follows:

1. Granted the plaintiff's claim in its entirety;
2. Declare the certificates of ownership that are the object of the dispute, namely: Certificate of Ownership Number: 3594/Desa Cipayung, Certificate of Ownership Number: 3595/Desa Cipayung and Certificate of Ownership Number: 3596/Desa Cipayung issued on 31 January 2017;
3. Obligated the defendant to revoke and cross out from the land book register the decision documents on the object of the dispute in the form of: Certificate of Property Rights Number: 3594/Desa Cipayung, Certificate of Ownership Number: 3595/Desa Cipayung and Certificate of Ownership Number: 3596/Desa Cipayung issued on January 31, 2017;
4. Ordered the defendants to pay court costs in the amount of Rp. 6,387,000.00 (six million three hundred and eighty-seven rupiahs) jointly and severally.

The appeal filed by PT. Bank Rakyat Indonesia (Defendant II Intervention/Comparator), the decision of the Serang State Administrative Court was upheld by the Jakarta High Court Decision Number: 205/B/2019/PT.TUN.JKT dated 30 April 2019, with a ruling verdict as follows:

1. Receive appeals from Defendant II Intervention/Comparison, Defendant II Intervention-2/Comparison and Defendant/Appellant;
2. Strengthening the decision of the Serang State Administrative Court Number 33/G/2018/PTUN-SRG, April 30 2019 which is being appealed;
3. Punish the Appellant to pay court costs for the appeal level in the amount of Rp. 250,000.00 (two hundred and fifty thousand rupiah).

Meanwhile, at the cassation level of the decision Number: 31K/TUN/2020 the verdict is:

1. Rejected the cassation request from the cassation applicants: Head of the South Tangerang City Land Office, PT. Bank Rakyat Indonesia (Persero) Tbk., and Qalam Tedy Filianda;
2. Convict the Cassation Petitioner in the amount of Rp. 500,000.00 (five hundred thousand rupiah).

The main issue in this case is basically Afifi Ahmad Taudjidi's claim regarding the issue of overlapping

land ownership certificates which ultimately led to the cancellation of land ownership certificates that were being encumbered by mortgage rights with the Serang State Administrative Court Decision on 22 April 2019. Issuance of the dispute object certificate by the defendant has caused harm to the plaintiff, so the defendant's actions have complied with the provisions of Article 53 paragraph (1) of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Court where if a person or a legal entity harmed by a state administrative decision may submit a written claim to the competent court so that the decision is declared null and void legitimate.

The legal consequence of canceling the certificate of ownership of land that is being burdened with this mortgage right is that the creditor is no longer the preferred creditor which is the hallmark of a mortgage right. This is very detrimental to creditors (PT.Bank Rakyat Indonesia) who have good intentions.

PT.Bank Rakyat Indonesia in this case, provided 2 (two) credit facilities to Rusman, SE namely Working Capital Credit with Certificate of Ownership Number 3596/Desa Cipayung and Home Ownership Credit with Certificate of Ownership Number 3595/Desa Cipayung. The Home Ownership Credit has been paid off by the debtor and a working capital loan of IDR 1,500,000,000 (one billion five hundred million rupiah).

Legal protection aims to minimize all risks, either those that might arise or those that have arisen/occurred. Cancellation of land title certificates that are burdened with mortgage rights causes losses to banks due to the change in position from preferred creditor to concurrent creditor.

The bank as a creditor with good intentions is of course greatly disadvantaged because the bank has provided a working capital credit loan of Rp. 1,500,000,000.- (one billion five hundred million rupiah), while the mortgage rights have been canceled by the court and the Supreme Court while the court decision does not further regulate protection for banks as creditors regarding the fate of collateral and whether or not the bank can carry out the execution process collateral object.

Bank Indonesia Regulation (PBI) Number: 7/2/PBI/2005 concerning Asset Quality Rating for Commercial Banks confirms that in the event of problem loans and the mortgage rights have been canceled by a Court Decision, creditors can carry out credit restructuring. Article 51 PBI Number: 7/2/PBI/2005 regulates the criteria for debtors who can carry out credit restructuring as follows:

1. Debtors experience difficulties in paying principal and credit interest;

2. The debtor has good business prospects and can fulfill his achievements after the restructuring.

The Mortgage Law and the Banking Law also do not protect specifically in the event of a lawsuit from another party entitled to the object of collateral that is being burdened with a mortgage, but only regulates legal protection for creditors if the debtor is unable to fulfill the achievement (default). so that it has bad credit status and this is also a legal vacuum (rechtvacuum). For debtors who no longer have good faith and there are claims from other parties who are entitled to the collateral object, banks can refer to Article 1131 of the Civil Code concerning General Guarantees concerning the relationship between creditors and debtors as follows:

1. For debtors who are unable to fulfill their achievements, the debtor has the right to take some of the assets and assets from the creditor;

2. Wealth and assets of defaulting debtors can be auctioned and sold to pay off debts.

With the loss of privileges owned by creditors, banks can strive to fulfill their achievements by using general guarantees as contained in article 1131 of the Civil Code. Thus, based on the wording of article 1131 of the Civil Code, it can be concluded that collateral for credit received by the debtor is not limited to the debtor's assets that have been controlled by the bank or that are bound through a guarantee institution. All of the debtor's assets are collateral for the credit he receives from the bank, and in banking practice regarding the debtor's assets as referred to in the provisions of the Civil Code which are often included in the credit agreement . The protection regulated in the Civil Code is weak and not sufficient to provide a sense of security for

creditors, this refers to the risks that will be experienced by banks who have lost the privileges of the mortgage holder.

The author considers that there has been bad intention from the debtor to harm the creditor (default), this can be seen from:

1. The debtor applied for a working capital loan to the bank on 22 May 2017 with the object of collateral being a certificate of ownership of land with the number: 3596/Desa Cipayung issued on 31 January 2017 and it turned out that this certificate was finally declared null and void due to administrative defects at the time of publication. Based on the testimony of a witness named Pandu Eko Prasetyo as BRI Credit Investigation Staff, it was stated that Rusman, SE's working capital credit status was bad credit and there were arrears with the bank. Bank BRI has also billed at the beginning of 2018.

2. Rusman, SE as the object holder of the dispute who is burdened with mortgage rights has also been summoned legally and properly to be questioned about this case but has never been present at trial.

Creditors holding mortgage rights will lose their rights as preferred creditors (preferred creditors). against the cancellation of the mortgage right by a court decision, the creditor can choose the method of settlement, is:

1. Non-litigation routes, namely efforts to settle disputes that can be taken by creditors outside the court;

This non-litigation route is also a preventive measure of protection. Cancellation of the certificate of ownership of the land which is used as a mortgage does not cause the cancellation of the credit agreement, considering that the nature of the mortgage is an *accessoir* agreement. Cancellation of mortgage rights by a court decision also cannot be directly concluded that the credit will be in trouble or have a bad credit status, but it will have an impact on fulfilling achievements in the event of a bad credit.

Law Number 30 of 1999 concerning Alternative Dispute Resolution and Arbitration, especially in Chapter II, regulates alternative institutions for resolving non-litigation disputes, namely by way of Consultation, Negotiation, Mediation, Conciliation

and Arbitration. In line with if there is good faith from the debtor as stipulated in Article 1338 paragraph (3) of the Civil Code, the non-litigation route can also be carried out by deliberation and consensus. This is also in accordance with the clause contained in the credit agreement, namely the debtor must notify the creditor if the guarantee suffer damage, loss, or destruction. Both parties can mediate regarding canceled credit guarantees.

The mediation is to discuss the replacement of new material guarantees with the same value or *borgtoch* guarantees to reflect that the debtor has good faith in fulfilling his achievements. The replacement of the collateral object will then be bound by a guarantee agreement in accordance with the collateral object provided by the creditor, for example mortgages, mortgages, fiduciaries and pledges.

Based on the results of the interviews, as an effort to provide a sense of security in terms of fulfilling achievements by the debtor, banks also contain provisions regarding the granting of a replacement collateral object in the event of cancellation of the collateral object by a court decision in the Bank's General Terms and Conditions (SKU) signed by the debtor at the time of binding the credit contract. Efforts that can be made to minimize unforeseen credit risk are by including a clause regarding the replacement collateral object that must be given to the creditor in the event of a cancellation in the credit agreement. It also contains a clause if the debtor does not have authority and loses the rights to the collateral object, the debtor is obliged to pay off all his debts immediately and all at once. The sound of this clause can protect banks from all possible bad intentions from debtors and provide a sense of security for banks in order to maintain bank credibility.

2. Litigation pathway, namely efforts to resolve disputes that can be pursued by creditors by means of proceedings in court.

Creditors who feel their rights have been impaired can file a lawsuit with the competent court, this is also confirmed in Article 1267 of the Civil Code which reads: "the party against whom the agreement is not fulfilled, can choose, force the other party to fulfill the agreement if it can still be done or demand

cancellation agreement with the reimbursement of costs, losses and interest.

The sound of this article can be used as a basis for disadvantaged creditors to sue debtors who cannot fulfill their achievements. The creditor and the debtor bind themselves in a credit agreement that is legally binding for both parties, in the event that the debtor cannot carry out his achievements and the collateral object has been canceled by the Court, the debtor must provide a replacement collateral object to the bank in the amount of the previous collateral object which has been declared cancelled.

The first step that the creditor can take is to give a warning or subpoena to the debtor so that he fulfills his achievements. Reprimands or subpoenas are made if the debtor has been negligent and is unable to fulfill his achievements in accordance with the payment term stated in the credit agreement. The next step after a subpoena or warning is given, the debtor still does not fulfill the achievement, the creditor can choose the method of resolving disputes through litigation. The litigation route should be carried out if the debtor does not have good faith to fulfill his obligations to provide guarantees in accordance with one of the clauses in the credit agreement.

The lawsuit filed by the creditor should also be in the form of a lawsuit to cancel the credit agreement and also an additional lawsuit (assessor) in the form of confiscation based on:

Article 226 paragraph (1) HIR: "A person who has property that is not permanent, can request by letter or verbally to the chairman of the district court, which is in his jurisdiction where the person holding the item lives, to have the item confiscated." And Article 227 paragraph (1) HIR: "If there is a presumption that is reasoned, that a person who is in debt, while a decision has not been passed on him or while a decision against him cannot be carried out, tries to find ways to embezzle or take away his goods, both non-permanent and permanent, with the intention of keeping said goods away from the debt collector, then upon a letter of request the person concerned, the head of the district court may order the confiscation of said goods in order to safeguard the rights of the person making the request, and the requester must be notified that he will appear before

the court, the first district court after that to advance and strengthen his lawsuit."

The purpose of filing an assessor's lawsuit is in the form of confiscation which is stipulated in Article 178 paragraph (3) HIR, that is, if the plaintiff does not ask for confiscation, the judge will not order the collateral to be confiscated. As a result of canceling this credit agreement, the debtor who has no good faith in fulfilling his achievements is required by force to return the amount of credit that has been given at once, return the costs incurred by the creditor and provide compensation because it has been erased and the loss of expected profit creditor. The lawsuit for canceling the credit agreement is also considered better because it is in accordance with the precautionary principle that must be applied by banks to minimize the risk of credit. Law Number 10 of 1998 concerning Banking in article 8 that before providing credit, banks must conduct an in-depth analysis of the intention and ability (ability) of the debtor to pay off his debt and return all financing according to what has been agreed. This is also in line with the results of interviews that the author has conducted, that before providing credit, Bank UOB Medan Branch and HSBC Bank Medan Branch conduct a character assessment of the prospective debtor. With debtors who are no longer able to fulfill their achievements after being subpoenaed and also no longer in good faith, the credit agreement between the two parties will only make it difficult for the bank in the future.

The purpose of filing a lawsuit by a bank to a district court is to obtain a favorable decision and besides that, the decision can finally be implemented. The purpose of the enforceable decision is to confiscate all objects and assets of the debtor, both movable and immovable, so that the debtor's property that has been confiscated cannot be transferred, traded and transferred.

After a court decision that is voluntary regarding the cancellation of the credit agreement, the debtor is obliged to pay off the amount of credit that has been given and also other costs that have been incurred by the creditor and provide compensation to the bank. For debtors who still do not fulfill their achievements after a court decision obliges them to repay credit, the court has the authority to enforce the decision by force, namely executing all assets and assets of the debtor. This execution is carried out by holding an auction in

public and the results of the auction will be used as payment for the creditor in the amount stated in the court decision. This confiscation action is confirmed in Article 227 paragraph (1) HIR. Collateral confiscation can be carried out if there has been a court decision that is voluntary and both the debtor and the creditor have accepted the decision.

The cancellation of land ownership certificates which also causes the loss of mortgage rights owned by banks is a very detrimental thing for the banks. Loss of privileges owned by creditors which can be used to minimize credit risk in the event of default. In this case the bank loses 2 (two) things attached to it, namely the loss of privileges as a preferred creditor and also loss of debt repayment guarantees. Creditor protection regulated in Article 1131 of the Civil Code with general guarantees through confiscation claims is very minimal to provide certainty and protection to creditors in the event of default. Bearing in mind that the creditor must go through a lengthy lawsuit examination process to obtain a court decision that has permanent legal force and if in the end the creditor's claim is not granted by the panel of judges, the collateral confiscation cannot be carried out for the settlement of bank receivables. In this case, banks must also be protected in the event of a loss caused by a third party by means of an institution or special legal entity that can be used as a means of mediation for all losses arising as a result of the cancellation of the mortgage by a court decision. And also the need for a special regulation that regulates protection for banks that lose material guarantees in general, especially mortgage rights.

Legal protection for banks with good intentions in the event of cancellation of mortgage rights by a court decision is not enough to provide a sense of security for banks, therefore the authors suggest revising the relevant laws and regulations. The Mortgage Law must be revised or made implementing regulations in order to maintain the position and characteristics of creditors holding mortgage rights by emphasizing that in the event of cancellation of the collateral object due to maladministration, the debtor is required to provide replacement guarantees to the debtor as a form of good faith in fulfilling achievements so that creates certainty regarding the position and characteristics of creditors holding mortgage rights. Revisions must be

made to the Banking Law regarding special protection against cancellation of collateral objects due to lawsuits from other entitled parties.

The author also considers that the judge's decision to annul the object of the dispute is correct, this is also in accordance with the principle of "Praesumptio Iustae Causa" where the certificate of ownership of land that is issued in advance must be protected in order to create legal certainty. The application of this principle has been reflected in this decision where the panel of judges declared the validity of the certificate of ownership of land owned by Afifi which was issued in 1983 and declared the cancellation of the second certificate of ownership issued in 2014 in the name of Muhammad Elief which had been split into 3 (three) certificates. right of ownership.

As an effort to realize legal protection for banks for the carelessness and negligence of the South Tangerang City National Land Office which harmed creditors and also debtors, the injured party can submit an effort of resistance in this case Bank BRI as the owner of the guarantee of Mortgage Number: 4467/2017. The land certificate is the result of a decision from a state administration official, in this case the National Land Agency Office of South Tangerang City, and therefore can be subject to sanctions in accordance with the provisions of state administrative law. Sanctions can be imposed on officials who are proven to have committed negligence in the matter of issuing multiple certificates. In this case, dismissal and dismissal and position can be carried out.

This resistance effort is based on civil law, namely that there is an unlawful act (*onrecht mattigedaad*) and the creditor can file a lawsuit again with the District Court for all losses arising from the abolition of the mortgage right. Acts against the law (*onrecht mattigedaad*) are also confirmed in Article 1365 and Article 1366 of the Civil Code.

Article 1365 of the Criminal Code regulates all legal actions that cause harm to other people, so the person who caused the loss because of his mistake must compensate for all the losses he has caused. Article 1366 of the Criminal Code emphasizes that a person who causes harm to another person is not only responsible for the loss caused by his actions but is also responsible for the loss arising from his negligence and carelessness.

2. Application of the Principle of Accuracy That Can Be Done by the National Land Agency to Prevent the Occurrence of Overlapping Certificates of Property Rights on Land Encumbered with Mortgage Rights

The factors used as indicators to assess whether a title certificate is valid are as follows:

1. Property rights certificates are issued by authorized government agencies, namely the task of implementing land registration is carried out by the head of the National Land Office, this is regulated in Article 6 paragraph (1) of Law Number 24 of 1997 concerning Land Registration;
2. Issuance of land title certificates must also comply with procedural and substantial requirements
3. Issuance of title certificates does not conflict with Legislation and General Principles of Good Governance. If they conflict, the certificates of title issued must be declared null and void and declared revoked and crossed out from the Land Book List.

The factor underlying the cancellation of the certificate of ownership which is the object of dispute in the Supreme Court Decision Number 31 K/TUN/2020 is an administrative flaw. The decision of the Serang State Administrative Court Panel of Judges with Decision Number: 33/G/2018/PTUN-SRG granted the plaintiff's claim in its entirety, namely canceling the certificate of ownership of land with number 3594/Desa Cipayung, 3595/Desa Cipayung, 3596/Desa Cipayung which was very detrimental to Defendant II Intervention (PT. Bank BRI) but the South Tangerang City Land Office did not receive any sanctions.

The disputed object certificate originating from the splitting and transfer of the certificate in the name of Muhammad Elief with the number Certificate of Property Rights Number: 3082/ Cipayung Village to be in the name of Qalam Teddy Filianda does not contain information regarding evidence of land acquisition and the origin of the land. In this case the National Land Agency (Plaintiff) is also unable to show and attach the warkah of the three disputed object certificates. This is contrary to Article 24 and Article 25 of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as the Law on Land Registration). Land

registration requires proof of old rights and this is confirmed in Article 24 paragraph (1) of the Law on Land Registration, namely:

For the purposes of registration of rights, land rights originating from the conversion of old rights are proven by means of evidence regarding the existence of said rights in the form of written evidence, witness statements and or statements concerned, the degree of truth of which is determined by the Adjudication Committee in land registration in person. systematically or by the Head of the Land Office in sporadic land registration, it is deemed sufficient to register the rights, the rights holders and the rights of other parties burdening them.

Double certificates are one result of having two ownership rights to the same land, this is confirmed in Article 107 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling Land Rights and Management Rights. In general, there are 3 (three) reasons behind the overlapping ownership of land certificates, namely:

1. Mistakes in terms of understanding, recognizing and applying the position in the case of the issuance of multiple certificates;
2. The occurrence of neglect and giving rise to mismanagement of the transfer of ownership rights to land by the national land agency;
3. The land administration system is not good and has not been able to prevent the issuance of multiple certificates.

A certificate of land ownership is stated as maladministration if it contains errors as follows:

- a. Procedural errors;
- b. Misapplication of laws and regulations;
- c. Right subject error;
- d. Right object error;
- e. Wrong type of right;
- f. Widespread miscalculation;
- g. There are overlapping land rights;
- h. Juridical data and physical data are incorrect; or
- i. Other errors of an administrative nature .

Land title certificates that contain maladministration can be requested for cancellation. In Article 106 paragraph (1) of the Regulation of the Minister of

Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 it is emphasized that: "A decision to cancel land rights due to defects in administrative law in its issuance, can be appealed for annulment due to requests from interested parties or officials in authority without any application."

Cancellation of land rights is also regulated in Article 104 paragraph (2) of the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 1999 The decision to cancel land rights is issued if there are:

1. Administrative defects;
2. Carry out court decisions that have permanent legal force.

The issuance of the certificate of ownership rights to this land is administratively flawed based on Article 107 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling Land Rights and Management Rights namely the Head of the Office of the South Tangerang City National Land Agency (defendant) does not carry out research on juridical data as appropriate so that overlapping land rights occur. And the Head of the Office of the South Tangerang City National Land Agency (defendant) should not have further processed the application for registration of rights on the disputed object certificate because he already knew that the location of the land for which the application was submitted had another certificate of ownership with number: 344/Cipayung issued on May 20, 1983 in the name of the first rights holder Supardi Bin Sandinama and based on the deed of sale and purchase dated April 19, 1983 the rights were transferred to Afifi Ahmad Taudjidi. The defendant should not have continued processing the application for land rights but instead summoned the interested parties regarding the alleged overlapping of land title certificates.

The problem of canceling land ownership certificates due to overlapping which is detrimental to the creditor (PT.Bank Rakyat Indonesia) as a party with good intentions stems from the carelessness and inaccuracy of the South Tangerang City National Land Agency (defendant) in carrying out physical and juridical data checks and violations crime in terms of making physical and juridical data. The researcher considered that if the defendant had examined juridical data and physical data by taking

into account the principles of good public administration, this case would not have been possible. Issuance of the disputed object certificate is contrary to the General Principles of Good Governance as emphasized in Article 10 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, namely:

1. Principle of Legal Certainty

In this case the Head of the Land Office for the City of Tangerang Selatan was negligent and created legal uncertainty by issuing a disputed object certificate, even though in the same location there was a certificate of ownership in the name of Afifi Ahmad Tadjidi. This case cannot occur if the Head of the South Tangerang City Land Office investigates the land history and juridical data of land parcels properly and carefully.

2. The principle of impartiality

The principle of impartiality should be implemented by the Head of the South Tangerang City Land Office by considering and examining all facts, data, and the interests of all parties as a whole without discrimination before issuing the disputed object certificate.

3. The principle of accuracy

The Head of the South Tangerang City Land Office does not pay attention to this principle of accuracy. The issuance of the object of dispute should be based on valid information and data to support the legality of the determination so that the decision in question is prepared carefully before the decision and/or action is enacted.

Afifi Amad Taudjidi (Plaintiff) is the legal owner of a land area of 500 square meters (five hundred square meters) with title certificate number: 344/Desa Cipayung. The author considers that in the issuance of the certificate of ownership with the certificate number of the title with the number: 3082/Desa Cipayung in the name of Muhammad Elief there have been criminal and civil violations. Where in the trial process, it was proven that the Head of the South Tangerang City Land Office (defendant) was unable to indicate the origin of this land and did not attach the notes of the three disputed object certificates. The next negligence was the research and examination of juridical data and physical data which was not carried out properly so

that the defendant did not know that the location of the land parcel for which the application was submitted had a certificate of ownership that burdened him.

An indicator of an act is said to be against the law if someone commits an act that is contrary to legal obligations, causing harm to other people. An unlawful act is also interpreted as an act that is contrary to written or unwritten regulations. So in this case, the defendant was not careful and not thorough in examining physical data and juridical data. This negligence can be subject to witnesses regulated in Article 1365 and Article 1366 of the Civil Code, namely:

Article 1365: "Every act that violates the law, which causes harm to another person, requires that loss, compensates for the loss."

Article 1366: "Every person is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness."

The elements of an unlawful act (*onrechtmatigedaad*) based on articles 1365 and 1366 of the Civil Code, include making something or not making something (neglecting something) which:

1. Violating the rights of others;
2. Contrary to the legal obligations (*rechtsplicht*) of those who commit the act;
3. Contrary to the norms that develop in society.

The criminal offense in this land law is providing false data on the production of physical data and juridical data related to the existence of land carried out by the National Land Agency, village heads and people applying for rights. Therefore, there has been a violation of the provisions of the articles in the Criminal Code (KUHP), namely:

Article 423 jo. Article 424 of the Criminal Code: "Civil servants who with the intention of benefiting themselves or others, unlawfully, by abusing their power, force others, to surrender something, make a payment, make deductions from a payment, do a job for themselves, shall be punished with imprisonment for a maximum of 6 years".

Article 55 paragraph (1) of the Criminal Code regarding delneming

1. "Those who do, who order to do, and who participate in doing the deed";

2. "Those who give or promise something by abusing power or dignity, by violence, threats or misdirection, or by providing opportunities, means or information, deliberately encourage other people to take action."

Article 385 paragraph (1) of the Criminal Code concerning Fraudulent Acts: "Whoever with the intention of unlawfully benefiting himself or another person, sells, exchanges or encumbers with a credit verband a right over Indonesian land, a building, construction, planting or seeding, even though It is known that the one who has or shares the rights over it is another person.

From the sound of the three articles above, it can be concluded that an official who benefits himself along with other people who participate in the event of an official's negligence of duties and authority in the use of his power to carry out an event certain. Besides that, the lurah has a very important role in ensuring that there are no cross-disputes which are then corroborated by information from the sub-district head where the land is located . In this case, the authors assess the certificate of ownership over overlapping land is caused by several factors, namely:

1. The inaccuracy and carelessness of the South Tangerang City Land Office in carrying out inspections and preparing physical and juridical data;
2. The applicant's intention was not good in issuing the land title certificate number 3082/Desa Cipayang.

The discrepancy between the physical data and juridical data on the existing registers at the land office with the actual situation indicates negligence on the part of officials. In this case, the defendant should have also rejected the registration of the disputed object as this has also been regulated in Article 45 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration namely:

The Head of the Land Office refuses to register the transfer or encumbrance of rights, if one of the conditions below is not met:

- a. The certificate or statement regarding the condition of land rights is no longer in accordance with the existing registers at the Land Office;
- b. The legal act as referred to in Article 37 paragraph (1) is not proven by a PPAT deed or a quote from the auction minutes as referred to in Article 41, except in certain circumstances as referred to in Article 37 paragraph (2);
- c. the documents required for the registration of the transfer or encumbrance of the rights in question are incomplete;
- d. The other conditions specified in the relevant laws and regulations are not met;
- e. The land in question is the object of a dispute in court;
- f. Legal action as evidenced by the null and void PPAT deed or canceled by a court decision that has permanent legal force; or
- g. The legal action referred to in Article 37 paragraph (1) is canceled by the parties before being registered by the Land Office.”

In this case, the defendant should have paid close attention to the wording of Article 45 paragraph (1) letter a and then returned the application for the certificate of the disputed object on the grounds that the certificate of land rights was no longer in accordance with the existing registers at the South Tangerang City National Land Office. It was said that it was no longer suitable because at the same location a land ownership certificate in the name of Afifi had been issued and there was no document on the transfer of rights from Afifi to Muhammad Elief and the land registration application document was also incomplete.

CONCLUSION

Based on the research and discussion that has been described, the authors draw the following conclusions:

1. Based on the Decision of the Serang State Administrative Court with decision number: 33/G/2018/PTUN-SRG which canceled the certificate of ownership of land that was being burdened with mortgage rights, in this case the bank lost 2 (two) things attached to it, namely the loss privileges as a preferred creditor and also lose the guarantee of repayment of debt protection against the

bank. Protection for banks whose collateral objects have been canceled and loans with bad credit status can be carried out by efforts to save credit in the form of credit restructuring. For debtors who no longer have good faith and there are claims from other parties who are entitled to the collateral object, banks can refer to Article 1131 of the Civil Code regarding general guarantees. The method of settlement that can be carried out by the creditor in the event of cancellation of the certificate of ownership of land encumbered with mortgage rights can be in the form of non-litigation and litigation. Banks can take non-litigation efforts first to protect their interests by conducting deliberations and consensus regarding the replacement collateral object in the form of a new material guarantee of the same value or it can be in the form of a borgtoch guarantee to reflect the debtor's good faith in fulfilling his achievements in accordance with the provisions of Article 1338. paragraph (3) of the Civil Code which emphasizes not being good. The litigation route should be carried out if the debtor who no longer has the good faith to fulfill his obligations, the bank can file a lawsuit with the district court. The lawsuit filed by the creditor should also be in the form of a lawsuit to cancel the credit agreement and also an additional lawsuit (assessor) in the form of confiscation.

2. The application of the principle of accuracy that should have been carried out by the National Land Agency for the City of South Tangerang to prevent overlapping certificates of ownership rights on land encumbered with mortgage rights is to refuse and not process further the application for land ownership certificates made by Muhammad Elief issued on dated August 5, 2014 with reasons for refusal in the form of unclear proof of land acquisition and the origin of the land suggest what and at the same location, if a plotting check is carried out, there should also have been a certificate of ownership right against it, namely in the name of Afifi Ahmad Taudjidi, which was issued on May 20, 1983. The issuance of this certificate of property rights also involved civil and criminal violations. The civil violation committed by the Head of the Land Office for the City of South Tangerang was in the form of an unlawful act as emphasized in Article 1365 and Article 1366 of the Civil Code in terms of carelessness and inaccuracy in examining physical and juridical data. The criminal offense is in the form of providing false data when preparing physical data

and juridical data regarding the existence of land by the National Land Agency, village heads and people applying for rights as regulated in Article 423 jo. Article 424 of the Criminal Code, Article 55 paragraph (1) of the Criminal Code, Article 385 paragraph (1) of the Criminal Code.

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