

Legal Consequences of Execution of Land on Which There is a Building of Another Person Based on a Review of the Mortgage Rights Provisions

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Abstract

This study discusses the legal consequences of executing land on which there are buildings owned by other parties, with a focus on the provisions of mortgage rights in Indonesian law. This study explores how land that is mortgaged by the building owner can give rise to complex legal implications, including the issue of priority of rights and protection for building owners who do not have land rights. Moreover, it identifies the obstacles faced in implementing land execution, such as conflicts between land owners and building owners and the lack of clear regulations regarding this situation. This study also suggests efforts that can be made to overcome these problems, such as negotiation and mediation, to reach a fair agreement between the parties involved. Through an in-depth analysis of the related legal issues, this study aims to provide a better understanding of the challenges and solutions in implementing mortgage rights amidst diverse interests.

Keyword: legal consequences, land execution, mortgage rights, buildings owned by other parties, negotiation

INTRODUCTION

According to the provisions of Article 1 point 1 of Law Number 4 of 1996 concerning Mortgage Rights on Land, "Mortgage Rights on land and objects related to land, hereinafter referred to as Mortgage Rights, are a form of collateral imposed on land rights as regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (Sitompul et al., 2022). This Mortgage Right may or may not include other objects that are part of the land. This right is used to guarantee the repayment of certain debts, and to give certain creditors a more preferred position compared to other creditors" (Tampubolon, 2021). Based on this understanding, mortgage rights are collateral for debt repayment, which gives priority rights to creditors. The object of the collateral is Land Rights as regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles. Mortgage Rights as a solid land guarantee institution that is able to provide legal certainty for all parties involved, have several prominent characteristics (Budiartha & Setiasa, 2023).

Mortgage Rights grant certain creditors the right to take action on the Mortgage Rights that are used as collateral. However, these rights do not include physical control or use of the land but rather authorize the creditor to sell the collateral object if the debtor defaults. The proceeds of the sale are then used, either in whole or in part, to pay off the debtor's debt to the creditor. Since the enactment of the Mortgage Rights Law on April 9, 1996, all land used as credit collateral after that date must comply with the provisions stipulated in the Mortgage Rights Law (Renee, 2021). It can be concluded that a mortgage is a guarantee on land to pay off a certain debt, which gives certain creditors priority rights or a higher position than other creditors in terms of debt repayment. Regarding the subject of the mortgage, it is regulated in Article 8 and Article 9 of the Mortgage Law. From these provisions, it can be concluded that the legal subjects in the imposition of mortgage rights consist of the grantor and holder of the

mortgage. The grantor is an individual or legal entity that has the authority to take legal action on the object of the mortgage. The holder is also an individual or legal entity that is positioned as a party that has a debt. In practice, the grantor of the mortgage is usually called the debtor, namely the party that is in debt, while the holder of the Mortgage is called the creditor, namely the party that has the receivable. Based on Article 4 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects related to land, it states that the Object of the Mortgage Right is: 1) Ownership rights, 2) Cultivation rights, 3) Building rights, 4) Usage rights over state land, which according to applicable provisions must be registered and according to their nature can be transferred, can also be burdened with mortgage rights (Imanda, 2020).

In addition to the mortgage right, there are characteristics of mortgage rights are providing a special position or priority rights to the holder (certain creditors) compared to other creditors (F. M. K. Putra, 2013). Based on the definition of Mortgage Rights, it is known that Mortgage Rights give priority to creditors over other creditors (Sagala, 2015). The concept of "preferred position for certain creditors compared to other creditors" is explained in General Explanation Number 4 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. It is explained that if the debtor defaults, the holder of the Mortgage Right has the right to sell the land used as collateral through a public auction in accordance with applicable laws and regulations, with priority rights compared to other creditors. This principle is known in law as *droit de preference* (Tambunan & Winanti, 2024).

Law Number 4 of 1996 also states that Mortgage Rights continue to follow their objects in the hands of anyone who holds the object. This means that the Mortgage Right will not end even if the object of the Mortgage Right is transferred to another party, either through sale or other transfer. This principle is called *droit de suite*, which provides certainty to the creditor that he still has the right to receive payment from the proceeds of the sale of the collateral object, even though the land or land rights have been transferred to a third party. Mortgage Rights fulfill the principles of specialty and publicity, which aim to bind third parties and provide legal certainty for interested parties. The principle of specialty is realized through the creation of a Deed of Grant of Mortgage Rights (APHT) by the Land Deed Making Officer (PPAT). Meanwhile, the principle of publicity is implemented through the registration of Mortgage Rights at the Land Office, which is an absolute requirement for the birth of Mortgage Rights and binds them to third parties. Another advantage of Mortgage Rights is that their execution is easy and certain. If the debtor defaults, the creditor does not need to take the usual civil lawsuit which is time-consuming and expensive. Mortgage Rights holders are given a special execution mechanism regulated in Article 20 of Law Number 4 of 1996 so that the execution process can be carried out more efficiently. According to Arie S. Hutagalung, these characteristics are designed to provide protection to the banking sector, which has the largest portion of the credit, so that they can channel funds safely. This is expected to create a healthy and conducive economic climate (Karjoko, 2019).

As part of the guarantee system, Law Number 4 of 1996 stipulates that Mortgage Rights continue to follow their objects, regardless of who controls the object. This principle, known as *droit de suite*, provides assurance to creditors that they still have the right to receive payment from the proceeds of the sale of the collateral object, even though the land or land rights have been transferred to a third party. In addition, Mortgage Rights fulfill the principles of specialization and publicity, which aim to bind third parties and provide legal certainty to all parties involved (Taufano & Silalahi, 2024). The principle of specialization is realized through the creation of a Mortgage Rights Grant Deed (APHT) by the Land Deed Making Officer (PPAT), while the principle of publicity is implemented through the registration of Mortgage Rights at the Land Office, which is an absolute requirement for the birth of Mortgage Rights and binding them to third parties.

Mortgage rights are often used as collateral in providing credit because land as the object has a high economic value and tends to increase over time. The granting of mortgage rights is carried out through two processes, namely the granting of mortgage rights and registration of mortgage rights. The first process is the granting of mortgage rights, which can only be implemented after a credit agreement, which is the main agreement between the creditor and the debtor. Based on Article 10 paragraph (2) and Article 11 of Law Number 4 of 1996 concerning Mortgage Rights and Objects Related to Land (hereinafter referred to as UUHT), the Land Deed Official (PPAT) is required to prepare a Deed of Granting of Mortgage Rights (APHT). APHT plays an important role because it regulates the terms and conditions for granting mortgage rights related to the guarantee of the debtor's debt. APHT must also include special requirements in accordance with Article 11 paragraph (1) of UUHT, namely the identity of the grantor and holder of mortgage rights, the domicile of the grantor and holder of mortgage rights, the determination of the guaranteed debt, the value of the mortgage, and an explanation of the object of the mortgage right. The second process is the registration of mortgage rights by the local Land Office, which includes registration of the APHT that has been signed by the parties (Silviana, 2020). The PPAT is obliged to send the APHT along with other necessary documents to the Land Office. Furthermore, the Land Office will create a mortgage land book, record it in the land book of land rights, and issue a copy of the record on the land rights certificate. The mortgage right will be considered valid after being recorded in the mortgage land book. The Land Office then issues mortgage certificate as final evidence showing the mortgage right in accordance with the provisions stipulated in Article 13 and Article 14 of the UUHT (Kurnianda, 2020; Pangesti & Sahetapy, 2023).

However, in many cases, mortgage certificates only list land data without explaining in detail the buildings or other objects on the land. This can cause confusion about what is actually the object of the guarantee. If there is a default, this ambiguity can result in a dispute between creditors, debtors, and third parties who may claim rights to the building. Article 11 Paragraph (1) letter e of Law Number 4 of 1996 concerning Mortgage Rights (UUHT) stipulates the obligation for parties involved in granting mortgage rights to clearly detail the object of the mortgage right. This provision includes complete identification and description of the object of the mortgage right, whether in the form of land or buildings on it. The ambiguity in the details of the object of the mortgage right is often a source of dispute between creditors, debtors, and third parties. Without adequate details, claims may arise from third parties over buildings or objects that are not mentioned in the mortgage certificate. Thus, compliance with the provisions of Article 11 paragraph (1) letter e of the UUHT is expected to prevent legal conflicts that can lead to long and expensive litigation.

The provisions of Article 11 paragraph (1) letter e of Law Number 4 of 1996 concerning Mortgage Rights (UUHT) state that in the mortgage rights agreement, the object of the mortgage rights must be clearly detailed. Ambiguity in the details of this object can trigger legal disputes, especially when there are third-party buildings on the land being executed. In this case, the mortgage right is the right given to the creditor to control and sell collateral, such as land or buildings, in an effort to ensure the fulfillment of the debtor's obligations. However, legal problems can arise when the land being pledged has buildings belonging to other people, because this raises questions about the priority of rights. In this situation, the conflict between the landowner, who has the mortgage rights, and the building owner who may not have a direct connection to the debtor's debt can cause legal confusion. The absence of clear provisions regarding the protection of the rights of each party can create a legal vacuum that affects the implementation of execution and justice for all parties involved. Based on the explanation above, the question that will be discussed in this study is how to determine the priority of rights between the owner of the land that is guaranteed and the owner of the building built on it and the implementation of the execution of the mortgage rights with the presence of buildings

owned by other parties. Then, the obstacles and efforts in implementing land execution with the presence of buildings owned by other parties.

RESEARCH METHOD

In this study, the research method of the statute approach, or statute approach or can also be called normative legal research is a process to find a legal rule, legal principles, or legal doctrines in order to answer legal issues regarding statutory provisions related to the priority of rights between the owner of the land that is guaranteed and the owner of the building built on it and the implementation of the execution of mortgage rights with the presence of buildings owned by other parties. Then the obstacles and efforts in the implementation of land execution with the presence of buildings owned by other parties (Kurniawan, 2018). The case approach, namely the approach taken to analyze and examine used as a guideline for legal problems regarding obstacles and efforts in the implementation of land execution with the presence of buildings owned by other parties. Then, the conceptual approach is the approach taken based on the views and patterns of doctrine or thoughts of experts that have developed in legal science. The various approaches and legal research presented will answer how the implementation of land execution can take place with the presence of buildings owned by other parties and the obstacles in the implementation of land execution with the presence of buildings owned by other parties.

RESULT AND DISCUSSION

Legal Consequences of Land Guaranteed by the Owner of the Building on It and the Implementation of the Execution of Mortgage Rights with the Presence of Buildings Owned by Other Parties

According to Article 1 number 11 of Law Number 10 of 1998, which is an amendment to Law Number 7 of 1997 concerning Banking, credit is defined as the provision of money or similar claims based on a loan agreement between a bank and another party. This agreement requires the borrower to repay his debt within a certain period of time, with the obligation to pay interest. The essential element of credit is trust, which means the belief of the bank as a creditor that the credit given will actually be returned within the agreed period of time. This element is seen from the belief of the creditor that the performance given, either in the form of money or services, will actually be received back within a certain period of time in the future. Refers to the period that separates the provision of performance and counter-performance that will be received in the future. This time element contains the understanding of the premium value of money, where the money that exists now has a higher value compared to the money that will be received in the future. The level of risk that will be faced due to the time period that separates the provision of performance and counter-performance that will be received in the future. The longer the credit is given, the higher the risk level because the borrower's ability to fulfill his obligations will decrease over time (W. Putra & Widjaja, 2018).

When a bank provides credit to a debtor, the debtor often provides collateral as a form of protection for the creditor, which in many cases is a mortgage on a property. This mortgage serves as a guarantee that if the debtor fails to fulfill his obligations, the creditor has the right to execute the collateral to recover the funds lent. In this context, the relationship between credit and mortgage becomes important because it guarantees trust between the bank as a creditor and the debtor. However, when the collateral provided is land on which there is a building owned by someone else, legal complexity begins to arise, considering that there is more than one party who has an interest in the property. The uncertainty about how the execution of the mortgage will be carried out without harming other parties creates additional challenges in the debt collection process, and this is where the issue of priority rights becomes very relevant.

Priority Rights are an important issue in the context of mortgage rights, especially when it concerns land on which there is a building owned by someone else. In the Indonesian legal system, the principle that land and buildings are one unit is often the basis for determining ownership rights. However, the situation where the building stands on land that is not owned by the building owner raises confusion about which rights should be prioritized when execution is carried out. This can lead to legal uncertainty that can trigger disputes between interested parties. In the implementation of mortgage execution, the owner of the secured land often has the right to claim the proceeds of execution, but this situation becomes complicated if there is a building owned by a third party. The building owner, although not having land rights, may have invested heavily in the construction and maintenance of the building. In this case, their right to protect their investment may conflict with the rights of the land owner who wants to enforce their mortgage. The ambiguity regarding how the priority of these rights is determined can lead to prolonged legal disputes in court.

When these disputes arise, judges usually have to consider several factors, including whether the building was built with a permit, whether there is an agreement between the landowner and the building owner, and how much investment the building owner has made. In some cases, the judge may decide to prioritize the building owner's rights, especially if the building is a source of livelihood or has significant economic value. However, such a decision can set a complicated precedent, given that it can ignore the landowner's legitimate rights to the land being pledged. The issue of priority of rights also relates to the burden of proof in a dispute. Who must prove their rights? In many cases, the burden of proof often falls on the building owner, who must show that they have a legitimate right to build on the land. However, if there is no agreement or clear evidence, this can complicate their position and make them vulnerable to adverse decisions. Regarding the execution of mortgage rights used as credit collateral, there are several opinions from experts regarding this execution. According to Ridwan Syahrani, the execution or implementation of a court decision is the realization of the obligation of the losing party to fulfill the rights of the winning party, as stated in the court decision. Mertokusumo emphasized that the implementation of a judge's decision, or execution, is the realization of the obligation of the related party to fulfill the performance regulated in the decision. Harahap stated that execution is a legal action taken by the court against the losing party in a case. Execution is a continuation of the case examination process and cannot be separated from the entire legal process in a civil context. Thus, execution is an integral part of the implementation of the rules of procedure regulated in the HIR or RBg. Soepomo explained that the law of execution regulates the methods and conditions used by state apparatus to assist interested parties in implementing the judge's decision, especially when the losing party is unwilling to fulfill the decision voluntarily and there are no special provisions in the law that regulate this matter (Rahmansyah, 2022).

The procedure for executing mortgage rights is that the Applicant submits his/her application to the Head of the District Court. After receiving the application, the Head of the District Court immediately instructs to summon the defaulting debtor to be given a warning. The debtor is given eight days to fulfill his/her obligations namely to pay off his/her debt voluntarily. If the debtor still does not fulfill his/her obligations, the creditor will report the situation to the Head of the District Court. The Head of the District Court will then issue an order for the mortgage object to be seized through an exceptional seizure carried out by the Clerk or his/her replacement official, assisted by two witnesses who meet the requirements by the provisions of the law. The Clerk or his/her replacement official who carries out the seizure is required to prepare a report regarding the seizure action and notify the intention of the seizure to the party whose goods are being seized if the party is present at that time. Regarding the execution application process, every execution must be carried out through a public auction, to obtain the highest price for the mortgage object. The creditor has the right to obtain payment

of the receivables guaranteed from the proceeds of the sale of the mortgage object. If the proceeds from the sale exceed the highest receivable, which is at least the value of the collateral, the remaining proceeds from the sale become the property of the person granting the mortgage.

Before the execution, the Head of the District Court will take several actions, namely a warning. This action is regulated in Article 196 HIR and Article 207 RBG. For court decisions or judge's decisions that can be executed, only civil decisions that are condemnatory (punishment) in nature provide rights, and even then, can only be carried out at the request of the winning party. Furthermore, the Clerk or Bailiff of the District Court will summon the losing party to appear before the Head of the District Court on the specified day and date, to be given a warning to be willing to comply with the contents of the decision within eight (8) days after the warning. If the time given is not complied with, an additional warning will be given one or two times. The execution process for the object of the mortgage requested by the Head of the District Court follows the same procedure. Furthermore, if the warning given is not heeded by the debtor, the Head of the District Court can order the Clerk or Secretary to carry out an execution seizure as regulated in Article 197 HIR and Article 208 RBG. The regulation states that if the specified time has passed and the decision has not been fulfilled, or if the losing party is not present even though they have been properly summoned, then the Head or authorized employee will issue an order by letter to seize immovable property. If there is no immovable property or the amount is insufficient, then the seizure action will be carried out on the goods.

The next process for mortgage rights is by auction. An auction is a form of sale of goods that is carried out openly to the public, either directly in front of the Auction Officer or through electronic media (internet), with a price offering method that can be done verbally or in writing, after first making an effort to gather interest from prospective buyers.

Related to court execution auctions, there are a number of requirements that must be met as a completeness in the application, including:

1. Determination from the Head of the District Court.
2. Aanmaning or warning.
3. Determination of seizure of the mortgage object.
4. Minutes of Seizure.
5. Details of debt.
6. Notification of the auction to the auction applicant.
7. Proof of ownership, namely a certificate.

Regarding the timing of the auction, once determined, the Chairman of the District Court as the auction applicant will make the first and second announcement of the auction within a period of 15 days. Thus, the second auction announcement must be made not less than 14 days before the auction. If after the second auction announcement, there is no repayment or settlement, the auction will still be held, and the winner is the highest bidder who exceeds the set limit.

Determining the timing of the auction is an important step in the process of executing assets pledged through mortgage rights. After the Chairman of the District Court as the auction applicant sets the time of the auction, he is obliged to announce the auction to the public. This announcement is done in two stages: the first auction announcement and the second auction announcement. This process aims to provide sufficient information to the public and potential buyers regarding the planned auction so that they have the opportunity to prepare and follow the auction process properly. The first and second auction announcements must be made within a period of 15 days, provided that the second announcement must be made not less than 14 days before the auction. This scheduling is important because it provides adequate time for prospective bidders to obtain complete information about the auction object, including the applicable terms and conditions. With a clear and timely announcement, it is expected that

there will be greater participation from prospective buyers, which in turn can increase competition in the auction and the potential for higher asset sales value. If after the second auction announcement, there is no repayment or debt settlement by the debtor, the auction process will still be carried out according to the predetermined schedule. In this case, the winner of the auction is the highest bidder who exceeds the predetermined limit. The decision to continue the auction even though there is no repayment is a step that reflects the principles of law and certainty in the execution of mortgage rights. In this way, creditors can recover the value of the pledged assets and continue the process of recovering receivables more efficiently. A transparent and well-scheduled auction process is an integral part of protecting the rights of all parties involved in the execution process, including debtors, creditors, and the general public.

Based on the procedure for the execution of mortgage rights used as credit collateral, several problems make the execution not run smoothly. Inconsistencies in the Mortgage Rights Certificate often occur, especially about the details of the pledged object. Many mortgage certificates only list the land certificate number, area, and boundaries of the land, without providing detailed information about buildings or other objects on the land. This practice is contrary to the provisions of Article 11 paragraph (1) letter e of Law Number 4 Year 1996 on Mortgage Rights (UUHT), which requires that the object of the mortgage right be detailed. This provision is made to provide legal certainty for the parties involved, both creditors and debtors and also to prevent disputes arising with third parties. Lack of clarity in the details of the object of the mortgage can pose significant legal risks. For example, if the building on the pledged land is owned by a third party that is not involved in the mortgage agreement, problems may arise when the creditor wants to execute the collateral. In such a case, the third party may claim ownership of the building, and the building cannot be executed together with the land. This will result in obstacles in the process of repaying the debtor's debt because execution can only be carried out against the land, while buildings that may have high value are not sold.

Obstacles and Efforts in the Implementation of Land Execution with the Existence of Buildings Owned by Other Parties

The execution of land on which there are buildings belonging to other parties often faces various obstacles that can complicate or even hinder the execution process. The unclear status of ownership is one of the main obstacles in the execution of land on which there are buildings belonging to other parties. When a building is not listed or not detailed in the certificate of mortgage rights, this creates a legal loophole that can be utilized by third parties who claim rights to the building. In a legal context, a mortgage certificate should cover all objects of collateral, including buildings that stand on the land. However, if these details are ignored, there will be uncertainty regarding the ownership and rights associated with the building. This uncertainty not only creates potential disputes between creditors and third parties but can also result in an inefficient execution process. An aggrieved third party may file a lawsuit or objection to the court, seeking legal protection to defend its rights to the building. This will add to the legal burden for the creditor, who will have to face a litigation process that may be lengthy and costly. During this time, execution against the land cannot proceed, resulting in delays in the recovery of secured receivables. Furthermore, the unclear ownership status of the building may also impact the economic value of the security object. If the building is recognized as belonging to a third party and cannot be executed, the value of the land may be significantly reduced. Creditors may not be able to obtain the optimal value from the sale of the land to the detriment of their financial position. Therefore, all parties involved in the mortgage agreement need to ensure that all objects of collateral, both land and buildings, are clearly and accurately recorded in the mortgage certificate.

Having a building located on the land being used as collateral can add complexity and challenges to the execution of the mortgage. When third parties feel that they have rights to

buildings that are not detailed in the mortgage certificate, they have the right to file legal claims to defend their ownership. In a legal context, this often involves filing a lawsuit with the court to seek protection of their rights, which could include an application to prevent execution against the land. The legal process that these third parties must go through is often lengthy. Third parties will undergo a series of legal procedures that may include proving ownership, filing documents, and possibly a trial. During this process, the creditor seeking to execute the mortgage cannot proceed with the execution of the secured land. This delay can result in financial losses for the creditor, especially if they are hoping to recover their receivables soon. Additional costs are also an important issue in this situation. Creditors may need to incur legal costs to deal with a lawsuit filed by a third party. This could include lawyer fees, court fees, as well as potential costs for further investigation into the ownership status of the building. All of these costs, besides draining the creditor's financial resources, can also disrupt their business plans and cash flow.

Executing land that has buildings owned by other parties, becomes one of the main challenges for creditors who want to enforce their mortgage rights. When the building is not registered or not detailed in the mortgage certificate, the execution process becomes more complicated because the court must consider several different legal aspects. This is different from a simpler execution where the object is only land with clear ownership status. One of the complicated legal steps is the need for confiscation involving not only the land but also the buildings on it. In this situation, the court is expected to ensure that all interested parties, including third parties claiming rights to the building, are allowed to present their arguments. This can involve additional legal procedures, such as hearings or mediation, to reach an agreement or a fair decision. The court may also require additional evidence to evaluate the situation more deeply. This can include documents proving ownership of the building by a third party, as well as evidence regarding whether the building is separate from the land or not. Collecting this evidence is of course time-consuming and can add to the complexity of the execution process. In some cases, the court may even seek an expert appraisal to gain a more objective view of the value and status of the property, further extending the duration of the enforcement process. During this phase, creditors may face significant uncertainty regarding the outcome of the enforcement they are seeking. The costs associated with additional legal procedures, including attorney fees and court costs, can add up quickly, creating a greater financial burden. In addition, uncertainty about the timing of the process can affect creditors' business plans, especially if they rely on the recovery of receivables for their continued operations.

Compliance with the law is a crucial aspect in every stage of the execution process. This process does not only involve physical actions to reclaim the collateralized assets but also requires strict adherence to applicable legal procedures. One of the main components of this compliance is the implementation of proper administrative procedures. This includes filing an execution application with the court, submitting the necessary documents, and fulfilling other legal requirements by applicable provisions. The success of the execution largely depends on whether all procedures are followed properly. If the creditor or authorized party does not comply with the requirements or procedures specified in the law, this can lead to suspension or even cancellation of the execution. For example, if there is no adequate notification to the debtor or other interested parties, they can file a lawsuit challenging the validity of the execution. In this case, failure to comply with administrative procedures can provide a strong argument for the aggrieved party to defend their rights in court. In addition, compliance with the law also includes the obligation to provide appropriate notification to all parties involved. This notification aims to provide the debtor and third parties with an opportunity to respond or defend their rights before the execution is carried out. Failure to properly submit this notification may give rise to allegations of procedural violations, which in turn may affect the

legitimacy of the execution. Therefore, creditors need to ensure that all parties receive clear and timely information regarding the execution plan.

Seizure of assets through execution of mortgage rights is a legal process that carries various risks, especially when the execution is carried out without clear legal certainty regarding the status of the building standing on the seized land. One of the most significant risks is that the seizure may be deemed invalid by the court. In this context, the ambiguity regarding the ownership and rights to the building can create a legal loophole that benefits third parties who feel they have a claim to the property. If a building is not listed or is not properly detailed in the mortgage certificate, third parties can file a lawsuit to cancel the execution, asserting that their rights are stronger or more legitimate than those of the creditor.

If the seizure is deemed invalid, the creditor will not only face the risk of losing the right to enforce the secured assets but may also be involved in a lengthy and expensive litigation process. Counterclaims filed by third parties can result in significant and time-consuming legal costs, which in turn can be detrimental to the creditor's financial position. In addition, this process can cause delays in the recovery of secured receivables, which are critical to the creditor's continued operations, especially if they are dependent on such recovery to meet financial obligations. Furthermore, the risk of an invalid seizure can have an impact on the creditor's reputation. Being involved in a protracted legal dispute can create a negative perception of the market, which can affect relationships with creditors, investors, and other business partners. The potential financial and reputational losses faced by creditors due to an invalid seizure demonstrate the importance of conducting due diligence before executing. Therefore, creditors need to ensure that all collateral objects, including buildings standing on the land, are recorded and by applicable laws. In doing so, they can minimize the legal and financial risks associated with executing the mortgage. Negotiation and mediation are important initial steps before executing land, especially when there are buildings owned by other parties. This process aims to reach a mutually beneficial agreement between the landowner and the building owner, thereby reducing the potential for conflict that may arise during execution. In many cases, the building owner may have invested time, energy, and resources in building and maintaining the property. Therefore, a sensitive and constructive negotiation approach is essential to building good communication between the two parties.

Through mediation, a neutral third party can act as a facilitator to help the landowner and building owner formulate an acceptable solution. The mediator can help identify the interests and needs of each party, making it possible to find common ground. For example, the landowner may be willing to provide compensation to the building owner to move his building or find an alternative solution that can accommodate the interests of both parties. This process not only helps to ease tensions but also creates a better relationship between the parties in the future. Negotiation and mediation also have significant advantages in terms of time and cost efficiency. The litigation process in court is often time-consuming and expensive. By resolving issues through negotiation or mediation, both parties can avoid complicated legal procedures and expedite the resolution of the dispute. In addition, the results achieved through mediation tend to be more satisfactory for both parties because they are actively involved in the decision-making process and can determine the solution that best suits their situation.

CONCLUSION

Regarding the ambiguity in the mortgage certificate and its impact on the execution of credit guarantees, it shows compliance with legal provisions, especially in detailing the collateral object. It is very important to prevent disputes and protect the rights of all parties involved. The cases involving Bank Danamon and PT Bank Negara Indonesia (Persero) Tbk show that incomplete information regarding buildings on the collateralized land can provide an opportunity for third parties to claim their rights, which ultimately harms the creditor. Both court decisions emphasize that the mortgage certificate must include all elements related to the

collateral object in detail. Otherwise, legal uncertainty can occur which not only hinders the execution process but also has the potential to cause prolonged disputes. In addition, the court emphasized the importance of clarity and accuracy in preparing legal documents as a preventive measure against future conflicts.

The process of executing land that has buildings owned by other parties is often faced with various challenges that can hinder the smooth implementation of mortgage rights. One of the main problems is the unclear ownership status that arises when details regarding the building are not clearly stated in the mortgage certificate. This creates a legal loophole that can be exploited by third parties to claim rights to the building, potentially leading to disputes and delays in execution. In such a situation, creditors are faced with a lengthy and expensive litigation process, which can slow down the recovery of receivables and negatively impact the economic value of the collateral object. Uncertainty regarding the ownership of the building can reduce the value of the land used as collateral, thereby harming the creditor's financial position. In addition, compliance with legal and administrative procedures is essential to ensure smooth execution. Failure to comply in this regard can result in suspension or cancellation of execution, which will increase the financial burden and disrupt the creditor's business plan. Therefore, all parties involved in the mortgage agreement need to ensure that all collateral objects are clearly and accurately recorded in the mortgage certificate. This not only provides legal certainty for creditors but also prevents potential disputes in the future. Careful management and compliance with applicable legal provisions are key to avoiding complications in the execution process, thereby increasing efficiency and effectiveness in the recovery of secured receivables.

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