

The Blockage Of Freehold Title That Encumbered By The Mortgage Rights At The Land Registry Office Padang

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Abstract: *The Mortgage Rights are identical to Security Rights, which is encumbered over the Freehold Land, places the secured creditor in a position of priority (Preferent) as against other creditors. On the Article 6 UUHT declared, if the debtors breach of contract, the first Mortgage holder the rights to sell The Mortgage object on its own power through a public tender and making repayments of the debt from that sales. The problem is, the Freehold Title that has been burdened by that Mortgage Rights can be blocked by the third party at the Land Registry Office Padang. On the Article 3 Permen ATR/BPN No. 13/2017 explain that the recording of the blockage is carried out on rights over land due to legal actions or legal events, or because of land disputes or conflicts. Someone can submit the recording of the blockage to the local Land Registry Office to be able to block the land which is their rights, where the nature of the block itself is not permanent. Based on the jurisprudence of the decision of the Supreme Court of the Republic of Indonesia No. 349K/Pdt/1984 on the date 31-5-1985 stated that the goods that have been pledged as collateral for debt cannot be blocked or subject to confiscation.*

Key Words: *Blockage, Certificate, Freehold Title, Mortgage Rights, Legal Force.*

1. INTRODUCTION:

Soil is an important part of human life. The land is used for farming, livestock and housing. Along with these interests, conflicts or disputes over land are sometimes unavoidable. In fact, it can lead to legal actions or legal events occur. Legal actions or the occurrence of legal events are not only concerning the land object, but also concerning the basis of the rights of the land object, namely the certificate.

Problems related to land are land certificates which can be a source of disputes and disputes.

Individuals, legal entities or law enforcers can apply for a block to a certificate of Ownership that is bound by Mortgage Rights where the reason for the request for registration of the block is clear and has a legal relationship with the land requested for blocking.

The execution of the mortgage guarantee is the last step taken by the bank as the recipient of the mortgage if the debtor as the provider of the mortgage is in default (default).

2. THEORITICAL FRAMEWORK:

a. Theory of Legal Certainty

According to Utrecht, legal certainty has two meanings, firstly rules are general so that individuals know what can or cannot be done, second in terms of legal protection for each individual from the nature of arbitrary government to know what can and cannot be done by the state to every individual.[1]

b. Theory of Authority

Philipus M. Hadjon's, said that every government action is required to be based on legitimate authority. [2]

3. LITERATURE REVIEW:

Mortgage Rights are Guarantee Rights that are imposed on land rights as referred to in the Basic Agrarian Law, including or not including other objects that are an integral part of the land for the settlement of certain debts, which give priority to creditors over creditors. other creditors.

Blocking according to the provisions of Article 1 Permen ATR/BPN No. 13 of 2017 is a note that blocking is an administrative action of the Head of the Land Office or an appointed official to determine the *status quo* (freezing) of temporary land rights against legal actions and legal events on land. . The status quo is the state of things as they are now.

5. METHOD:

The method used in this study is an empirical juridical approach.

6. DISCUSSION:

Land in a juridical sense is the surface of the earth, land rights are rights to a certain part of the earth's surface, which are limited, two-dimensional in length and width.[3]

Legal actions or the occurrence of legal events are not only concerning the land object, but also concerning the basis of the rights of the land object, namely the certificate.

The reason for the recording and removal of the block is due to the existence of a relationship of interest between the blocker and the land owner or the interests of the land owner itself, namely the existence of problematic debt-receivable relationships, default, lost certificates, unfair inheritance distribution, forgery or other land disputes.

Block recording is the administrative action of the Head of the Land Office or an appointed official to determine the status quo (freezing) of temporary land rights against legal actions and legal events on the land. The status quo is a constant state as it is now.

A person can apply for a block registration to the local Land Office to be able to block the land which is their right where the nature of the block itself is not permanent. Individual parties who wish to apply for a block must have a legal relationship with the land certificate. The requirement to apply for a blocking application must be that there is a legal relationship between the applicant and the right to the land, so it is not just any party, and of course a letter with unclear origins or often called anonymous letters is not allowed for that, because the condition for the existence of a legal relationship is *imperative* or mandatory.

7. ANALYSIS:

A. The Process of Blocking Land Rights in the form of Property Rights Encumbered with Mortgage at the Land Office of Padang City

The guidelines for the blocking process prior to the issuance of Permen ATR/Head of BPN No.13 of 2017 were Minister of Agrarian Affairs/Head of the National Land Agency No.3 of 1997 or hereinafter known as Perkaban No.3 of 1997. In Perkaban No.3 of 2017 there is also no word terms of blocking, but changes to Land Registration Data based on a Decision or Determination Court as stated in Article 125 and Article 126.

B. The legal force of the certificate of ownership attached to the Mortgage Rights with the blocking

From the results of research at the Padang City Land Office, the Regulation of the Minister of ATR / Head of the State Defense Agency No. 13 of 2017 is a legal umbrella in acting related to Blocking and Confiscation Procedures. Based on the jurisprudence of the decision of the Supreme Court of the Republic of Indonesia No. 349 K/Pdt/1984 dated 31-5-1985 that goods that have been used as collateral for debt cannot be blocked or subject to confiscation. So it is clear that the Padang City Land Office cannot block certificates bound by Mortgage Rights. However, the fact that occurred in the field it was also found that the certificate of ownership that had been installed with Mortgage Right was blocked at the Land Office of the City of Padang, then the certificate that had been installed with Mortgage had legal force in accordance with the provisions of the Minister of ATR / Head of the State Defense Agency No. 13 of 2017 Article 1 paragraphs (1) and (2) of the certificate, the status quo is determined, namely the condition remains as it is now. This means that the legal force of the certificate remains valid, remains the strongest evidence, but legal actions or legal events cannot be carried out such as data maintenance, transfer of rights by PPAT deed, separation / division of fields, buying and selling and so on. This is the basis for the absence of legal certainty for the parties referring to the legal basis for the characteristics of Mortgage Rights Permen ATR / Head of the National Defense Agency No. 13 of 2017 concerning Procedures for Blocking and Confiscation namely *Droit de preferent*, *Droit de suite*, fulfills the principles of speciality and publicity and is easy and sure to execute. If the *debtor* breaks his promise.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The Land Office of Padang City has blocked the certificate of ownership that has been encumbered with Mortgage Rights, which is not in accordance with the jurisprudence of the Supreme Court of the Republic of

Indonesia No. 349 K/Pdt/1984 dated 31-5-1985 which states that goods that have been used as debt guarantees cannot be blocked or subject to confiscation. The Padang City Land Office is more selective in conducting assessments and analysis of the blocking applications submitted using the precautionary principle.

- As long as the Certificate of Ownership is encumbered with Mortgage Rights, it is blocked at the Land Office of Padang City, the certificate is determined as the status quo, namely the condition remains as it is now.

9. SUGGESTIONS

The suggestions given by researchers are as follows:

- According to the advice from the Padang City Land Office officials, to facilitate perceptions in the field regarding the application of Permen ATR/Head of BPN No. 13 of 2017 further Technical Guidelines (juknis) are needed to prevent the absence of multi-factor interpretations related to the period of recording blocking. An example of a problem is related to the problem with the blocking period of the certificate submitted for the registration of the block with the legal relationship in Article 5 paragraph (2) point (c) Permen ATR / Head of BPN No. 13 of 2017 concerning heirs or ownership of joint property in marriage, which in reality exceeds the regulation, pending the completion of the ownership rights.
- In order for the Padang City Land Office to be more selective in increasing prudence at work, the standard format for blocking requests that have been used must be corrected, namely Article 6 of Permen ATR / Head of BPN No. 13 of 2017 concerning requirements and Article 13 concerning time period delete block record.

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