



---

## **The Bank's Efforts Against Mortgage Cases Over Building Utilization Rights Which Period Ends Before Financing Is Due**

**Titik Aminah**

Law Study Program, Faculty of Law, University of Batam, Indonesia

e-mail: [titikaminah@univbatam.ac.id](mailto:titikaminah@univbatam.ac.id)

### **ABSTRACT**

This journal is entitled Bank Efforts Against Building Use Rights Cases That Expire Before Financing is Due with the construction of the problem: 1. How is the legal arrangement by banks regarding cases of mortgages on building use rights whose period ends before financing is due; and 2. What are the obstacles and solutions from the bank in cases of mortgages on building use rights that expire before the financing is due. This journal's qualification/type of writing uses normative legal writing supported by sociological/empirical legal research. To analyze some of the problems in this journal, the prominent theory of legal positivism theory introduced by Jeremy Bentham as the Grand Theory is used. 1 This theory explains the pros and cons of law, which must be measured through a paradigmatic approach in legal theory. From the pros and cons of the consequences of applying the law itself. 2 Bentham tries to put forward the leading theory in one of his masterpieces which is described and constructed in such a way from an application of the law. 3 The author also conducts an analysis based on the legal theory introduced by John Austin, which is in line with Jeremy Bentham, where John Austin emphasized that the law is interpreted as an order from the legislator or ruler (as a command of the lawgiver). 4 This means, according to the author, all government officials working in the law enforcement field), including investigators at the Indonesian National Police, must carry out orders attributively from legislators or authorities in the provisions of the legislation.

**Keywords:** Bank Efforts, Mortgage Rights, Building Use Rights, Maturity Financing

### **INTRODUCTION**

In the current era of globalization, the role of banking in advancing a country's economy is enormous. Almost all sectors related to various financial activities always need bank services. In order to move the wheels of the economy of a country, banking institutions are required to be able to realize the goals of national banking as contained in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking, five namely to support the implementation of national development in the context of increasing equity, economic growth, and national stability direction of increasing the welfare of the people.

An increase in the economy's pace will lead to the growth and development of businesses carried out by the community. Usually, business actors in developing their businesses always try to increase their business capital by making loans or direct credit with banks.

The importance of land for human survival because it is there that humans live, grow, and develop; even at the same time, it is a place where they are buried when they die.<sup>6</sup>

Boedi Harsono defines the Right to Build as the right to construct and own buildings on a state or other people's land for a limited period.<sup>7</sup>

The Mortgage Act defines "Mortgage over land and objects related to land," from now on referred to as "Mortgage," in Article 1 paragraph (1) of the Mortgage Act, as follows:<sup>8</sup> Mortgage rights are collateral rights 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 certain creditors over other creditors.

Because the building use rights that are used as collateral for mortgages has limited time, then, of course, they will cause legal problems.<sup>9</sup> Article 18 paragraph (1) letter d of the Mortgage Law states that the last mentioned basis for the abolition of the Mortgage is the abolition of land rights. The abolition of land rights can be interpreted as the physical land or plots that have been erased or the "rights" over the land.

## **RESEARCH RESULTS AND DISCUSSION**

### **Legal Arrangements by Banks for Mortgage Cases Over Building Utilization Rights Which Period Ends Before Financing is Due**

In the mortgage law, there is no provision on legal protection for Mortgage Holders whose object is land with the status of building Rights whose term ends before the credit is due. The possibility of the abolition of the Mortgage With the abolition of the right to the land on which it is encumbered raises problems and objections in practice, especially among creditors. Thus causing less legal certainty for mortgage institutions as an accessory agreement of a debt-debt agreement.

Sri Soedewi Masjchoen Sofwan pointed out that in such a case, there is no *zaaksgesvolg*, the right to use buildings whose term ends back to the state, while according to the agrarian Basic Law system, the state is not the owner of the land but controls the land. Furthermore, he argued that mortgages (read: Mortgage rights) that do not have a strong position, which do not have the nature of the material (can be defended against anyone), and do not have the nature of *droit de suite* (always follow the object) will no longer meet the needs of banking traffic, Capital traffic and credit modern and international. Especially in today's development era, where much credit is needed for development, domestic and foreign capital investment requires mortgage institutions (read: Mortgage rights) as collateral, and the efficacy of mortgage rights must be maintained or improved.<sup>19</sup>

As it is known that Mortgage Rights burden the "land rights," not "the land." As an immovable object, the land is not going anywhere, but land rights can be transferred or transferred or the term ends, such as Building Use Rights. With the expiry of the building use rights period, according to the law, the land rights are nullified, and thus burdensome rights such as mortgage rights are also deleted. The cancellation of Mortgage Rights on land whose term has expired occurs by law; roya by the Land Office is only needed for orderly land administration.

Bank efforts are efforts that can be made to prevent problems that will occur. So, this legal remedy can be carried out before a problem occurs because the function of a preventive legal remedy is to prevent problems from occurring.

In banking practice, it can happen that the term of the building use rights has ended while the debts are still ongoing. The debtor is in default or when the building uses rights period has not expired while the debtor is in default due to the protracted settlement of the debt, so that the validity period of the usufructuary rights The building ended without the parties knowing. This will undoubtedly be detrimental to the creditor holding the Mortgage, so in this case, the creditor holding the Mortgage needs to get legal protection.

Regarding the limited term of the right to use the building, the legislation has provided two ways that allow the holder of the right to use the building whose term expires to remain the holder of the right to use the building, namely first through the extension of Rights; second renewal of rights.

In banking practice, imposing a new mortgage on a building right whose term expires before the credit is due does not always go quickly. Sometimes there are debtors/collateral owners who are reluctant to sign the deed of encumbrance and object to being burdened with the cost of encumbering new encumbrances. To anticipate the possibility of this happening, the bank usually prepares an agreement or clause that protects the interests of the bank/creditor itself, namely at the time of signing the credit agreement for the first time, because usually, in such circumstances, the debtor is easier to negotiate and is willing to sign an agreement containing a clause or power of attorney to the bank to in time on behalf of the debtor or the owner of the guarantee to extend the right to the right to use the building whose term expires before the credit is due. The process of the occurrence of mortgage rights, the process and procedures for imposition of mortgage rights consist of 2 (two) stages: a. The stage of granting liability rights is before the land deed-making office (PPAT), preceded by a guaranteed debt and receivable agreement.

According to Article 10 paragraph (1) of the Mortgage Act, the beginning of the Mortgage Granting stage is preceded by a promise to provide a Mortgage Right as collateral for repayment of certain debts, which is outlined in the debt agreement concerned or other agreements that give rise to the debt. By the nature of the accessory of the Mortgage, the granting of the Mortgage must be a follow-up to the principal agreement, namely the loan agreement or other agreement. Power

of attorney must be granted before a Notary with an authentic deed, which is made specifically with a Power of Attorney to impose Mortgage Rights.

The provisions of Article 11 Paragraph 1 of the Mortgage Law are mandatory for the validity of the Mortgage granted. If this is not stated in full, then the Deed Granting the Mortgage concerned is null and void by law (explanation of Article 11 paragraph 1 of the Mortgage Law).

Before discussing the practice of reimbursing Building Use Rights, whose term of rights ends before the credit is due, the author first presents how the practice of extending or renewing the Building Use Rights itself can be obtained to obtain a complete picture.

The sequence of activities that must be followed to extend and renew building use rights is as follows: Applications for extension or renewal of building use rights are submitted in writing to the Minister through the Head of the Land Office whose working area covers the land in question, the Head of the Regional Office. Legal action against mortgage rights over building use rights that expire before the financing is due can be done in two ways: a. The period is extended if it fulfills the conditions stated in Article 26 of Government Regulation Number 40 of 1996 that in the first paragraph mentions Building Use Rights on state land; at the request of the right holder, it can be extended if it fulfills the following conditions.

b. The land is still being used properly according to the circumstances, nature, and purpose of granting the right. c. The right holders appropriately met the conditions for granting these rights. d. The rights holder still fulfills the requirements as a rights holder. e. The land is still by the spatial layout of the area concerned.

According to Article 27, paragraph 1 of Government Regulation Number 40 of 1996, an application to obtain an extension of the Building Use Right or renewal must be submitted by 2 (two) years before the expiration of the said Building Use Right. The conditions that must be met: a. The land is still being used correctly by the circumstances, nature, and purpose of granting said right. b. The right holders have appropriately fulfilled the requirements for the granting of rights. c. The right holder still fulfills the requirements as a subject who can hold Building Use Rights. Namely, he is still an Indonesian citizen or a legal entity established according to Indonesian law and domiciled in Indonesia by the provisions of Article 19 of Government Regulation Number 40 of 1996. d. The land is also still by the spatial layout plan of the area concerned.<sup>21</sup>

In the inclusion of a Building Use Right Certificate whose period has been extended, the location of the change is only in the validity period of the right because it has been added or extended. The number of the Building Use Right Certificate remains so that the right to the land still exists.

In providing legal remedies for banks related to financing provided by banks to customers receiving facilities with collateral whose building use rights period has expired before the financing is due, it must be considered because banks in terms of providing financing to customers

receiving facilities must indeed be accompanied by collateral where the function of collateral for the bank has an essential function. After all, when the customer receiving the facility is no longer able to repay the financing from the bank, the function of the collateral is to repay the financing, which can be done using the bank auctioning off the collateral based on the agreement that has been given to the customer receiving the facility.

Suppose the auction results exceed the value or amount of financing repayment of the customer receiving the facility. In that case, the bank will give the remaining results to the customer receiving the facility. The ability to carry out auctions for collateral means that the bank has power of attorney over the collateral it receives from the principal. In this case, the bank's power of attorney over the collateral for building use rights is considered valid by law when the binding of collateral is carried out using the Land Deed Making Officer making a Deed Granting Mortgage Rights for building use rights on stamped paper which is attended and signed by the mortgagee, the mortgagee, as well as two witnesses and signed by the Land Deed Making Officer until the Land Deed Making Official registers the deed of granting mortgage rights to the Land Office by fulfilling all the requirements and procedures for registering Mortgage Rights at the Land Office which then the Land Office issues a Mortgage Certificate on building use rights. Issuing a Mortgage Certificate for a building use right is a legal action regarding the bank having power over the building use right collateral. Implementing these matters will create mutually beneficial financing between the recipient of the facility and the bank.

From the provisions of this article, it can be seen that mortgage rights can be deliberately abolished and can also be removed because of the law.<sup>22</sup> to ensure legal certainty, according to Article 18, paragraphs 1 and 2 of the mortgage law, against mortgage rights that have been removed, the record of the burden of mortgage rights on the certificate of land rights and land book must be crossed out. In Article 22, paragraph 4 of the mortgage law, the write-off as intended is carried out based on the interested party's application by attaching a Certificate of mortgage rights that the creditor has recorded that the mortgage has been removed because the secured receivable has been paid off.

The reason for the termination of the mortgage is specified in Article 18, paragraph (1) of the Mortgage Law. This is because of the following reasons: a. Debt secured by a mortgage; b.(A) the right of the holder of the Right; c. Clearance of liability based on the determination of the rank by the Chief Justice; d. Abolition of encumbered land rights; From the provisions of this article, it can be seen that mortgage rights can be deliberately abolished and removed because of the law.

Lien on the right to use building that the right to use the extended building period must be tied first with a power of attorney to charge the lien accompanied by the management of changes in land rights or extension of the term of the right to use the building changes the term of the right to use the building is so the land deed Office must do the deed of granting liens and register it with the National Land Agency. The bank always controls the land deed officer regarding managing the extension of the building rights period because a power of attorney to charge the mortgage is

not enough to bind the collateral. After all, the collateral not tied to the mortgage deed is considered not legally vital.

Getting legal protection is everyone's dream if one of the parties to an agreement does not carry out the contents outlined in the agreement. So legal protection is a legal consequence of the engagement since a legally concluded agreement acts as a law for those who make it (Article 1338 paragraph (1) of the Civil Code). At the same time, the engagement can be born because of the agreement or the law.

### **Constraints and solutions from the bank to the case of a mortgage on the right to use the building that the period ends before the financing maturity**

In the legal proceedings carried out by the Land Deed Making Officer, there are obstacles and solutions from the bank for mortgages on building use rights that expire before maturity. Constraints mean factors or conditions that limit, hinder, or prevent the achievement of targets; force forcing the cancellation of the execution. At the same time, the Solution is a way of solving/solving problems without pressure.

The obstacles are as follows:<sup>23</sup> a. The bank wants to achieve the target, so it does not look at the timeframe and escapes the attention of those who should provide credit according to the timeframe on the Building Use Rights certificate. b. If the building uses rights certificate has expired, the creditor still has debt and must still be paid, and the creditor cannot execute the expired land. It becomes difficult to collect money that the debtor has borrowed.

The solution is as follows: a. Provides a shorter credit period than the maturity of the Building Use Right. The term of the certificate does not exceed the credit term. Suppose the credit period has already been given beyond the Building Use Rights certificate term. In that case, the bank must take an approach to persuade the debtor to apply for an extension by asking for a fee by informing them that if it is not extended, then the land will belong to the State.

They are extending the rights to the Building Use Rights simultaneously at the beginning of the credit agreement and at the time of extending the credit. In this case, the debtor authorizes the bank to extend these rights, and all costs incurred for this process become the debtor's burden. b. The debtor still has to pay the remaining financing to the creditor, even though the period for the building use rights certificate has expired, but it does not rule out the possibility that the credit agreement ends; the debtor must extend the validity period of the certificate so that the creditor can execute the land and building that is collateralized. Reimbursement of Mortgage Rights over land Building Use Rights whose term has expired and has been renewed in the credit period (before the credit is due).\

## **CONCLUSION**

1. From the results of the discussion on the Bank's Efforts against Mortgage Cases over Building Utilization Rights whose Term expired before the Financing Maturity, it can be concluded that the following matters were written off: Deletion of Mortgage Rights over land whose term had expired by law, Roya by the Office Land is only needed for the orderly administration of land. In providing legal remedies for banks related to financing provided by banks to customers receiving facilities with collateral whose building use rights period has expired before the financing is due, it must be considered because banks in terms of providing financing to customers receiving facilities must indeed be accompanied by collateral where the function of collateral for the bank has an essential function. After all, when the customer receiving the facility is no longer able to repay the financing from the bank, the function of the collateral is to repay the financing, which can be done using the bank auctioning off the collateral based on the agreement that has been given to the customer receiving the facility.
  
2. If the auction results exceed the value or amount of repayment of the customer receiving the facility, the bank will give the rest of the auction proceeds to the customer. The ability to carry out auctions for collateral means that the bank has power of attorney over the collateral it receives from the principal. In this case, the bank's power of attorney over the collateral for building use rights is considered valid by law when the binding of collateral is carried out using the Land Deed Making Officer making a Deed Granting Mortgage Rights for building use rights on stamped paper which is attended and signed by the mortgagee, the mortgagee, as well as two witnesses and signed by the Land Deed Making Officer until the Land Deed Making Official registers the deed of granting mortgage rights to the Land Office by fulfilling all the requirements and procedures for registering Mortgage Rights at the Land Office which then the Land Office issues a Mortgage Certificate on building use rights. Issuing a Mortgage Certificate for a building use right is a legal action regarding the bank having power over the building use right collateral. Implementing these matters will create mutually beneficial financing between the recipient of the facility and the bank.

## REFERENCE

- Idham, *Konsolidasi Tanah Perkotaan dalam Perspektif Otonomi Daerah*, Alumni, Bandung, 2004.
- Jeremy Bentham (1748-1832), "*Introduction to the Principles of Morals and Legislation*" yang dipublikasikan dalam <http://www.iep.utm.edu/bentham/> dengan Bentham, Jeremy, *Internet Encyclopedia of Philosophy*.
- Lili Rasjidi dan Thania Rasjidi, *Pengantar Filsafat Hukum*, Mandar Maju, Bandung, 2002.
- Undang-Undang Nomor 10 Tahun 1998 juncto Undang-Undang Nomor 7 Tahun 1992.
- Surojo Wignjodipuro, *Pengantar dan Asas-Asas Hukum Adat*, Gunung Agung, Jakarta, 1982.

Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta, 2003.

Kartini Muljadi dan Gunawan Widjaja, *Hak Tanggungan*, Prenada Media Group, Jakarta, 2006.  
<http://eprints.undip.ac.id/17807/1/SUWITO.pdf>

Koentjaraningrat, *Metode-Metode Penelitian Masyarakat*, Gramedia, Jakarta, 1990, halaman 65

Muhammad Ngajenan, *Kamus Etimologi Bahasa Indonesia*, Semarang, Dahara Prize, 1990.

Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, Jakarta, Balai Pustaka, 1988.

Irhah Fahmi, *Manajemen Perbankan: Konvensional dan Syariah*, Mitra Wacana Media, Jakarta, 2015.

Lelang adalah proses membeli dan menjual barang atau jasa dengan cara menawarkan kepada penawar, menawarkan tawaran harga lebih tinggi, dan kemudian menjual barang kepada penawar harga tertinggi. Dalam teori ekonomi, lelang mengacu pada beberapa mekanisme atau peraturan perdagangan dari pasar modal, dalam <https://id.wikipedia.org/wiki/Lelang>

[https://id.wikipedia.org/wiki/Sertifikat\\_hak\\_guna\\_bangunan](https://id.wikipedia.org/wiki/Sertifikat_hak_guna_bangunan)

Idham. *Konsolidasi Tanah Perkotaan*, PT.Alumni Bandung, 2014.

Indonesia, *Undang-Undang tentang Peraturan Dasar Pokok-Pokok Agraria*, Undang-Undang Republik Indonesia Nomor 5 tahun 1960, LN Nomor 21 Tahun 1960, LN Nomor 4211, Ps 35 ayat (1)

Sri Soedewi Masjchoen Sofwan, *Hukum Perdata Hak Jaminan Atas Tanah*.

Sudargo Gautama & Ellyda T. Soetiyarto, *Op Cit*, halaman 25

Sutan Remy Sjahdeini, *Hak Tanggungan Asas-asas, Ketentuan-ketentuan Pokok Dan Masalah Yang Dihadapi Oleh Perbankan*, Airlangga University Pers, 1996.