

# Legal Protection To Creditor To The Warranty Of Changed Living Rights Status Become A Disclosure (Decision Analyse Of The Republic Of Indonesia Supreme Court Number: 390k/Pdt/2016)

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## **ABSTRACT**

*This research takes on case study of civil case Number 390K / Pdt / 2016. The purpose of this study is to know and further examine the rationale constructed by the judge in the Supreme Court Decision with the number: 390K / Pdt / 2016, against the cancellation of the Deed of Grant from the parents to their child which made it in the Notary, as well as the implementation of the related judge's decision with the cancellation of the deed of grant and about legal protection against creditors collateral guarantee rights in dispute, when a guarantee which has been encumbered by the mortgage right becomes a dispute due to the transition of the previous rights which has been disputed. The transfer of land right must be in accordance with the correct legal process so that when the land rights are secured to the creditor, the land right will be cleared from disputes in the future. Law enforcers in resolving land rights disputes through litigation or non-litigation are often found that in resolving the dispute it is deemed unfair. As experienced in this case where it is not in accordance with applicable legal provisions. That the cause of the problem of land disputes in this case is the unlawful act that eliminates the status of other siblings and thus loses the right of inheritance due to the transfer of rights with the Grant Deed conducted without the knowledge of other siblings consequential in a dispute. The Land Right in dispute are guaranteed by the creditor where the debtor has defaulted and can not fulfill its obligations so that it will be sold in auction. While the efforts made by the plaintiff are to file a lawsuit to the court for the loss of their rights from the land and obtain their rights on the land of the dispute.*

**Keywords:** *Legal Protection, Creditor, Deposit Insurance, Land Dispute, Grant*

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## **INTRODUCTION**

The process of loading mortgages registered by the Land Deed Official (PPAT), in which the credit guarantee on a land title certificates have become certified dispute. There was a dispute

over the land because of a problem regarding the land due to the previous transition that occurred. In this case the dispute arises from a grant from a parent to a child who should have inherited a share of common property or an inherent heir or an inherent beneficiary in the transfer of his / her right, as occurred in the Decision of the Supreme Court of the Republic of Indonesia Number 390K / Pdt / 2016 who is also a Land Deed Officer makes a grant deed for grant transfers from parents to biological children.

The transition grant will be transferred to one of his children is a matter which, if desired by the grantor, grants can be obtained for not deleting essential part of the other heirs. The grant is a lawful act or the wish of the heir before he dies. The cause of the dispute is also caused by the lack of openness in the family and other parties that should be included in the distribution of inheritance to be discussed in kinship. In the distribution of inheritance whose rights in the land become lost when the grant is made secretly. While the status of the land that became disputes has been guaranteed to the creditors where in such cases have experienced bad credit so that the land will be sold through the auction system in accordance with the credit agreement which made at the began of the agreement.

A grant is a gift made by a person to another party committed while still alive and the execution of the division is usually done at the time the grant is still alive. Usually the gifts will never be denounced by relatives who do not accept the gift, because basically a person who owns the property is entitled and free to give his property to anyone. According to the provisions of Article 1666 of the Civil Code Act with the meaning a grant is an agreement by which the beneficiary, in his or her life, free of charge and irrevocably, deposits something for the intended beneficiary to receive the surrender.<sup>1</sup>

In the decision, the plaintiffs in the case sued his brother who had made a grant quietly without known by other siblings. Where ever happens the process of installing the mortgage rights was done in 1987 until 1999, and the second time the installation of mortgage rights in 1999 until 2005. The grants occurred in 2003. If speaking of land registration, it is not true if the right to land is undergoing the process of installing the mortgage right at the moment there has been a Grant. Because of the occurrence of the roya must be between 2002 or 2003. And also grants are made not in accordance with legal procedures in general, ie without his consent of his brother. So that has resulted in losses for the other parties that the brothers and

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<sup>1</sup>R. Subekti, (2004), *Kitab Undang-Undang Hukum Perdata*, Cetakan Ke-35, Jakarta:PT. Pradnya Paramitha, p. 436.

sisters have lost the right of inheritance of the estate of the heirs by their parents. Thus, the sibilings who did such actions without the consent of the family will be field suit.

The land right is the power of a person in whom he has a letter of legality of the land right. Land rights can be transferred by various processes and land registration by the authorities. In this case, the land rights are transferred to the buyer by the process of grant from parent to child.

Implementation of grant on a pice of land is done through a grant deed made by PPAT then the registered deed and he transfered of rights in the National Land Agency and noted to be the recipient of grants. The right is in accordance with the provisions of Article 37 of Government Regulation No. 24/1997 about Land Registration, that the transfer of land rights and property rights of apartment units is done through sale and purchase, exchange, grant, income in company and other legal act of transfer of rights only registered if through deed made by the Land Deed official (PPAT). In this case as well as the Notary and PPAT has responsibility for the deed he had made Habib Adjie argue that<sup>2</sup> :

1. They were who appointed as Notaries, temporary notary and notary regarded as an official duties of a lifetime so it must be responsible for the deed in unlimited time.
2. Responsibility for the deed he had made valid and will continue for Notaries, Temporary Notary and substitute Notary and also Fromer Notary, Former Substitute Notary and Substitute Notary who is still alive.

In addition, the responsibility of the head of the Land Office for its legal action, it can be concluded that the Land Office is the State Administrative Officer, the functions and duties of the Land Office in relation to issuing the land certificate are as well as the National Land Agency (Badan Pertanahan Nasional).<sup>3</sup>

Different opinion stated by Sjaifurrachman's that in Indonesia there is no recognition of absolute responsibility indefinitely, so that any official or organizational board in any field has limitations in terms of authority and time. As a result of limitation of authority and time limitation in carrying out his / her position, the responsibility to be endured by an official or organizational board in any field is also limited. This means that any limitation of authority will have an impact on the limitation of responsibility<sup>4</sup>. Without responsibility for this

<sup>2</sup>Habib Adjie, (2009), *Hukum Notaris Indonesia*, Bandung: Refika Aditama, p. 5.

<sup>3</sup>Zuman Malaka dan Habib Adjie, "Tanggung Jawab Kantor Pertanahan Terhadap Terbitnya Sertifikat Ganda (Studi Kasus Putusan Kasasi MA, No. 162 L/TUN/2012)", *Jurnal Pemikiran Dan Pembaharuan Hukum Islam, Al-Qanun*, Vol. 20, No. 2, Diakses dari <http://jurnalafh.uinsby.ac.id/index.php/qanun/article/view/535>.

<sup>4</sup>Sjaifurrachman, (2011), *Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta*, Surabaya: Mandar Maju, p. 192.

problem, then the work will become more severe, if implicated in the problem of imprisonment He will be shadowed by a criminal justice to death. As for the civil liability, the heirs of the notary can carry responsibly. The notary's responsibility should be limited only to the period of his service. If it already exists, it can not be held responsible anymore.<sup>5</sup>The obligation to know and understand the conditions of authenticity, validity and the causes of the failure of a Notary Act, it is very important to prevently avoid the defect of Notarial deed which may result in the loss of authenticity and the cancellation of Notary deed, which may harm the interest of the public, especially the interested parties.<sup>6</sup>

## METHOD

This study is a normative research (normative legal research) that is a study conducted by reviewing the rules of law applicable or set against a particular problem. This research uses approach of statue approach, research approach through concept, principle, doctrine, conceptual approach and case approach.

## ANALYSIS AND DISCUSSION

### Description of the Case Position In the Decision of the Supreme Court of the Republic of Indonesia Number:390K/Pdt/2016

Land rights which have become disputed and still in the status of mortgage rights by PT. Bank Sulteng Tolitoli Branch. The power right is where currently held by the Creditor. Noldy Taropetan who was the recipient of Saul Taropetan's deceased grant from his father who were planted secretly without the knowledge of another brother who should have the right to the land in the inheritance position due to their deceased father. The principal case as follows:

1. That the plaintiff is the first son of Henny Taropetan, Robby Taropetan and Shirley G. Taropetan (the Plaintiffs), from the Saul Taropetan (Dad) couple who died on August 11, 2012 and Nontje Adeleide (Mother) who died on January 10, 1987, where their marriage is endowed with 4 (four) children :

Henny Taropetan (Daughter)

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<sup>5</sup>Endang Sri Kawuryan dalam Yeni Rahman, "Limitasi Pertanggungjawaban Notaris Terhadap Akta Otentik Yang Dibuatnya", *Jurnal Hukum Universitas Brawijaya*, Diakses dari <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/2152>

<sup>6</sup>Sjaifurrachman dan Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, Bandung : Mandar Maju, 2011, p. 121, dalam Heni Kartikosari dan Rusdianto Sesung, "Pembatasan Jumlah Pembuatan Akta Notaris Oleh Dewan Kehormatan Pusat Ikatan Notaris Indonesia", *Jurnal Panorama Hukum*, Vol. 2, No. 2, Diakses dari <http://ejournal.unikama.ac.id/index.php/jph/article/view/1855>

Robby Taropetan (Son)

Shirley G. Taropetan (Daughter)

Noldy Taropetan (Son)

2. The defendants is Noldy Taropetan (Defendant I), Rudi, S.H (Defendant II), Arnolus Anggoman (Participant I), PT. Bank Sulteng Tolitoli Branch (Participant of Defendant II), National Land Agency of Tolitoli Regency (Participant of Defendant III).
3. In their marriage during his life has a joint property in the form of a plot of land and house building, an area of 411 m<sup>2</sup> located on the street of PA. Tandean, Number: 26, Kelurahan Panasakan, Baolan Sub-district, Tolitoli District, as the Hak Milik Certificate Number: 634 of 1982 which is now a dispute.
4. After that Saul Taropetan died in 2012, the plaintiffs found out that the disputed land / house of dispute was granted by Saul Taropetan to Defendant I through Defendant II by way of Grant Deed No. 809 / XII / Baolan / 03 dated December 30, 2003 without the knowledge and without the consent of the Plaintiffs, in which Plaintiffs and Defendants I have equal heirs to the land / house of the dispute.
5. The Plaintiffs suspected the Grant by the Saul Taropetan to the Defendant I, through the Deed of the Defendant Grant II, is solely based on the interest of bank credit, in which the land / house of dispute is guaranteed to the Creditor of the Bank by Defendant I to the Defendant II (Regional Government Bank).
6. Whereas the grant of Saul Taropetan's deceased to Defendant I through Defendant II and registered rights transfer by Defendant III has been done unlawfully by Defendant II and Defendant I, since the land / house of dispute has been charged by mortgage since 1987 until 1999, and year 1999 until 2005 by the late Saul Taropetan at Bank BRI Branch of Tolitoli and in the second defendant (II) , so not granted by law grant was done in 2003, because in 2003, the land / disputed house is being placed the Guarantee Rights in the second defendant The late Saul Taropetan, and if the quod non-Grant is correct in 2003, then the grant recording and the transfer of rights by the Defendant III on the certificate should be contained in the column / sheet of the Certificate of "Cause of Change" between 2002 and Roya in 2002 also.
7. That the grant of land / house of dispute by the deceased Saul Taropetan to the Defendant II, and done without legal procedure by Defendant II, without involving the plaintiff's consent, and the Deed of Grant is made by "time-retreat" (As if the grant occurred in 2003, non quod), the act of Defendant I and Defendant II is an unlawful act with all legal

consequences, since the grant has caused damage to the Plaintiffs, namely having lost the inheritance rights of the estate of the deceased's parents.

8. Whereas in the case of a grant of land / house of dispute only to Defendant I, which has removed the right of inheritance of the Plaintiffs according to law shall be canceled and the land / house of dispute as heritage / heritage property shall be re-distributed among the heirs.
9. Because of the plaintiffs are concerned to the land / house of the dispute will be transferred through the Sale and Purchase, Pawn or Other Actions that are inherently transferred to the Right.
10. Then, after undergoing the trial process, based on Tolitoli District Court verdict Number: 3 / Pdt.G / 2014 / PN Tli. On 30 June 2014 the judge decided to reject the Examination of Defendant I and Defendant II in the principal of the case, to grant the Plaintiff's claim that Plaintiff I and Defendant I were legitimate beneficiaries of the late Saul Taropetan and Nontje Adeleide, and declared that the house / , and Declares that Defendant I and Defendant II have committed unlawful acts with all legal consequences. Then the Judge also declared void the deed of grant on the land / house of the dispute.
11. At the appeals level at the request of Defendant I and Defendant II, the decision of the District Court was upheld by the High Court of Palu with Decision Number 61 / PDT / 2014 / PT PALU dated February 4, 2015.
12. Subsequently on March 10, 2015, a cassation will be filed on March 24, 2015, as from the Deed of Statement of Cassation Application Number: 03 / Pdt.G / 2014 / PN Tli. Then the Defendants / Plaintiffs / Complainees filed a response of the cassation received at the Registrar of the Tolitoli District Court on April 8, 2015.
13. The reasons that filed by the Cassation Appellant / Defendant I / Comparative I, II in his or her cassation memory, the Palu District Court examining the case at the first instance and the appeal level has erred in applying the law both in legal considerations his or her decision. And the first legal considerations are correct and correct in accordance with applicable law. And in the binding object of the dispute, according to law No. 4 of 1996, the PT Bank Sulteng through the State Auction is a blessing to sell the object of dispute through public auction and if the object of the dispute is auctioned then the effect of causing new problems between the plaintiff and the winning bidder, therefore the object of the dispute must be removed from the binding of the mortgage right through the

judge's decision, the impact of the new problem, because in the lawsuit the case does not ask the object of the dispute to be removed from the collateral / credit guarantee.

### **Legal protection for creditors to certification of mortgages that have been disputed.**

Legal protection for the creditor against the security guarantee that has become the dispute there are 2 (two), those are Preventive Legal Protection and Repressive Law Protection.

#### 1. Preventive Legal Protection

- a. In the Indonesian Civil Code contained the Articles 1131 and 1132, regarding all forms of material debtor good that movable objects or immovable objects, whether existing or existing, will become dependent for all his engagement, and the material or object that will be guaranteed to be collateral for all who owe it to him. So according to the researcher, based on articles 1131 and 1132 in the Civil Code, creditors get legal protection to get repayment of credit debt from the debtor. So it is not centered on the object of land dispute used to pay off debtor debt, but other property can also be a guarantee for the creditors to get the debt repayment.
- b. Act Number 10 of 1998 on Amendment to Act Number 7 of 1992 concerning Banking, under article 12 A, if the debtor has bad credit, the creditor may purchase part or all of the collateral either through a public tender system or outside the auction based on the delivery voluntary by the owner of the collateral or under a power of attorney to sell outside the auction of the collateral owner, in the event that the debtor does not fulfill its obligations to the creditor, provided that the collateral is purchased shall be disbursed as soon as possible. The purchase of collateral by the creditor through an auction system is intended to assist the creditor to accelerate the settlement of the debtor's customer obligations.
- c. Act No. 4/1996 on the Rights of the Insured Article 1ayat (1) Providing a priority or priority to the holder of the Guarantee or the creditor (droit de preference), constitutes a form of legal protection provided to the creditor in the event of default debtors, especially in the repayment of its debt.

#### 2. Repressive Law Protection.

- a. In the Mortgage Act, Article 6, 7, 11, 14, 20 regulating that if the debtor is pledged or defaulted, the first holder of the Mortgage Right shall have the right

to sell the object of Mortgage right to his / her own power through a public tender system and to take repayment of the proceeds from the sale. Where is the guarantee that the land that is used as the object of the Mortgage Rights must be registered and get the Certificate of Mortgage Right which has the irahirah "For the sake of Justice based on the One Godhead", it has the Executorial force for the holders of the Mortgage Rights.

- b. Proof according to Book IV of the Civil Code, Regarding this case, the evidence can be made by the creditor to settle the dispute through the litigation path according to the Civil Code of Book IV concerning the verification and verification of the ownership of the object of land rights under the Basic Agrarian Law. The evidence here must be interpreted by juridical, in which verification is given logical consideration, why certain events are considered true and support the arguments of the lawsuit. In this proof the parties shall provide sufficient grounds to the court judge to examine the case concerned in order to provide legal certainty, of the truth of the events relating to this case, thereby, the proof is charged to the parties.<sup>7</sup> According to articles 1865 and 1866 of the Indonesian Civil Code, "anyone who argues that he has a right, or to uphold his own right or deny any right of another person, refers to an event, is required to prove the existence of such right or event, writing, evidence with witnesses, allegations, confession, and oath ". Accordingly, the lender may prove in accordance with that article by submitting written evidence of Authentic Deed / Deed or certificate from the original credit agreement to the possession of the Mortgage Rights certificate from the disputed land, filed witnesses, and so forth.

### **Legal Efforts That Can Be Conducted By The Creditor Party To Get Debt Settlement Of Debtor Parties To The Debt Rights That Become Dispute**

Creditor's Probable Effort Conduct a negotiation between the debtor and the other party concerned in the land to the creditor. Provision of invoices made if the term of payment determined has been exhausted by the debtor. Debtors who can not pay their debts and settle credit restructuring. After the credit rescue effort through credit restructuring is deemed failed

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<sup>7</sup>Rusmadi Murad, (1991), *Penyelesaian Sengketa Hukum Atas Tanah*, Bandung: Penerbit Alumni, p.53.

by the creditor to the debtor and other parties involved in the guarantee land, the other credit rescue action taken by the creditor that is the acquisition of the asset from the debtor or the collateral pledged in, but its fails as a result of a decision by the District Court that declare to issue the disputed object from the debtor's guarantees. Due to the length of the debtor in returning the credit, so to return the State's money quickly, the creditor can be held an auction system.

## CONCLUSION

After all the description have been discussed above, the researcher can be concluded that the legal protection against creditors is contained in Law No. 4 of 1996 concerning the Rights of Counterparty to Land along with objects related to the land and make the interest of the debtor party and the creditor gets legal protection from the government. The main purpose in making this Mortgage Law in particular provides legal protection for the creditor if the debtor against the law in the form of wanprestasi. Apabila the debtor is not responsible, then the creditor can take action in the form of sanctions addressed to the debtor, either mild sanctions such as taking collateral from the debtor or giving strict sanctions if the debtor is still unable to pay off its debt. It is also contained in the provisions of article 20 paragraph (1) of the Mortgage Act.

However the causes of land dispute problems are the land administration system, the uneven distribution of land ownership and documents where there should be a clearer history for the land system where the Land Agency should cooperate with the Civil Registry so that the legality and the right to the land can be more appropriate in determining the right to land and the transition that occurred. Where the legality of land ownership is solely based on formal evidence (certificate) only. The form of legal protection for the creditor of the ownership disputes on the object of collateral which is borne by the right of the Dependent refers to Articles 1131 and 1132 of the Civil Code which regulate the debtor whether or not both existing and non-existing, whether or not to be borne liabilities for all engagement.

This is due to the Law on Banking and the Act on Mortgage Rights which specifically regulates the rights of creditors if the defaulted debtor is unable to protect the interest of the creditor. Therefore according to the author, used Article 1131 and 1132 on general guarantee, where the creditors here still get legal protection to get the credit repayment from the debtor. So that it is not centered on the disputed object used to settle debtor debts, but other existing and existing treasures will be a guarantee for creditors to get debt repayment debt.

The decision of the Supreme Court to cancel the Grant Agreement and to re-register the inheritance shall only give the legal effect of the deed not to have the force of law, but it shall not necessarily be the basis of the Land Affairs Office to make the transfer / revocation of the transfer of ownership rights to the land certificate. except in the petitem the verdict is clearly an order for it and has had a permanent legal force.

While the efforts that can be made by the creditor to get the fulfillment of his right to debt repayment debt that is by mangajuan civil lawsuit on the case of debts receivable to the District Court. Because the creditor here legally retains the right to collect the debtor's debt. Although the creditor has changed its status from a preferred creditor to a creditor, the creditor can still claim his / her rights to the debtor until the debts are fully repaid.

### **Acknowledgment**

#### 1. For The Creditor

The creditor must be apply the principle of caution again in accepting the credit application from the debtor, and recheck the collaterals collateralized by the debtor so that the collateral can be ascertained from the dispute, as well as to evaluate the credit quality of the debtor viewed from the business prospect, the performance of the debtor, and the ability of the debtor to pay the credit.

#### 2. For The Government

For the government should be to restore law or create a new law aimed at protecting the creditors. Thus, the creditor is no longer disadvantaged by the disputes disputed by the debtor who is not responsible. 17 In order to refine PMK No.106 / PMK.06 / 2013 on Amendment to PMK No.93 / PMK.6 / 2010 concerning the Auction Implementation Guidelines, to add new rules that protect the interests of the creditors, in the future a lawsuit from a third party against the guarantee object when it becomes a stick due to the debtor.

#### 3. For the National Land Agency

The National Land Agency (BPN) as an institution authorized to maintain land data on the transition of a right to land, should issue a regulation legislation requiring the consent of the other brothers to the grant made by a parent to one of their children in order for the legal act grants and recording of rights over land rights give more legal certainty to the holder. This research suggests that there is uniformity in the implementation of

registration of transfer of rights in every Land Office and not impressed the imposition of unfounded rules.

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