



## Liability of rural banks for the case of unlawful acts of loss of certificate of ownership used as credit collateral

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### Abstract

As part of the loan disbursement process, the customer signs a loan agreement containing clauses governing the applicable loan terms. The certificate submitted by the customer to the bank is kept by the bank for the duration of the loan and can be retrieved or returned by the bank after the loan is repaid. The bank is obliged to return the collateral after the debtor has paid off the loan. This type of research is normative legal research or in other words, it is also called doctrinal legal research. Normative legal research focuses on document analysis using various legal sources, such as laws, court decisions, contracts or agreements, legal principles and principles, legal theories, and opinions of legal experts. It is also possible that the debtor can ask the bank to compensate the bank for important assets in addition to the replacement of lost replacement certificates. It is possible to send a written request letter to the bank and if the bank does not provide clarity and does not provide a settlement, the debtor can take legal action. Based on the legal issues that the author raises in this study, it can be explained that in the loan disbursement process, the customer signs a loan contract containing clauses that regulate the terms of the loan to be disbursed.

**Keywords:** Liability, BPR, unlawful Act, certificate of property rights, credit guarantee

### Introduction

Banking institutions themselves are regulated by Law Number 7 of 1992, which was subsequently amended by Banking Law Number 10 of 1998 (hereinafter referred to as the Banking Law). According to the Banking Law, there are two types of banks: commercial banks and local banks. Bank Perkreditan Rakyat (hereinafter referred to as BPR) is a bank that organizes banking operations based on conventional and sharia principles and does not provide payment services in its activities. BPR only accepts deposits in the form of time deposits, savings, and other similar types of deposits. The focus of BPR business activities is to serve small businesses and local communities<sup>[1]</sup>.

With the passing of Law No. 4 of 2023 on Financial Sector Development and Strengthening on January 12, 2023, "People's Economic Bank" became the new term for BPR. BPR plays a very important role in the Indonesian economy. One of its main mandates is to increase lending to micro, small and medium enterprises (MSMEs). This is because MSMEs often require additional capital from external parties. The overall goal of BPR is to support national development through increased equity, economic growth, national stability, and improved community welfare, especially in rural and suburban areas and MSME actors. Therefore, it is expected that BPRs will play a greater role in the development of MSMEs<sup>[2]</sup>.

Some laws governing collateral institutions set out comprehensive mandatory collateral requirements that are an integral part of the collateral law. In addition, in providing credit guarantees, other laws and regulations that fall under the scope of the Guarantee Law must also be complied with. Another function of collateral in lending is the borrower's obligation to fulfill loan repayment obligations according to the agreement and manage the funds responsibly. Borrowers are obliged to repay their debts to the bank promptly to avoid the risk of loss of assets used as loan collateral if the loan is deemed to be in default.

Therefore, an understanding of the guarantee laws stipulated in various legal regulations is very important regarding the functioning of credit guarantees or debtor guarantees<sup>[3]</sup>.

The elucidation of Article 8 of the Banking Law states that banks are not obliged to require additional collateral in providing loans. As a result, the preventive guarantee function in the field of substantive law is almost non-existent. This opens up opportunities for unscrupulous debtors to take advantage of such opportunities. Although collateral is not a mandatory requirement in Article 8 of the Banking Law and is only one of the conditions that must be met, in practice banks always require collateral in the form of debtor assets when granting loans. Experience shows that the most preferred asset for banks is generally land<sup>[4]</sup>.

Article 1 point 1 of the UUHT explains that Mortgage Rights on land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, along with or without other objects that constitute a unit with the land, for the repayment of certain debts that give priority to certain creditors against other creditors. From the definition of hak tanggungan, it can be seen that hak tanggungan is a security right imposed on land.

As part of the loan disbursement process, the customer signs a loan agreement containing clauses governing the applicable loan terms. The certificate submitted by the customer to the bank is kept by the bank for the duration of the loan and can be retrieved or returned by the bank after the loan is repaid. The bank is obliged to return the collateral after the debtor has repaid the loan. Article 18 of the UUHT stipulates that the return of the mortgage object will only occur if the main contract has been repaid. This means that the main contract and the collateral contract are abolished. Therefore, the bank must return the land title certificate collateral. However, in practice, some banks are unable to provide collateral for the title deed, even though

the loan has been repaid. There are several possibilities for the underlying certificate not to be returned to the bank. This may be because the collateral is still being processed at the Land Registry Office.

However, there is a possibility that you may not receive the collateral because it is lost at the bank. The bank issues a letter stating that the debtor's title deed has been lost. This may expose the bank to legal action from the debtor who feels distressed due to the loss of property ownership. It is also possible that the debtor may ask the bank to compensate the bank for important assets in addition to the replacement of the lost replacement certificate. It is possible to send a written request letter to the bank. And if the bank does not provide clarity and does not provide a settlement, the debtor can take legal action. Based on the formulation of the problem above, the formulation of the problem can be taken "How is the effort made by the bank to reissue the Certificate of Ownership of the land used as collateral for credit in order to carry out responsibility for acts that are determined to be unlawful?"

### Research method

This type of research is normative legal research or in other words, it is also called doctrinal legal research. Normative legal research focuses on document analysis using various legal sources, such as laws, court decisions, contracts or agreements, legal principles and principles, legal theories, and opinions of legal experts<sup>[5]</sup>. This research uses a legal approach. That is by examining all laws and regulations relating to the legal issues discussed. In addition, this research also uses a case approach, namely an approach that considers cases that are relevant to the problem at hand and has resulted in court decisions that have lasting legal force<sup>[6]</sup>. The method of collecting legal materials in normative legal research is carried out through literature research on legal materials, both primary legal materials and secondary legal materials. The search for legal materials can be done by reading, watching, listening, or searching for legal materials on the internet or website. Library research (bibliographic research) is a study of written information about the law obtained from various sources, widely used, and necessary for normative legal research<sup>[7]</sup>.

### Result and discussion

Bank Perkreditan Rakyat is a bank whose business activities are conventional or based on sharia principles and whose activities do not include payment services. This is regulated in Article 1 Paragraph 4 of Law Number 10 of 1998 on Banking, but there is also another definition in Article 1 Paragraph 5 of Minister of Home Affairs Decree Number 22 of 2006. Volkskreditbanken (hereinafter referred to as regional BPR) is a national credit bank in which all or most of the capital is owned by the region through direct participation and comes from the individual wealth of the region. Bank Perkreditan Rakyat (BPR) is a banking financial institution that only accepts deposits in the form of savings, time deposits, or other forms equivalent thereto and distributes funds as a BPR business entity. Besides being known as a bank that runs its business conventionally, National Credit Bank also runs its business based on sharia principles. BPRs do not provide payment services in their activities. This means that BPR activities can be equated with banking activities in general such as: Checks and Drafts, GIRO has a much narrower scope, but BPR banks do not have these features<sup>[8]</sup>.

Regarding the scope of its activities, there is a further restriction that local banks cannot participate in clearing and foreign exchange transactions for BPRs whose initial capital is relatively low compared to commercial banks. BPR status is granted to other institutions in accordance with Banking Law No. 10 of 1998 by fulfilling the procedural requirements set out in Government Regulation No. 71 of 1992 and Indonesian Banking Regulation No. 8 of 26 2006 on Local Credit Banks. This provision is used considering that the institution originated from the Indonesian community and is still needed by the community.

A very popular banking service among the public is credit facilities. People often need additional funds, especially to continue developing their business. The concept of credit is explained in Article 1 number 11 of the Banking Law. Credit is stated as the provision of money or letters that are equated with it based on a credit agreement between a bank and another party. The borrower is obliged to repay the loan and pay interest after a certain period of time the bank provides loans to customers with the aim of making a profit. In addition to lending, banks also invest in other activities, such as providing capital to companies in the financial sector. As part of the lending process, banks as lenders provide loans to customers as borrowers in accordance with various criteria or principles. This is done to reduce the risk of banking losses in the event of default or default by the borrower<sup>[9]</sup>.

In order for a land ownership certificate to have a strong evidentiary value, one of the conditions for its issuance is that it is carried out by an agency authorized to issue land ownership certificates. The authority to issue land ownership certificates is the Director General of the National Land Agency of the Ministry of Agriculture and Land Planning. The authority of the Ministry of Agriculture and Spatial Planning / National Land Agency in issuing certificates is regulated in the Regulation of the Director General of the National Land Agency of the Republic of Indonesia Number 2 of 2013 concerning the Transfer of Authority to Grant Land Rights. Land registration activities. This is clearly regulated in Section 3 Articles 12 and 13 and Chapter IV on the authority to conduct land registration activities in Articles 14 and 18. The authority granted to the Ministry of Agriculture and Spatial Planning/National Land Agency to issue land ownership certificates is an authority that comes from within the country, namely the granting of state authority to a government agency by the legislature.

Mortgages can be interpreted as collateral, but collateral itself means security for the loan received (Kamus Besar Bahasa Indonesia). Paragraph 1 of Article 1 of the Mortgage Rights Law stipulates that land rights may be subject to a mortgage within the meaning of Law Number 5 of 1960 on the Principles of Agricultural Land, regardless of whether the mortgage is for the following purposes: that it is in the interest of security. A creditor has priority over other creditors because other objects are not part of the property that is essential for the repayment of a particular debt. The subject matter of mortgages is determined in Article 8 through Article 9 of Law Number 4 of 1996 concerning Mortgages. Both provisions stipulate that the one who can become a legal entity in granting a mortgage is the mortgagor. This is an individual or legal entity that has the authority to take legal action against real estate under the mortgage law. In practice, the lender in the mortgage law is commonly referred to as the debtor, which is the person who

borrow money from a banking institution. Habib Adjie explains: “By including the promises in the APHT and subsequently registering the mortgage rights at the Land Registry Office, the principle of openness is fulfilled and the promises become binding on third parties.”<sup>[10]</sup>

UUHT stipulates that Building Rights of Use can be used as collateral for debts owed. The UUHT does not regulate in more detail which building use rights can be used as collateral for debts encumbered by Hak Tanggungan. According to Government Regulation No. 40/1996 on Mortgage Rights, there are three types of building use rights: Namely, building use rights on state land, building use rights on state-controlled land, and building use rights on freehold land. Of the three types of building use rights, UUHT can only use building use rights on state-owned land and building use rights on managed land as debt collateral with a hak tanggungan, and building use rights on freehold land can only be used as debt collateral with a hak tanggungan if it is determined that they cannot be used. Debt secured by a hak tanggungan on a hak guna bangunan that is a property right must be registered but cannot be transferred to another person.

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Unlawful acts are regulated in Book III of the Civil Code, Articles 1365-1380 of the Civil Code, including the obligations arising from the law. According to Article 1365 of the Civil Code, what is meant by an unlawful act is “An unlawful act committed by a person who through his fault has caused harm to another person.” The definition of unlawful act in Article 1365 of the Civil Code is not explicitly formulated. Article 1365 of the Civil Code only regulates that if a person suffers a loss due to an unlawful act committed by another person against him, then he can file a claim for compensation with the District Court. So the article does not regulate *onrechtmatigedaad*, but rather regulates the conditions for claiming compensation for unlawful acts.

According to Article 1365 of the Civil Code, a tort must contain the following elements:

**a. There is an action**

A tort begins with the action of the perpetrator. It is generally accepted that acting means doing (in the active sense) or not doing (in the passive sense).

**b. The act is unlawful**

The act committed must be unlawful. Since 1919, this offense has been interpreted in its broadest sense, which includes the following facts:

1. The act violates the applicable law.
2. It violates the legally guaranteed rights of another person.
3. It violates the legal obligations of the perpetrator.
4. An act that violates morals.
5. An act that violates the good manners of society in considering the interests of others.

**c. There is also negligence on the part of the perpetrator**

Article 1365 stipulates that a tort must have an element of guilt. Therefore, it is necessary to know the scope of the elements of guilt so that you can be held legally responsible if the following elements are met:

1. There is an element of willfulness,
2. There is an element of negligence (negligence, negligence) and
3. There is no justification and excuse (*rechtvaardigingsgrond*).

**d. The victim suffered a loss**

In addition to material losses, there are also losses caused by unlawful acts, but the law also recognizes the term non-material losses, which are also measured in monetary units.

**e. There is a causal relationship between the act and the harm**

A prerequisite for the occurrence of a tort is the existence of a causal relationship between the act committed and the harm caused. This causal relationship can be seen in the text of an act that causes loss due to negligence. The loss is caused by an act, or the loss is caused by an act. The question here is whether the loss was caused by the act and to what extent this can be proven. If there is a causal connection between the loss and the act, then we can say that all losses are the result of the act.

**f. There are acts that go against the wisdom and necessity of good social relations.**

Acts that violate the need for prudence and good social relations, called *Zorgvuldigheids*, are also considered illegal. Therefore, even if a person commits an act that harms others without violating the provisions of a written law, the act can be charged with an illegal act because it violates the principles of decency and necessity in the framework of social relations.

It is also possible that the debtor may request the bank to compensate the bank for important assets in addition to the replacement of the lost replacement certificate. This does not rule out the possibility of sending a written request letter to the bank and if the bank does not provide clarity and does not provide a settlement, the debtor can take legal action. This happened in 2022 at PT BPR BKK JATENG (Perseroda) Sukoharjo branch. There is a loan that has been fully repaid by the debtor, but the bank is unable to immediately repay it or hand over the title to the land that is collateral for the bank. The bank said it had lost the certificate, as a result the debtor filed a lawsuit against the bank to request replacement of lost land rights and physical

compensation from the bank. Based on this, the author wants to examine the extent of the bank's responsibility for the loss of land registration rights used as collateral for bank loans.

When granting a loan, banks usually require collateral to protect the debtor in case of default or bankruptcy. In reality, most banks prefer loan collateral in the form of title deeds over other asset collateral. Title certificates are considered more valuable and suitable for insurance or collateral in the event of a shortfall or loan default in the future. The certificates that serve as collateral for the loan are kept by the bank and returned by the bank to the borrower after the loan is repaid. However, the bank may not be able to provide the certificate as collateral for the loan, because the certificate may still be processed at the National Real Estate Board office or because the certificate is lost or unavailable at the bank.

### Conclusion

Based on the legal issues that the author raises in this study, it can be explained that in the loan disbursement process, the customer signs a loan contract containing clauses governing the terms of the loan to be disbursed. The certificate submitted by the customer to the bank is kept by the bank during the loan period and can be taken or returned by the bank after the loan is repaid. The bank is obliged to return the collateral after the debtor has repaid the loan. Article 18 of the UUHT stipulates that the return of the mortgage object will only occur if the main contract has been repaid. This means that the main contract and the collateral contract are abolished. Therefore, the bank must return the land registration security deed. But in reality, there are some banks that are unable to provide security for the title even though the loan has been repaid. There is some possibility that the security deed has not been returned to the bank because the security is still being processed at the Land Registry Office. However, it is possible that you did not receive the collateral because it was lost at the bank. The bank issues a letter stating that the debtor's title deed has been lost. This may expose the bank to legal action from the debtor who feels distressed due to the loss of property ownership.

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