

# Execution of dependent rights objects due to overlapping land for the purpose of debt repayment (Case Study of Supreme Court Decision Number: 25 PK / TUN / 2021)

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## ARTICLE INFO

### Article history:

Received Nov 12, 2022  
Revised Dec 05, 2022  
Accepted Dec 30, 2022

### Keywords:

Execution;  
Dependent Rights;  
Overlap.

## ABSTRACT

This research analyzes the execution of dependent rights objects due to overlapping land for the purposes of debt repayment (case study of supreme court decision number: 25 pk / tun / 2021), The method used is normative legal research that is descriptive, analyzing secondary data in the form of primary legal materials and secondary legal materials. Data acquisition using literature study techniques and analyzed in a qualitative way draws conclusions with deductive logic. This study discusses the arrangement of the execution of collateral objects due to overlapping land for debt repayment based on laws and regulations related to legal remedies from the failure of execution of collateral objects due to overlapping land for debt repayment purposes, How are the implications of the execution of collateral objects due to overlapping land for debt repayment costs based on Supreme Court Decision Number: 25 PK/TUN/2021.

## ABSTRAK

Penelitian ini menganalisa tentang eksekusi objek hak tanggungan akibat adanya tumpang tindih (overlapping) tanah untuk keperluan pelunasan utang (studi kasus putusan mahkamah agung nomor: 25 pk/tun/2021), Metode yang digunakan adalah penelitian hukum normatif yang bersifat deskriptif, menganalisa data sekunder berupa bahan hukum primer dan bahan hukum sekunder. Perolehan data menggunakan teknik studi kepustakaan dan dianalisa dengan cara kualitatif menarik kesimpulan dengan logika deduktif. Penelitian ini membahas tentang pengaturan eksekusi objek jaminan akibat adanya tumpang tindih (overlapping) tanah untuk keperluan pelunasan utang berdasarkan peraturan perundang-undang yang terkait upaya hukum dari gagalnya eksekusi objek jaminan akibat adanya tumpang tindih (overlapping) tanah untuk keperluan pelunasan utang, Bagaimana implikasi dari eksekusi objek jaminan akibat adanya tumpang tindih (overlapping) tanah untuk keperluan pelunasan utang berdasarkan Putusan Mahkamah Agung Nomor: 25 PK/TUN/2021.

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## I. INTRODUCTION

Indonesia is a country of law that regulates all matters concerning the relationship between the state and society publicly and privately with the principle of guaranteeing legal certainty, meaning that the holding of private law is to guarantee laws between individuals that regulate the rights and obligations of one individual to another in community relations. The field of private law includes law on persons,

family law, material law, binding law, and inheritance law. Furthermore, private law is regulated in the Civil Code (KUHper). In order to uphold justice so as to ensure legal certainty, the law requires and demands to include evidence, in article 1866 of the Criminal Code or 164 HIR one of the most powerful, complete and perfect evidence is written evidence in the form of authentic deeds. (Sheane Gunandi, 2019).

It is also explained in article 1866 of the Civil Code that "An authentic deed is a deed made in the form prescribed by law by or in the presence of a general officer authorized to do so at the place where the deed was made." The evidentiary power attached to an authentic deed is perfect power and that is to say that the proof is sufficient by the deed itself unless there is evidence of an opponent (*tegen bewijs*) proving otherwise or proving otherwise of the deed, this binding word means that the judge is bound by the deed itself as long as the deed made is in accordance with the provisions of the validity of a deed as provided in Section 1886 of the Civil Code. Authentic deeds as evidence that are considered the strongest and fullest establish the legal relationship between the parties clearly concerning rights and obligations, the deed itself is made to guarantee legal certainty and in order to avoid disputes in the future. (Denico Doly, 2019).

The general official who is authorized to make authentic deeds is a notary while for authentic deeds in the field of land is the authority of the Land Deed Making Officer (PPAT). One of the authentic deeds that is the authority of PPAT is the Deed of Granting APHT Dependent Rights, in Article 1 paragraph (1) of Law Number 4 of 1996 concerning Dependent Rights to Land and Objects Related to Land Dependent Rights is:

“Dependent Rights to land and objects related to land, hereinafter referred to as Dependent Rights, are collateral rights imposed on land rights as referred to in Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles, following or not following other objects that are integral to the land, for the repayment of certain debts, which gives priority to certain creditors over other creditors”

The granting of dependent rights is usually carried out by creditors to obtain legal protection and guarantees of legal certainty for the lands that are used as collateral because the right to obtain repayment of receivables in advance of other creditors and the right to sell land auctions even if the land has been transferred rights to other parties, meaning that land that has been used as collateral and charged with dependent rights can be executed if the debtor cannot pay off his debts or defaults, as referred to in article 20 paragraphs (1) and (2) of the UUHT, as follows: (Ngadenan, 2010) “the right of the holder of the first Dependent Right to sell the object of the Dependent Right as referred to in Article 6, or The executory title contained in the Dependent Rights certificate as referred to in Article 14 paragraph (2), the object of the Dependent Right is sold through a public auction according to the procedures prescribed in the laws and regulations for the repayment of receivables of dependent rights holders with prior rights than other creditors; Upon the agreement of the grantor and the holder of the Dependent Right, the sale of the object of the Dependent Right may be exercised under the hands if thus it will be able to obtain the highest price in favor of all parties.”

This means that the rights of dependent rights holders can execute land in the event of default, but in practice, it is often different from applicable laws and regulations, as in cases that have been decided in the Supreme Court Decision Number: 25 PK / TUN / 2021, cases that occur in Bangka Regency, Bangka Belitung Islands Province where there is overlapping (*overlapping*) of certificates that have been charged with dependent rights as objects of guarantee for debt repayment, even though the object of guarantee is Sertip ikat Hak Milik Number 1490 / Parit Padang Village, Sungailiat District, Bangka Regency, dated May 31, 1994 with an area of 271 M2 (two hundred and seventy-one square meters) with Situation Drawing No. 333/1992 dated December 24, 1992 on behalf of Polana Wibowo had previously checked with the Office of the National Land Agency of Bangka Tengah Regency so that the creditor in this case was PT. BANK MEGA, Tbk made legal

remedies, namely filing a lawsuit at the Pangkalpinang State Administrative Court until the Cassation because it felt aggrieved and felt that it was lost its rights as a Preference Creditor.

On the basis of the above presentation, which is behind me to raise this research with the title "The Legal Force of the Deed of Encumbrance of Dependent Rights against the Execution of Collateral Objects Due to Overlapping of Land for Debt Repayment (Case Study of Supreme Court Decision Number: 25 PK/TUN/2021).

## II. RESEARCH METHODS

Researchers apply normative methods that include primary and secondary data, namely through looking at related legislation and then reviewing based on facts that are in accordance with observations in society. The specifics of the research are descriptive analytical. The implementation of the analysis is only to a descriptive level by analyzing and showing reality in sequence so that it can be understood and concluded using deductive logic. In collecting data through literature studies. Namely data obtained indirectly from the object of study, but obtained from other sources orally or in writing. The secondary data from written materials in the form of:

- a. Primary legal materials
  - a) Civil Code
  - b) Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles
  - c) Law Number 4 of 1996 concerning Dependent Rights
  - d) Government Regulation (PP) concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officers
  - e) Regulation of the Minister of Agrarian State / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.
  - f) Supreme Court Decision Number: 25 PK/TUN/2021.
- b. Secondary legal materials
- c. The secondary legal studies are literature books, journals, Imiah works, papers, the last document related to the object to be studied as information.
- d. Tertiary legal materials

Supporting legal studies, in the form of primary, secondary and tertiary materials outside the field of law, such as Indonesian dictionaries, the internet and others that can be used to complete research data.

## III. RESULT AND DISCUSSION

### 1. Execution of collateral objects due to *overlapping* land for debt repayment under related laws and regulations

It is explained in article 1868 of the Civil Code that "An authentic deed is a deed made in the form prescribed by law by or in the presence of a general officer authorized to do so at the place where the deed was made." Salim HS, where he defines an authentic deed as a mark of evidence made by/or in the presence of an authorized official for it, according to the form and procedure stipulated in the laws and regulations. In the sense of this legislation, it can be said that all legal rules issued by officials authorized for it are classified as sources of law in the implementation of authentic deed making. Therefore, if the concept of authentic deeds is interpreted in the sense of legislation, then it can be said that all deeds issued by public officials, who according to the laws and regulations are authorized to make the deed are authentic deeds. Thus, the authentic deed is not only made by a notary, but also made by the PPAT, Auction Officer, Bailiff and other officials, although it cannot be underestimated in relation to not all holders of the office have concrete and special provisions that formulate the form of authentic deed in the type of office. (Priyo Handoko, 2000).

Authentic deeds for legal acts regarding land are the authority of the Land Deed Making Officer (PPAT), as explained in article 2 of Government Regulation Number 37 of 1998 concerning Land Deed Making Officers that:(Mariam Darus Baruldzaman, 1991)

- a. "PPAT is tasked with carrying out some land registration activities by making deeds as evidence of certain legal actions regarding land rights or Property Rights to Flats Units which will be used as a basis for registration of changes in land registration data resulting from legal actions.
- b. The legal acts as referred to in paragraph (1) are as follows: Selling; Swap; grant; income into the company (inbreng); division of common rights; Granting Building Use Rights / Right of Use to Property Rights land; granting of Dependent Rights; grant of powers imposing Dependent Rights."

As stated above, one of the authentic deeds made by PPAT is the Deed of Encumbrance of Dependent Rights which according to Article 1 paragraph (1) of Law Number 4 of 1996 concerning Tanggungan Rights to Land, namely:

*"Dependent Rights to land and objects related to land, hereinafter referred to as Dependent Rights, are collateral rights imposed on land rights as referred to in Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles, following or not following other objects that are integral to the land, for the repayment of certain debts, which gives priority to certain creditors over other creditors."*

The principles in if the object of guarantee is burdened with dependent rights according to Law number 4 of 1996 concerning Dependent Rights to Land, as follows:(Sutan Remy Sjahdeini, 1996)

- a. "Dependent Rights provide a preferred position for creditors holding dependent rights;
- b. Dependent Rights cannot be divided, unless promised by the existence of a Partial Roya;
- c. Dependent Rights can only be imposed against existing land rights;
- d. Dependent Rights may be imposed on his land as well as objects relating to the land;
- e. Dependent rights may also be imposed on objects relating to land that will only exist at a later date;
- f. Accessoir Dependent Agreement;
- g. Dependent rights can be used as collateral for new debts that will only exist;
- h. Dependent rights can guarantee more than one debt;
- i. The right of dependents follows its object in the hands of whomever the object of the dependent right is located;
- j. On top of the right of dependents can not be laid confiscated by the court;
- k. Dependent rights can only be charged on certain lands;
- l. Dependent Rights must be registered;
- m. Dependent rights can be granted with certain promises;
- n. The object of dependent rights should not be promised to be owned by the dependent rights holder himself if the debtor defaults;
- o. The execution of dependent rights is easy and certain".

From the exposure of the above principles if the object of guarantee is charged with Dependent Rights, it provides the main position or preference and has the right of execution if the debtor cannot pay off the debt as referred to in General Explanation Number 4 of the UUHT states that:(Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan, Pasal 4, n.d.)

*"Dependent Rights are collateral rights to land for the repayment of certain debts, which give priority to certain creditors over other creditors. In a sense, that if the debtor defaults on the pledge, the creditor of the holder of the Dependent Right is entitled to sell through a public auction the land used as collateral under the provisions of the relevant laws and regulations, with the right to precede it from the other creditors. The position of precedence certainly does not diminish the preference for State receivables under the provisions of applicable law."*

Furthermore, according to Article 20 paragraph (1) of the UUHT: "If the debtor is injured, then based on: (Undang-Undang Nomor 4 Tentang Hak Tanggungan, Ps.20, n.d.)

- a. The right of the holder of the first dependent right to sell the object of the Dependent Right
- b. The executory title contained in the Dependent Rights certificate..

The object of dependent rights is sold through a public auction according to the procedures prescribed in the legislation for the repayment of receivables of dependent rights holders with prior rights than other creditors. Dependent rights are often used by banks to bind an object that will be used as collateral for debt repayment, usually the deed of granting dependent rights is always accompanied by a credit agreement because to hold a credit activity must be preceded by a credit agreement as the principal agreement which is then followed by a guarantee binding agreement as a follow-up agreement. (Marnita, 2016)

The encumbrance of dependent rights does not arise by itself but must be preceded by a principal agreement in the form of a credit agreement so that it follows the principal agreement or also called *the accessoir agreement*. (Sutan Remy Sjahdeini, 1996) This is mandated in point 8 of the General Explanation of Law Number 4 of 1996 concerning Dependent Rights (UUHT), Article 3 paragraph (1) of UUHT, Article 10 paragraph (1) of UUHT and Article 18 paragraph (1) of UUHT.

The accessoir nature of dependent rights may have the following legal consequences: (Sutan Remy Sjahdeini, 1996).

- a. The existence of a dependent rights agreement depends on the principal agreement (credit agreement) so that when the principal agreement is deleted, the dependent rights agreement is also deleted, but vice versa when the dependent rights are deleted or destroyed, it does not result in the destruction of the principal agreement.
- b. The transfer or elimination of debt guaranteed in the credit agreement determines the existence of dependent rights.
- c. According to the law, if a receivable debt is not guaranteed repayment expressly by the right of dependents, then the right of dependents will not exist.

This means that the right of dependents provides 2 (two) privileges for the right holder, namely the Right to get repayment of receivables in advance of other creditors If the debtor defaults on promises, by selling the auction of the object of dependent rights that have been specially designated as collateral (*droit de preference*) and the Right to get repayment of receivables in advance than other creditors, if the debtor defaults on promises, by selling the auction of the object of dependent rights that have been specially designated as collateral (*droit de suit*).

The legal basis is contained in Article 6 of the UUHT, which reads:

"In the event of a debtor's default, the holder of the first Dependent Right has the right to sell the object of the Dependent Right on his own power through a public auction and take repayment of his receivables from the proceeds of the sale."

This means that if the debtor defaults or injures the promise, then the creditor of the dependent right holder who is entitled to execute the object of the dependent right through a public auction whose proceeds are given specifically to pay off the debt of the creditor concerned (no approval of the debtor is required as well as an injunction from the court because it is the right of the creditor of the dependent right holder). (Sutan Remy Sjahdeni, 1996).

## **2. Legal remedies from the failure of execution of collateral objects due to overlapping land for the purpose of debt repayment.**

Based on article 6 of Law Number 4 of 1996 concerning dependent rights that the holder of dependent rights or debtors has the right to sell dependent rights for the purpose of repaying debts if the debtor defaults, this article also provides a position for creditors to take precedence in debt repayment. The

provisions regarding the execution of dependent rights are regulated in article 14 paragraph (2) of the UUHT which in essence there are 3 ways, namely selling the object of dependent rights as referred to in 6 UUHT, the second is by means of executory title meaning through public auction, and finally execution based on the agreement of the giver and holder of dependent rights, the sale of the object can be carried out under the hands if thus it will be able to obtain the highest price that benefits all parties (regulated in article 20 paragraph (2) of the UUHT). (Siti Malikhatun Badriyah, 2020).

However, not all executions can be carried out properly, sometimes it is found that the execution failure is because the object of the guarantee is legally defective as in the case in the Supreme Court Decision Number 25 PK / TUN / 2021, in essence the creditor cannot execute because the object of the guarantee, namely the land overlapping so that it cannot be executed, the position of the guarantee agreement is very dependent on the underlying agreement. This needs to be done to provide protection to the creditor, so that if the debtor defaults, the creditor still gets the right to his receivables. (Siti Malikhatun Badriyah, 2013) therefore, if there is a failure to execute the object of bail, legal remedies can be made, where legal remedies according to Sudikno Mertokusumo are efforts or tools to prevent or correct errors in a judgment. Legal remedy is an effort provided by law for a person or legal entity in certain cases to fight the judge's decision as a place for parties who are dissatisfied with the judge's decision that is considered not to meet the sense of justice, because the judge is also a human being who can accidentally make mistakes that can lead to wrong decisions or side with one of the parties.

Legal remedies can be carried out criminally, civilly or administratively depending on the element of the lawsuit you want to file, if the case holder is to sue for damages, it is filed civilly, if the case holder is about revoking or canceling a TUN object that has been issued by a general official, it is filed with the TUN District Court, but if the case holder contains a criminal element, it can be criminally prosecuted. (Teguh Samudera, 1992).

In civil procedural law there are 2 (two) types of legal remedies, (Yahya Harahap & Tramizi, 2019) namely (1). Ordinary remedies consist of: (a). Resistance (*verzet*), (b). Appeal, (c). Cassation, and (2). Extraordinary remedies consist of: (a). Third-party resistance (*denden verzet*); (b). Judicial review (*request civil*).

The first Ordinary Legal Remedy, namely Resistance/*verzet* A legal remedy against a judgment outside the presence of the defendant (*verstek* judgment). The legal basis of *verzet* can be seen in article 129 of the HIR. *Verzet* may be made within a period of 14 days (including holidays) after the *verstek* judgment is notified or delivered to the defendant because the defendant is not present. The condition of *verzet* is (article 129 paragraph (1) of the HIR i.e. the issuance of a *verstek* judgment the period for filing a challenge is not to be past 14 days and if there is an execution it cannot exceed 8 days; and *verzet* is entered and filed with the Chief Justice of the District Court in the jurisdiction in which the plaintiff filed his suit.

Ordinary Remedies: An appeal is a remedy made if a party is dissatisfied with a District Court ruling. The legal basis is Law No. 4/2004 on Amendments to the Basic Law on Power and Law No. 20/1947 on Deuteronomy. The appeal must be filed with the clerk of the District Court who handed down the judgment (article 7 of Law No. 20/1947). The order of appeal according to article 21 of Law No. 4/2004 jo. article 9 of Law No. 20/1947 repeals the provisions of articles 188-194 of the HIR, i.e. there is a statement of wanting the appeal of the registrar to make the deed of appeal recorded in the parent register of the case the statement of appeal must have been received by the appellant no later than 14 days after the statement of appeal was made. the comparator can make a memory appeal, the comparator can file a counter memory appeal.

Ordinary Legal Remedies: Cassation According to articles 29 and 30 of Law No. 14/1985 jo. Law No. 5/2004 cassation is the annulment of judgments on the determination of courts of all judicial environments in the final judicial level. The judgment filed in the cassation judgment is an appellate

judgment. The reasons used in the appeal application specified in article 30 of Law No. 14/1985 jo. Law No. 5/2004 are not authorized (both absolute and relative authority) to exceed the limits of authority; incorrectly applied/violated applicable law; negligently fulfilling the conditions required by laws and regulations that threaten negligence with the nullification of the judgment in question.

**Extraordinary Remedies: Review** If there are matters or circumstances prescribed by law, a court decision that has been of judicial force may still be requested for judicial review by the Supreme Court in civil and criminal cases by the parties concerned. [article 66-77 of Law no. 14/1985 jo. Law no. 5/2004] The reasons for the review are according to article 67 of Law no. 14/1985 jo. Law no. 5/2004, namely:

- a. There is novum or new evidence known after the case is decided which is based on evidence later by the criminal judge which is declared false;
- b. If after the case has been decided, a determinative evidence is found which at the time the case is examined cannot be found;
- c. when it has been granted a thing that is not demanded/more than demanded;
- d. if as to any part of the claim has not been dismissed without consideration of the causes;
- e. if in one judgment there is an oversight of the judge / a manifest error. The deadline for filing is 180 days after the ruling of permanent legal force. (article 69 of Law 14/1985). The Supreme Court dismissed the application for judicial review in the first and last instance (article 70 of Law no. 14/1985).

**Extraordinary Remedies may *Denderverzet* Occur** if in a court judgment it harms the interests of a third party, then that third party may file a challenge to the award. The legal basis is 378-384 Rv and section 195 (6) HIR. It is said to be an extraordinary remedy because basically an award is binding on only the litigants (the plaintiff and the defendant) and does not bind a third party (but in this case, the result of the award will be binding on another person/third party, therefore it is said to be extraordinary). *Denderverzet* filed with the District Court which dismissed the case in the first instance.

According to Law No. 5 of 1985 jo Law No. 9 of 2004 concerning the State Administrative Court, to resolve State Administrative disputes arising as a result of the issuance of a State Administrative Decree (*Beschikking*) can be done in 2 (two) ways, namely, among others.:

- a. Through administrative efforts (Vide Article 48 jo Article 51 paragraph (3), ") In the event that a State Administrative Agency or Official is authorized by or under laws and regulations to administratively resolve certain Administrative disputes, it is void or invalid, with or without accompanied by claims for compensation and / or administration available).
- b. By suit (Vide article 1 number 5 jo article 53).
  - a) A person or civil legal entity who feels that his interests are harmed by a State Administrative Decree may file a written claim with the competent court containing a demand that the disputed Administrative Decision be declared void or invalid, with or without accompanied by claims for compensation and/or rehabilitation.
  - b) The reasons that can be used in a lawsuit as referred to in paragraph (1) are:
    - 1) The sued Administrative Decree is contrary to applicable laws and regulations;
    - 2) The State Administrative Agency or Officer at the time of issuing the decision referred to in paragraph (1) has exercised its authority for purposes other than the purpose for which the authority was granted;
    - 3) The State Administrative Agency or Officer at the time of issuing or not issuing a decision as referred to in paragraph (1) after considering all the interests implicated by the decree should not have come to the making or not of the decision.

### **3. Implications of the execution of collateral objects due to overlapping land for the purpose of debt repayment based on Supreme Court Decision Number: 25 PK / TUN / 2021.**

PT. Bank Mega, Tbk chose to file a lawsuit with the State Administrative District Court because according to its statement when the debtor defaults or does not fulfill his achievements so that the creditor should be able to directly extract the object of dependent rights for the purposes of debt repayment, but when the execution is about to be carried out, it turns out that the object of dependent rights, namely land, is found to be in dispute or overlapping land (*overlapping*) so as to prevent creditors from obtaining their rights.

In practice in banking institutions, the solution provided by the Dependent Rights Act for repayment of debts through the mechanism of Section 20 of the Dependent Rights Act is usually the last solution carried out by the creditors of the Dependent Rights Holders if the debtor of the Dependent Rights Holder is injured. However, despite the conveniences in the Dependent Rights Law in practice there are legal problems, in other words, the creditors of the Dependent Rights Holders through public auctions with the intermediary of the State Wealth and Auction Service Office (KPKNL). (Dwi Nugrihandini & Ety Mulyati, 2019).

Feeling aggrieved, the creditor finally filed a lawsuit with the State Administrative District Court in pangkalpinang city to get justice with a lawsuit which in essence in order to get his rights which he definitely wanted to be able to immediately exert the object of bail but from the first degree to the judge's consideration, the judge dismissed the entire lawsuit and there was no legal certainty regarding how the creditor could get his rights, namely to execute for the purposes of repayment of debts even though in accordance with Law No. 6 of 1996 contains dependent rights which reads "If the debtor defaults on a promise, the holder of the first Dependent Right has the right to sell the object of the Dependent Right on his own power through a public auction and take repayment of his receivables from the proceeds of the sale." This means providing a privileged position for dependent rights holders.

This means that from this case we can see that in practice the implementation and resolution of a case is sometimes not in accordance with what is written from the applicable laws and regulations. Therefore, it needs to be addressed in addition to the legal umbrella but strict law enforcement apparatus.

## **IV. CONCLUSION**

The way to execute the object of dependent rights is to sell the object of dependent rights as referred to 6 of the second UUHT, namely by means of executory title meaning through public auction, and finally execution based on the agreement of the giver and holder of dependent rights, the sale of the object can be carried out under the hands if then it will be able to obtain the highest price that benefits all parties (regulated in article 20 paragraph (2) of the UUHT). If the execution does not fail, legal remedies can be carried out both criminally, civilly and TUN But from this case from this case we can see that in practice the implementation and settlement of a case is sometimes not in accordance with what is written from the applicable laws and regulations, the creditor and debtor are both harmed due to disputes and *overlapping*.

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