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# Juridical Status of Land Guarantee Without Dependent Rights in Credit Agreements Against Criminal Confiscation in Corruption Cases

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## ABSTRACT

The object of land collateral without the Right of Dependency in the credit agreement which in the future turned out to be confiscated in the legal process of the crime of corruption because it was allegedly obtained from the proceeds of corruption allegedly committed by the Debtor, making the Creditor's position in the credit agreement a loss of the guarantee. This study uses a normative juridical method with secondary data and primary legal materials are laws and regulations. In the law of guaranteeing land objects without the right of dependency is allowed to be collateral in the credit agreement, but the position of the creditor is quite weak because it does not have the authority to parate the execution, executory title and agreement under hand. When the object of the collateral is confiscated in the legal process of a corruption crime, the Creditor still has other alternatives to take legal action against the repayment of achievements in the credit agreement carried out by the Debtor

**Keywords:** Land Object of Guarantee, Right of Dependent, Criminal Confiscation

## INTRODUCTION

In the business world, the practice of legal relations between Debtors and Creditors is commonplace, it aims to develop businesses in the aspect of the availability of capital or funds, known as loans or credit to banking or financing institutions<sup>1</sup>. The debtor is the party who borrows money while the creditor is the party who gives the loan, in the banking world according to the provisions of article 1 number 11 of Law number 10 of 1998 Jo law number 7 of 1992 concerning banking explains that "*Credit is the provision of money or bills that can be equated with it, based on an agreement or loan-borrowing agreement between a bank and another party that obliges the borrower to repay the debt after a certain period of time with interest*". Based on these provisions, banks generally have a role as a creditor, namely the party that provides loans to be billed to other parties, both individuals and legal entities.

Usually, the agreement on material guarantees in a credit agreement is used as an additional agreement (*accessoir*) which is a support for the predecessor agreement (the principal agreement) that has been agreed upon by the parties in the form of a debt and receivables agreement, thus the nature of this additional agreement is to follow or depend on the <sup>2</sup>principal agreement. The creditor can take advantage of the material guarantee provided by the debtor to cover or pay off unpaid loans, this is a form of applying the principle of prudence in fulfilling the indicators of the fulfillment of the provision of credit facilities to the debtor.

Material guarantees are divided into 2 (two), namely material guarantees for immovable objects and movable property guarantees. This distinction between movable and immovable objects is important for possession (*bezit*), delivery (*levering*), loading (*bezwaring*) and expiry (*verjaring*).<sup>3</sup> Especially in the practice of providing credit facilities by banks, often what is guaranteed by the debtor is immovable material collateral in the form of land or buildings. Both forms of collateral are in demand by credit facility providers because they are considered economically valuable and provide confidence in providing credit loans.

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<sup>1</sup> Mangara Sijabat, *Legal Protection of Debtors in the Implementation of Auctions of Dependent Rights in Indonesia* (Bandung: Widina Media Utama, 2023)

<sup>2</sup> Son, Fani Martiawan Kumara. "The debtor's liability for the loss of land rights in the object of guaranteeing the right of dependents." *Jurisprudence* 28.2 (2013).

<sup>3</sup> Mirwati, Yulia, and Busyra Azheri. "Legal protection for creditors in the imposition of the right of dependents of unregistered objects." *DE LEGA LATA: Journal of Law* 5.1 (2020): 106-114.

Immovable property collateral is burdened with legal instruments of dependents. Dependent Rights based on Law number 4 of 1996 concerning Dependent Rights on Land and Objects Related to Land defines that is "*the right of guarantee imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, together with or not along with other objects that are one unit with the land, for the repayment of certain debts, which gives a preferred position to certain creditors over other creditors*"

The birth of the right of dependency consists of two stages, namely the granting of the Rights of Dependency and the registration of the Rights of Dependents, the granting of the Rights of Dependency is carried out by making a Deed of Encumbrance of Dependent Rights (APHT) by the Land Deed Making Officer (PPAT), in the stage of granting this Right of Dependency in order to meet *the special* requirements. The following process is to register the Right of Dependency at the local Land Office as a fulfillment of *the publicity requirements*<sup>4</sup>, with the fulfillment of the procedures and conditions of this Right of Dependency, it can make the position of the creditor who holds the document the party that takes precedence in the repayment of the credit borrowed by the debtor.

Potential legal problems will occur if in the future the land guarantee cannot be registered for certain reasons, this makes the juridical status of the property guarantee questionable and the position of the special parties if in the future the object is in the criminal confiscation of the crime of corruption.

## METHOD

The type of research used in this paper is doctrinal normative juridical research, which is research that focuses on dogmatic aspects (legal systematics, legal synchronization, legal history, and comparative law), legal principles, legal theory, and legal philosophy.<sup>5</sup>The nature of this research is prescriptive and applied in this study is in line with the type of research that is of the juridical normative type of doctrine, which examines the law from the level of norms contained in its regulations and relevant concepts. The approach chosen in this paper is a legislative approach and a conceptual approach. Using a legislative approach, the research will focus on legal materials and regulations related to

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<sup>4</sup> Mangara Sijabat, *Op.Cit*, p. 18-19.

<sup>5</sup> Derita Prapti Rahayu and Sulaiman, 2020. *Legal Research Methods*. Thafa Media, Yogyakarta, p. 185

legal issues, have a comprehensive, inclusive, and systematic nature.<sup>6</sup> On a conceptual approach that comes from the concepts and doctrines of teachings that develop in legal science.

The author uses secondary research data sources, namely data obtained from literature studies where data sources can include official documents, scientific papers, scientific journals, or other sources related to the research object.<sup>7</sup> In this study, primary legal materials are used, namely research materials consisting of laws and regulations, official minutes, court decisions and official State documents<sup>8</sup>. Meanwhile, the supporters, both secondary and tertiary legal materials, also have the opportunity to be used in this study, as long as they are relevant and can help the author in analyzing the juridical status of land guarantees without the right of dependency against criminal confiscation in corruption crimes, as well as the position of the parties to the fulfillment of achievements in the credit agreement that takes place between the Debtor and Creditor.

## RESULTS & DISCUSSION

### 3.1. Juridical Status of Land Guarantee Without Encumbrance of Dependents in Credit Agreements

A money lending agreement or the provision of bills by the Creditor as a credit provider to the Debtor as the person who borrowed the money, generally in the credit agreement requires the existence of a guarantee agreement (*accessory*) as an additional agreement to guarantee the return of the bill borrowed by the Debtor in the event of default or default in the future. A guarantee agreement for property in the form of land can be imposed on a legal entity called Dependent Rights.

The logical consequence when the land guarantee is charged with the Right of Dependency to the Debtor who defaults on the promise based on the provisions of article 20 of Law number 4 of 1996 concerning the Right of Dependency on Land and Objects Related to the Land provides an alternative to the execution of the guarantee in the form of the first one, namely the execution parade by conducting the direct execution of the credit

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<sup>6</sup> *Ibid*

<sup>7</sup> Derita Prapti Rahayu and Sulaiman, *Op.Cit*, p. Sec. 187.

<sup>8</sup> Muhaimin, 2020. *Legal Research Methods*. Mataram University Press, Mataram, p. 59

guarantee through a direct public auction, the second is through an executory title with the title "For the sake of justice based on the One Godhead" based on article 14 of the Law on the Rights of Dependents stating that this executorial title has the same legal force as the court as a substitute for the Acte Grosse Hipotek.

Acte Grosse is a copy of an authentic deed at the top of which is titled "For Justice Based on the One Godhead" can be executed as befits a court decision that has permanent legal force. Such a deed based on the provisions of Article 224 of the HIR with a fiat from the chairman of the court, can be executed because the determination of the existence of rights in such a deed has been made in a certain form before a public official based on the provisions of the applicable law.<sup>9</sup> In addition to the two forms of execution of the guarantee, there is another alternative, namely the sale under the hand, as mentioned in article 20 paragraph 2 of the Law on the Rights of Dependents, which basically states that if it is estimated that through a public auction the highest price is not obtained, then the execution of the guarantee of the Right of Dependency can be carried out through a sale under the hand as long as it is agreed by the giver and receiver of the Right of Dependency,<sup>10</sup> Thus, there are at least 3 execution mechanisms for land guarantees if the land has been encumbered with dependent rights.

Based on Article 4 of Law Number 4 of 1996 concerning Dependent Rights on Land and Objects Related to Land, land rights that can be encumbered by dependent rights include property rights, business use rights, and building use rights. The holder of the right of dependency acts as a separatist creditor with the right of precedence and his position is preferred over the concurrent creditor (*droit de preference*). The certificate of dependency also includes an executory title, which gives the right holder the right to sell the object of the dependent right of his own power, as a manifestation of his principal position.<sup>11</sup> Although only the Property Rights, Business Use Rights and Building Use Rights are mentioned in the provisions above, the Dependent Rights can also be charged with the Right

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<sup>9</sup> Onassis, Irwana. "The Legal Strength of the Execution of the Right of Dependency on the Confiscation of Land and Building Guarantees based on the Creditor and Debtor Agreement." *Journal of Client Law* 1.1 (2024): 1-33.

<sup>10</sup> Article 20 paragraph 2 of Law number 4 of 1996 concerning Dependent Rights on Land and Objects Related to Land

<sup>11</sup> Sutan Remy Sjahdeni, *The Right of Dependency on Principles, Principal Provisions, and Problems Faced by Banking*, Alumni, Bandung, 1999

to Use the Ownership of a collateral land based on the provisions of the applicable regulations.

Because the legal institution of Dependent Rights only burdens the rights that are based on certificates, land objects that only have a land certificate (SKT), a statement of ownership and physical control of the land plot (sporadic), Tanah Girik, Letter C, Petok D, Green Letter/HPL, Pipil Tanah, *Eigendom Verponding*, *Opstaal*, or Statement of Recognition of Land Rights (SPPHT), are part of the basis for the old convention ownership rights.

For land that has not been certified, it is land that has not been registered with the local Land Office. In Article 10 paragraph (3) of Law Number 4 of 1996 concerning Dependent Rights, it is stated that if the object of the right of dependency is in the form of land rights derived from the conversion of old rights that have met the requirements for registration but have not been registered, the granting of dependent rights is carried out at the same time as the application for registration of the land rights concerned, besides that according to The Decree of the Board of Directors of Bank Indonesia number 23/69/KEP/DIR/1991 states that lands that have not been registered are not prohibited from being used as collateral or collateral for banks.<sup>12</sup>

So according to the description above, the types of old ownership convention rights can be used as collateral for credit agreements or money loans that are encumbered by the Dependent Rights, with the condition that the land object must be registered first along with the registration of the Right of Ownership at the local Land Office.

On the basis of land rights that are still using the conversion of old ownership and cannot be registered as Dependent Rights, it does not mean that the object cannot be a collateral in a credit agreement or borrow money. Based on the provisions of article 1131 Jo 1132 related to general guarantees, all existing and immovable property rights of the debtor, both movable and immovable, can be collateral in an agreement. In addition to the fact that the agreement must meet the elements and formulation of article 1320 of the Civil Code and related to the principle of freedom of contract, there are 4 (four) valid conditions for an agreement, namely (1) There is an agreement for someone who binds themselves (2) The skill of the parties in making the

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<sup>12</sup> Mirwati, Yulia, and Busyra Azheri. "Legal protection for creditors in the imposition of the right of dependents of unregistered objects." *DE LEGA LATA: Journal of Law* 5.1 (2020): 106-114.

agreement (3) The existence of certain things and (4) Halal reasons (*causa*)<sup>13</sup>, therefore the loan agreement to borrow money or the credit agreement with the old convention land guarantee materially does not violate the existing legal provisions, it's just that some banks will prefer guarantees with the imposition of Dependent Rights, because it guarantees repayment and a mechanism that can be taken when the debtor defaults.

Although it is juridically permissible to make an agreement with a guarantee on the basis of the old conversion ownership rights, not a certificate of ownership and without being burdened with Dependent Rights, in the author's view there are several things that must be considered together, namely:

1. The old convention land guarantee cannot necessarily be executed as the instruments of execution in the Dependent Rights, namely the Execution Title, Executory Title and Sale Under Hand.
2. The abolition of the basis of land rights does not remove the existing credit agreement or loan agreement to borrow money, because the agreement on collateral is an accessory agreement and not a principal agreement.
3. A credit agreement or borrowing money that contains a clause belonging to the *beding* (*Beding Van Niet Zuivering*), which is an agreement that contains a clause that directly has the agreed object of guarantee, unilateral executory practice in taking over the debtor's land ownership for negligence in fulfilling achievements by creditors is an act that violates the law. Even though the guarantee is already under the burden of the Dependent Rights according to article 12 of the Law on the Rights of Dependents, the making of an agreement with a clause belonging to the *beding* is categorized as a guarantee that is null and void.

### 3.2. The Position of the Parties When the Object of Land Security is Seized in a Corruption Case

That the confiscation legal regime is known to have different models and concepts depending on the legal system, in civil law there are Bailable Confiscation, Execution Confiscation, Adjustment Confiscation, Marital Confiscation and so on. In the state administrative law, there is a Tax Confiscation known in tax disputes, and in the Criminal Law there is a Criminal Confiscation for

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<sup>13</sup> Rahmawati, Widya, Kristi W. Simanjuntak, and A. Sakti RS Rakia. "Juridical Analysis of Bad Credit Settlement Without Guarantee of Dependents' Rights (Study of Decision Number: 11/PDT. GS/2018/PN SON)." *Judge: Journal of Law* 6.02 (2025): 184-196.

the purposes of investigation and prosecution, as well as in the law of corruption or money laundering against assets or property that are suspected to be obtained from the proceeds of crime are also confiscated for the purpose of law enforcement. Against the object of land that was criminally confiscated in a corruption case that had previously been pledged in a credit agreement to borrow money by the debtor to the creditor makes the position of the parties, both debtors and creditors, interesting to discuss.

In the context of this article, the object is land security without Dependent Rights, which later became known to be the acquisition of the land allegedly from a criminal act of corruption, so that the investigators carried out criminal confiscation of the object *a quo*. First, when viewed from the legal relationship based on the discussion in the formulation of the first problem, related to a guarantee agreement without object and without being burdened with the Dependent Rights is valid and binding between the two parties who make it.

The second is that when there is a confiscation of the object of collateral, the conflict of interest between the interests of the state on the one hand and the interests of the creditor as the holder of the right of dependency results in the interests of the holder of the right of dependency being neglected because the interests of the state are prioritized.<sup>14</sup> Thus, the position of the creditor is the aggrieved party due to the confiscation of the land collateral object because of the existence of the collateral object intended for the repayment of credit from the Debtor, however, based on article 1381 of the Civil Code it is stated that the deletion or the existence of a dispute on the collateral object does not necessarily remove the credit lending agreement between the Debtor and the Creditor, the juridical logic is also because the collateral agreement is *Accessoir* or is additional not principal agreement, so that the Debtor still has an obligation to fulfill the achievements that have been made.

Legal remedies that can be taken by creditors for the loss of collateral objects without collateral rights as a result of confiscation of corruption crimes, then the creditor can take various legal remedies, namely if the legal process of the criminal act has been decided, the creditor can file a third party objection to the collateral object, but if it turns out that the legal remedy fails, The creditor may file a default lawsuit for non-fulfillment of the performance by the Debtor by postulating the confiscation of the guarantee (*Conservatory Attachment*) for the material property of other creditors, this is in accordance with the provisions of article 1131 of the Civil Code which states that all tangible assets, both existing and untangled, that exist or have the potential to exist can be collateral for the engagements that arise

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<sup>14</sup> Lofa, Ni Made Zelly Lonanza Andara, and I. Nyoman Darmadha. "Legal protection of creditors against the debtor's collateral land confiscated related to corruption crimes."

## CONCLUSION

That from the above research, the position of the land security object that is still converting the old right, there are two alternatives, namely registration of certificates for the acquisition of the object of Dependent Rights so that there are legal opportunities for the Creditor to carry out execution parate, executory title, or purchase under hand that can be taken by the Defaulting Debtor. Meanwhile, if the land object is directly pledged, based on the provisions of article 1131 Jo 1320 of the Civil Code, it is allowed according to existing law. For the object of collateral without the Right of Dependency being confiscated for a corruption crime, there is a conflict of norms in it, however, the interests of the state are prioritized, so that for the time being the Director loses the object of the guarantee for the credit agreement given, and the Creditor can still take other legal remedies such as third-party objections or default lawsuits against the Debtor who are still in the legal process of corruption.

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