

Analysis of Legal Protection for Third Parties as Owners of Collateral Objects of Mortgage Rights

(Case Study of Cirebon Religious Court Decision Number 808/Pdt.G/2021/PA CN)

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Abstract : *The involvement of a third party in a debt agreement as the owner of the collateral object is a legal act that often occurs in society. Not a few third parties feel disadvantaged due to the debt agreement between the debtor and the creditor because there are still no regulations that clearly regulate their legal protection, one of the cases is Decision Number 808 / Pdt.G / 2021 / PA CN This study aims to examine problems related to legal protection for third parties as owners of collateral according to applicable laws and regulations. This research method uses a normative legal approach by approaching the laws in force in Indonesia, then a normative analysis is carried out using data sources in the form of laws and regulations, court decisions, opinions of legal experts, along with existing legal concepts. This study will later focus on legal protection for third parties as collateral owners based on applicable regulations and legal settlements if third parties feel disadvantaged by the collateral object they own. From the results of the study, it can be concluded that there is no prohibition on the involvement of third parties as guarantors of land rights in the debt agreement process, however, legal regulations regarding the role of third parties are only explained implicitly in Law No. 4/1996, resulting in third parties being vulnerable to being harmed. As a form of legal protection for third parties, it can be done through a preventive process by issuing APHT and SKMHT by authorized officials, in addition, if the third party's rights have been harmed, it can be taken through litigation and non-litigation.*

Keywords: *Third Party, Guarantee, Agreement*

1. INTRODUCTION

The land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. In terms of the utilization of land, water and natural resources, especially regarding the surface of the earth called land, according to the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as Law No. 5/1960), it is determined that there are various types of land rights that can be granted to individuals and legal entities. (Attamimi et al., 2023) Ownership of land legally must be proven through a land certificate officially issued by the National Land Agency (BPN) as legal evidence of the land, so that parties who have legal evidence have the right to manage their land in accordance with applicable laws and regulations. One of the rights of a legitimate landowner is to be able to encumber the land as collateral for debt by being burdened with a mortgage as explained in Chapter 25 of Law No. 5/1960. Banks play a vital role in supporting the realization of national development. Based on Chapter 1 Paragraph (2) of Law Number 10 of 1998, a bank is defined as a business entity that collects funds from the public in the form of savings, then distributes them in the form of credit or other instruments, with the main aim of improving public welfare. Thus, the existence of banks as legally recognized entities has a very

strategic role in the process of economic and social development at the national level. (Azani, 2024) The Mortgage Guarantee Institution, which is regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Bound to Land, functions as a legal entity that protects the interests of both borrowers and creditors, and ensures access to legal protection provided by the state. (WIDJAJA, 2008) The main purpose of the ratification of this Mortgage Law is to provide legal protection to creditors if the debtor commits negligence that violates legal provisions (Lubis & Harahap, 2023). Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Bound to Land (hereinafter referred to as the Mortgage Law) is present as a form of legal certainty in terms of binding collateral on objects related to land. In Chapter 1 number 1 of the Mortgage Law, it is explained that: "Mortgage rights on land and objects related to land, hereinafter referred to as mortgage rights, are security rights imposed on land rights in accordance with the provisions of Law Number 5 of 1960 concerning Basic Agrarian Principles, together with or without other objects that are an inseparable part of the land, for the repayment of certain debts, which give priority to certain creditors compared to other creditors." (Tumbelaka, 2020)

To ensure that the credit agreement can guarantee debt repayment, the collateral binding process must be carried out by determining the mortgage right through the creation of a Deed of Granting of Mortgage Rights (APHT) prepared by the Land Deed Making Officer (PPAT). This deed contains promises that protect the creditor's rights, followed by the process of imposing mortgage rights through two stages, namely registration of mortgage rights and issuance of mortgage certificates. (Natania et al., 2020) It often happens that in the submission of mortgage guarantees by debtors, it is not done in the name of the debtor concerned, but in the name of another party or can be referred to as a third party as the owner of the land to be guaranteed. In providing mortgage guarantees, there is no prohibition on the involvement of third parties. In accordance with the provisions of Chapter 4 paragraph (4) and paragraph (5), and the Explanation of Chapter 3 paragraph (2) of Law No. 4/1996, it is implicitly possible that land that is guaranteed with mortgage rights can be land owned by a third party, which is permitted if the third party is involved in granting the mortgage right. However, if the debtor defaults, the third party will be at risk of bearing the loss. One case of third party involvement in the collateral guarantee can be seen from the Cirebon Religious Court Decision Number 808/Pdt.G/2021/PA CN which explains that the plaintiff has felt aggrieved by the actions of Defendant 1 and Defendant 2. The problem began when the defendant asked for

assistance in the agreement stated in the Al Murabahah Financing Agreement No. 09 dated January 10, 2013 which was made and before Notary and PPAT Lia Amalia. According to the initial agreement, based on an agreement that uses sharia principles, the lawsuit should have been filed with the Cirebon Religious Court which is the Absolute Competence for Resolving Problems in the agreement. This resulted in real material losses because the plaintiff did not understand the law, so the plaintiff used the services of an advocate in filing this lawsuit amounting to IDR 55,000,000 (Fifty Five Million Rupiah) and the plaintiff experienced immaterial losses. PT Bank Syariah Mandiri as a lender of funds to the defendants and as a co-defendant in the decision. In principle, if the customer does not fulfill the obligation to pay off his debt, based on the debt agreement mentioned above, by the first party, the second party as the holder of the first rank mortgage rights with this deed is given and states to receive the authority, and for that without prior approval from the first party: to sell or order to sell in public through auction the mortgage rights object either in whole or in part.

The focus of this study is related to legal protection for third parties if the land owned by the debtor is used as collateral based on the applicable Laws and legal settlement if the third party feels disadvantaged by the object of the collateral right owned. There are 3 (three) previous studies regarding legal protection for third parties as owners of collateral right objects. First, a study entitled "Guarantee of Mortgage Rights on Land Owned by Third Parties in Credit Agreements at Banking Financial Institutions Based on Law Number 4 of 1996 concerning Mortgage Rights" by Yunita Krysna Valayvi. The difference in this study is that it only criticizes the role of third parties that are not mentioned in Chapter 1 paragraph (2), (3), (4), (6) of Law No. 4/1996 so that the position of the third party in the legal act is considered as the second debtor in the credit agreement, in addition, the writing does not explain the legal protection for third parties as guarantors. (Valayvi 2016) The similarity with this study is that it discusses the presence of third parties in an agreement. Second, the manuscript entitled "Legal Protection for Creditors Holding Mortgage Rights Whose Collateral is Void and Becomes the Property of the Debtor" by (Putri & Sihombing, 2022) explains the position of third parties from the perspective of the Banking Law which does not provide legal protection for third parties as parties who own collateral objects. (Sugiyono 2017) The similarity of this study is regarding the resolution if the problem occurs, both criminally and civilly.

Third, the study entitled "Legal Protection for Creditors in Credit Agreements with Mortgage Guarantees According to Law No. 4 of 1996" by (Anwar, 2014a), in this

manuscript discusses more about legal protection for creditors if the object of the mortgage guarantee submitted belongs to a third party. (Adrian 2014) In addition, the manuscript focuses more on the discussion of legal protection for creditors, not third parties. The similarity with this study lies in the explanation of the procedure for installing mortgage rights when the land object used as collateral belongs to a third party. Based on this, the author intends to conduct further research on legal protection for third parties who are holders of collateral objects.

2. RESEARCH METHOD

The research method applied is normative juridical. The approach used in this study is an approach to the law in force in Indonesia, or what is known as positive law, as a data source. These data sources include laws and regulations, court decisions, opinions of legal experts, and various relevant legal concepts. (TOMY MICHAEL 2023)

3. RESEARCH RESULTS AND DISCUSSION

Legal Protection of Third Party Collateral Objects

The granting of credit by banks to debtors is not done just like that, but through a series of established procedures. The bank will apply standards that include an assessment of customer eligibility, both through a fit and proper test to evaluate prospective debtors, and by conducting due diligence, which is an in-depth examination of the credit facilities to be provided. This process aims to ensure whether the prospective debtor meets the criteria set by the bank before the credit is granted (Leonardy et al., 2023)

The agreement itself has been regulated in Chapter 1313 of the Civil Code (KUHPer) (Hirsanuddin & Sudiarto, 2021). An agreement requires an agreement or agreement between the parties who are mutually bound to carry out a legal act. The agreement involves two or more legal subjects, which can be individuals or legal entities. In applicable regulations, agreements between individuals and legal entities are permitted. One example is a debt agreement between an individual and a company that is a legal entity. In a debt agreement, the parties involved are often referred to as creditors and debtors. The creditor is the party entitled to the fulfillment of the performance, while the debtor has an obligation to fulfill the performance. To ensure that the credit agreement can guarantee the repayment of the debt, it is necessary to carry out a collateral binding process by granting a mortgage. This process begins with the creation of a Deed of Granting of Mortgage Rights (APHT) by the Land Deed Making Officer (PPAT), which contains

commitments to protect the rights of creditors. After that, the mortgage will be charged through two stages, namely registration of mortgage rights and issuance of mortgage certificates (Paramitha & Marwanto Darmadha, 2018).

Deeds are divided into two types, namely authentic deeds and private deeds. Authentic deeds are an important element in a contract agreement that functions as evidence. (Nofriandi et al., 2023) This deed contains an agreement regarding the rights and obligations of the parties, and has a characteristic, namely that it can only be drawn up by an authorized party, such as a notary or PPAT. Each deed must be made based on mutual agreement, so that if one party violates the contents of the deed, then that party can be considered in default. Meanwhile, a private deed is an agreement made based on an agreement of both parties, which is ratified by the signatures of the parties as proof that they agree to the contents of the agreement. The validity of a deed or private agreement depends only on the conditions for the validity of the agreement, without paying attention to the form of the deed as in an authentic deed. The purpose of a private deed is to bind the parties to the agreement on the basis of mutual trust, where the parties jointly prepare and ratify the contents of the deed as proof of reaching an agreement. This deed contains provisions regarding the rights and obligations of the parties, as well as sanctions for parties who intentionally violate the contents of the agreement. In order for the private deed to have stronger legal force, it can be signed before a notary by including at least two witnesses who are notary employees. The purpose of this procedure is to strengthen the legal standing of the deed.

When a third party is involved in a mortgage agreement, the party provides a guarantee to the creditor. This guarantee or guarantor must follow the provisions contained in Chapters 1320 and 1338 of the Civil Code. In general, guarantor is always part of the main credit agreement, but can also be included in additional agreements (*accessoir*). The third party acts as a guarantor for the debtor's obligations, and therefore, the third party is responsible for any actions of the debtor that may harm the creditor. One of the responsibilities of the third party is to hand over its assets to the creditor if the debtor fails to fulfill its obligations. The assets can then be sold through auction to be used to pay off the debtor's debt. Although the debtor may have made a mistake in selling the third party's property, the third party is still responsible for the debtor's actions because they have agreed to be involved in the credit agreement (Fernando & Tanawijaya, 2023).

If the debtor defaults due to the above reasons, then the creditor based on Chapter 1267 of the Civil Code can choose to file a lawsuit with the District Court, demanding to

continue to fulfill the requirements of the contents of the agreed agreement or demanding the cancellation of the agreement accompanied by requesting compensation for costs and interest. (Krisbiantoro & Arwanto, 2021) To determine whether the debtor is negligent in carrying out his obligations, there are 3 (three) ways to determine it, namely:

1. A debtor is proven not to have carried out the performance at all;
2. A debtor carries out the performance but does not carry it out properly;
3. A debtor succeeds in fulfilling the performance as determined but does not carry it out on time. (Anggles and others 2022)

According to Chapter 1243 of the Civil Code, if the debtor continues to neglect the implementation of an order after being declared negligent, he is obliged to replace the costs, losses, and interest resulting from the failure to carry out the order as stated in the contents of the agreement deed. The position of the contents of the agreement is equivalent to the applicable law, so the legal consequences of the debtor's error in not complying with the contents of the agreement are declared a breach of contract. To determine when the debtor is negligent, it is necessary to look back at the contents of the agreement and when the deadline stated in the agreement is regarding the fulfillment of performance for the debtor. As in the case of Decision Number 808 / Pdt.G / 2021 / PA CN, that the defendant must pay Material Compensation of IDR 55,000,000 and Intangible Losses of IDR 200,000,000. In accordance with the provisions of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, the parties are required to undergo the mediation process after being given an explanation of the essence of mediation, the stages involved, and the obligations that must be fulfilled by each party during the mediation process. After receiving adequate explanation, the Plaintiff and Defendant stated that they had understood the explanation and then signed a statement stating that they had received an explanation regarding mediation. From the explanation based on Chapter 1338 of the Civil Code, the defendants have violated these provisions and are declared in default of the agreement, so that in this case the plaintiff as the heir based on Chapter 1 243 KUHPer can submit a request for compensation for the defendant's mistakes.

Collateral is an object belonging to the debtor that is used to provide confidence to the creditor through an agreement in paying off a loan, if the debtor cannot pay his debt according to the term. (Aji and others 2021) Collateral law is divided into two types, namely material collateral and personal collateral. Material collateral refers to the absolute rights of the debtor to property that is directly related to the object of the collateral, so that the creditor can obtain repayment with collateral in the form of a mortgage on land. Meanwhile, personal collateral is a form of collateral that involves an individual who is responsible for replacing the debtor's position to fulfill obligations if the debtor fails to carry out his obligations or defaults. (Pradana et al., 2023) Personal collateral (*borgtocht*), according to Sri Soedewi Masjchoen Sofwan, is collateral that is directly related to someone related to the debtor, where generally the debtor's assets are used as collateral that can be maintained. The main elements in this personal guarantee are:

1. There is a direct legal relationship with certain people;
2. Can defend only certain debtors; and
3. The existence of assets owned by the debtor.

According to Subekti, personal guarantee is a contractual relationship between the creditor and the guarantor or third party. The purpose of the role of this third party is to ensure that the debtor's obligations can be fulfilled, either in full or in part. Thus, the guarantor's assets can be seized and auctioned in accordance with applicable legal provisions. The creditor is the party entitled to receive fulfillment of obligations from the debtor, while the debtor is the party who has the obligation to fulfill the demands. The third party, as the guarantor, is responsible for the debtor's obligations if the debtor fails to fulfill his obligations or defaults. As a general rule, third parties are not required to pay obligations to creditors unless the debtor fails to pay his debt. The legal consequence of this default is that the collateral assets owned by the third party will be executed to pay off the debtor's debt. Therefore, the third party has the right to demand the debtor to fulfill his obligations and pay off the debt according to the deadline agreed with the creditor, so that the collateral belonging to the third party is protected from the confiscation and auction process. In addition, a third party as a guarantor can sue the debtor for compensation before the debt is paid off if:

1. When the debtor is sued by the judge to make a payment;
2. If the debtor has promised to release the third party as a guarantor at a certain time;
3. If the money can be collected because the agreed payment period has ended;
4. After exceeding ten years if the agreement does not regulate the period for

termination of the agreement.

From the explanation above based on the case as in Decision Number 808/Pdt.G/2021/PA CN, the plaintiff as the former defendant I is at risk of having his land certificate taken over by another party (Creditor) if the defendants default because they do not pay off their debts to the creditor, who in this case is also a co-defendant. In this case, the plaintiff as a third party has the right to return his land certificate, as per the agreement that has been made, where the defendants stated that they would return the land certificate according to the agreed period.

The provisions regarding mortgage rights as collateral used to pay off debts if the debtor has defaulted are also explained in Law No. 4/1996 and Law No. 5/1960. (Anwar, 2014b) The elements of mortgage rights include:

- a. As a form of collateral in debt repayment which is referred to as mortgage rights;
- b. Law No. 5/1960 has regulated the object of mortgage rights;
- c. Mortgage rights can also be imposed on an object that is attached to or is part of a single unit of the land;
- d. Provides a primary position between certain creditors and other creditors. (LIsnaini 2021)

Regarding the role of third parties in mortgage rights, Law No. 4/1996 does not explicitly regulate this matter. In Chapter 1 of Law No. 4/1996, the position of the third party in the process of imposing mortgage rights as a party that can provide collateral is not clearly stated. The explanation in Chapter 3 paragraph (2) regulates the legal relationship between a third party and the debtor which is permitted in the provisions, with the condition that the third party must also be listed in the Deed of Granting of Mortgage Rights (APHT). However, the position of the third party is only explained implicitly, without providing clear legal certainty regarding the relationship between the third party and the debtor, which could put the third party at risk. harmed by the debtor. Furthermore, Chapter 4 paragraph (4) of Law No. 4/1996 states that all buildings, plants, and works above or below the land are part of the mortgage guarantee, and the holder of the rights to the land must be expressly stated in the APHT. Furthermore, Chapter 4 paragraph (5) stipulates that if the land used as collateral does not belong to the debtor, the debtor can only sign the APHT together with the owner of the land.

The signing is jointly signed by the creditor, debtor, and third party along with witnesses present in the signing process. Chapter 4 paragraph (4) and paragraph (5) of Law No. 4/1996 also explains the involvement of third parties as legal subjects in the debt

agreement process.

Based on the explanation of Chapter 1, Chapter 3 paragraph (2), Chapter 4 paragraph (4), and Chapter 4 paragraph (5) of Law No. 4/1996, it is implicitly possible that the land that is guaranteed with a Mortgage Right can be land owned by a third party. Regarding the case contained in Decision Number 808/Pdt.G/2021/PA CN, actually if the land asset that is pledged belongs to a third party (in the name of the plaintiff's husband), in the debt agreement it is permitted, this is in accordance with Law No.4/1996, only in the process an APHT must be made which is an authentic deed and the deed has been signed by the creditor and debtor (defendants). However, in this case, what was made was an underhand agreement and in the agreement did not present third parties or creditors of the defendants, even though the agreement was made before a Notary. This is what weakens the position of the third party as the owner of the land because in its implementation it is not in accordance with applicable regulations. If the collateral belongs to a third party, a statement can also be made stating that the land object owned is used as collateral for mortgage rights signed by the debtor, third party, and representatives of the heirs of the third party. The aim is so that no party acts arbitrarily. Then the statement will be recorded in the form of an agreement as authentic evidence that the third party and the debtor have entered into a binding agreement. Only then will the third party provide the land as an object of collateral for mortgage rights to the creditor in the name of the debtor's claim. (Dwi Laksono and others 2021)

In Decision Number 808/Pdt.G/2021/PA CN, it is explained that the plaintiff's ex-husband and the defendants only made a private agreement that was legalized before a Notary. The agreement stated that the plaintiff's husband would return the land certificate within 90 days. However, because the land certificate was not returned within the specified time, the plaintiff's husband extended the return period with a new agreement for another 90 days. In addition, based on the chronology described in the decision, the process of providing a mortgage guarantee was not carried out in accordance with the procedures stipulated in Law No. 4/1996. The procedure, which includes making a Deed of Granting Mortgage Rights (APHT) and a Power of Attorney to Charge Mortgage Rights (SKMHT) at the PPAT as an authorized official, as well as registering the mortgage at the Land Office, was not carried out. In fact, these stages are very important in providing a mortgage guarantee, in order to provide legal protection to all parties if at some point someone feels aggrieved. Due to negligence in carrying out the prescribed procedures, not only the plaintiff felt aggrieved, but also the defendant, namely the company that provided the loan

to the debtor, also felt aggrieved.

On the other hand, in the Civil Code, there is nothing that explains the prohibition on the involvement of third parties as guarantors of land rights, so that debtors can use land assets belonging to third parties/plaintiffs in order to obtain credit facilities. Furthermore, it is explained in Chapter 7 of Law No. 4/1996, that the mortgage right continues to follow its object in the hands of anyone the object is in, thus the land owned by a third party and guaranteed by the debtor should remain under the control of the third party. However, from Decision Number 808/Pdt.G/2021/PA CN it is explained that the plaintiff's certificate was actually taken by the defendants and when the land certificate was requested, the defendants could not return it to the plaintiff, this was because the defendants had not been able to fulfill their obligations to PT Bank Syariah Mandiri (co-defendant). This is not in accordance with Chapter 7 of Law No. 4/1996. Even though the land has been pledged by the debtor/defendants, the land owner/third party/plaintiff can still bring the land certificate.

There are several processes that must be carried out before the mortgage is placed, namely:

1. The debt agreement is consensual obligatoir, the meaning of consensual obligatoir is that the debtor is obliged to hand over the object of the mortgage guarantee to the creditor. Therefore, this debt agreement is classified as a personal agreement (*persoonlijke overeenkomst*) and is a principal agreement. As explained in Chapter 10 paragraph (1) of Law No. 4/1996, that the debt agreement is the principal agreement so that the agreement to grant mortgage rights which is accessory must follow the principal agreement.
2. In granting mortgage rights, it is preceded by an agreement stated in the APHT. APHT is an agreement to grant mortgage rights made by an authorized party, namely PPAT and is included as a legal act as regulated in Chapter 10 paragraph (2) in conjunction with Chapter 17 of Law No. 4/1996. PPAT is an official who is authorized to issue deeds related to land affairs, one of which is APHT. APHT is an authentic deed mandated in Law No. 4/1996 so that if it is not made in accordance with applicable provisions, the deed is considered null and void. APHT contains agreements between the parties such as:
 - a. A promise that limits the debtor's authority in renting out the land object that is used as a mortgage, such as in the case of changes to the rental period or receipt of rental fees in advance, unless there is written consent from the creditor beforehand;

- b. A promise to limit the debtor's ability to change the provisions applicable to the mortgage object, unless there is written consent from the creditor or mortgage holder;
 - c. If the debtor is in default, the collateral holder is given the authority to execute the mortgage guarantee in accordance with the decision of the competent District Court, based on the location of the mortgage object;
 - d. Revocation or execution of the land used as collateral for the mortgage, if proven to violate the provisions, must be authorized to the creditor in accordance with applicable regulations;
 - e. If the debtor violates the contents of the agreement, the collateral holder or creditor has the right to directly sell the land object used as collateral for the mortgage;
 - f. A promise that written consent from the recipient of the mortgage right or creditor is required if the debtor or the grantor of the mortgage right wishes to release his/her rights to the land used as collateral;
 - g. A promise to provide compensation to the debtor if there is a public interest that is released by the debtor;
 - h. If the mortgage land object is insured, the creditor will receive part or all of the insurance proceeds received by the debtor; and
 - i. Making a promise to the creditor to vacate the mortgage object if there is a default and the execution of the guarantee will be carried out.
3. If the debtor is not the party that owns the mortgage object, the Power of Attorney to Charge the Mortgage Right (SKMHT) must be made with a notary deed or PPAT deed. These provisions have been regulated in Chapter 15 paragraph (1) of Law No. 4/1996 which states that the making of SKMHT is mandatory. The purpose of making SKMHT is to guarantee legal certainty. After the SKMHT is made and signed by the third party, debtor, and creditor, the APHT is made by the Notary/PPAT based on Law No. 4/1996.
4. The granting of mortgage rights must be registered with the BPN no later than 7 working days after signing the APHT according to the explanation of Chapter 13 of Law No. 4/1996. In terms of registration at the BPN, according to Chapter 10 paragraph (2) it is explained that the PPAT is obliged to issue the APHT along with other supporting documents that have been determined by the BPN.

If all the stages that have been determined and are in accordance with applicable provisions have been carried out, the National Land Agency (BPN) will issue a Mortgage Certificate. After the process of issuing the Mortgage Certificate is in accordance with existing regulations, the creditor will have a legal relationship with the third party, because the third party is directly involved in the process of signing the SKMHT and APHT before a Notary or PPAT. This signing makes the third party considered the second debtor who is also responsible for paying off the debt. The third party is considered to have voluntarily participated in the process of borrowing funds from the creditor by providing his land as collateral for the mortgage.

Legal Settlement If the Third Party Feels Harmed by the Object of the Mortgage Guarantee

Legal protection is basically related to how the law provides justice, especially in terms of returning the rights of someone who has been harmed by another party. This loss usually occurs because a legal act is not carried out in accordance with applicable regulations, and ignores the principle of caution. Chapter 1338 of the Civil Code states that an agreement that has been agreed upon by the parties will be legally binding on them. The chapter also explains that the implementation of the agreement must be carried out in good faith. However, it often happens that one party does not fulfill its obligations, resulting in the party being declared in default. In this case, in accordance with Chapter 1239 of the Civil Code, the injured party has the right to claim compensation for losses incurred due to the negligence of the defaulting party. In addition, Chapter 1243 of the Civil Code also stipulates that a party who does not fulfill its obligations can be sued to pay compensation costs and interest as a result of the violation of the agreement. (Imanda 2020)

The Civil Code also contains an chapter that regulates the claim for compensation for the defaulting party as explained in Chapter 1267 of the Civil Code that if an agreement is not fulfilled, the party can choose whether the party demands to fulfill the agreement or cancel the agreement by demanding compensation, loss costs, and interest. Chapter 1267 of the Civil Code can be used as a basis for third parties to file a request for compensation for the actions of the defendants, so that the settlement of the default can be carried out through litigation by filing a lawsuit in court or carried out non-litigation if it is to be resolved amicably. If a third party's objection is submitted to the court, the court can conduct an investigation into whether it is true that the third party is the legal owner of the mortgaged land object and can request the creditor to return the mortgaged land object to the third party as the owner of the collateral object.

4. CONCLUSION

The existence of a third party in land rights guarantee is not mentioned in Chapter 4 paragraph (4) of Law No. 4/1996. However, Chapter 4 paragraph (5) and the Explanation of Chapter 3 of Law No. 4/1996 only explain implicitly regarding the involvement of a third party in the process of providing a mortgage guarantee. From this explanation, it can be understood that the involvement of a third party in the process of debt agreements for credit is not prohibited, but the regulation has not clearly regulated the rights and obligations of the third party so that it cannot provide definite legal protection for the third party as the owner of the guarantee if he feels disadvantaged either to the debtor or the creditor.

Legal protection for third parties who feel disadvantaged can be carried out with a preventive approach, such as through the preparation of a Deed of Granting Mortgage Rights (APHT) and a Power of Attorney to Charge Mortgage Rights (SKMHT), which aims to determine the limits of rights and obligations between the parties concerned, both creditors and debtors. In addition, if a third party feels aggrieved, legal settlement can be carried out either through litigation at the District Court or through non-litigation with a deliberation or family approach.

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