

**LEGAL CONSEQUENCES OF DEBT AND RECEIVABLE AGREEMENTS WITH THE  
TRANSFER OF LAND RIGHTS AS REPAYMENT OF DEFENDANT DEBTORS DEBT**

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**Abstract**

*This legal research aims to examine the legal consequences of debt agreements with the transfer of land rights as repayment of default debtors. This research is a normative legal research with a prescriptive and applied nature. The approach used in this research is a case study. The legal materials used are primary legal materials and secondary legal materials. The legal material collection technique used is library research. The legal material analysis technique used is the syllogism method. The results of this study indicate that collateral for debts in the form of land may not be transferred in the event of default, this is because it conflicts with Supreme Court Jurisprudence No. 2877 K/Pdt/1996, Law on Mortgage and Basic Agrarian Law. Therefore, debt agreements that make collateral as debt repayment by transferring rights in the event of default are null and void.*

*Keywords: Agreement, Debts, Wanprestasi*

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## **INTRODUCTION**

### **Background**

Indonesia is a legal state in accordance with Article 1 paragraph (3) of the 1945 Constitution, Amendment IV, where all actions carried out by Indonesian citizens must be based on law and must not conflict with applicable law. All actions that are based on law will also have a good impact in the future, because if all actions are based on law and do not conflict with the law, then these actions will also receive legal protection from existing law enforcement institutions. In this case, in Indonesia there are many laws that apply, namely criminal law, civil law, and so on. Civil law itself is regulated in various laws, one of which is the Civil Code or *Citizen's Law book* (BW).

Civil Code or *Citizen's Law book* (BW) itself regulates various actions that are closely related to problems that exist in society itself. For example, in Article 1754 of the Civil Code or *Citizen's Law book* (BW) regulates an agreement between two or more people who bind

themselves where one party gives to the other a certain amount of goods that are used up due to use, with the condition that the borrowing party will return the same amount of the goods .

An agreement can have legal force if the agreement complies with the legal requirements of an agreement as stated in Article 1320 of the Civil Code. In Article 1320 of the Civil Code, there are 4 conditions for the validity of an agreement, namely: the agreement of those who bind themselves, the ability to make an agreement, a certain subject matter, a lawful cause. These conditions must be fulfilled in their entirety and if an agreement is made in violation of one or more of the legal conditions of the agreement as regulated in Article 1320 of the Civil Code then the agreement is null and void.

In its development, debt and receivable agreements or loan and borrowing agreements as stated in Article 1754 of the Civil Code are the agreements most often entered into. Debt and receivable agreements are also usually related to collateral, which can be in the form of movable or immovable objects. The most common immovable object used as collateral is land. Land is needed by every human being, both on a small scale, which is only limited to residential needs, and on a large scale, namely for social and business needs [1].

Human need for land is what makes land value quite high, therefore land is often used as collateral for debt because its value is quite high. However, in daily practice, borrowing and borrowing of money or debts and receivables are widespread which are then tied to a Sale and Purchase Agreement (PPJB) for land parcels and some are even tied directly to the issuance and signing of a Sale and Purchase Deed (AJB) for land. so that these actions often cause conflict among the community [2]. Apart from the above, there are also many practices of debt and receivable agreements with a plot of land as collateral, and in these agreements there is a clause that if there is a default or the debtor is unable to repay the debt then the collateral in the form of the land will become the property of the creditor and the rights to the land will be transferred. .

Based on the brief explanation above, the author is interested in studying this matter in more depth, which is then outlined in a legal writing entitled: LEGAL CONSEQUENCES OF DEBT AND RECEIVABLE AGREEMENTS WITH THE TRANSFER OF LAND RIGHTS AS PAYMENT OF DEFENDANT DEBT DEBT

### **Objective**

The background to this research is that there are many debt and receivable agreements that occur in society, where in these agreements there is often a clause stating that the collateral for the debt and receivable agreement can be used as repayment by transferring rights. The purpose of legal writing is to determine the legal consequences of debt and receivable agreements with the transfer of land rights as repayment of debts of defaulting debtors..

## **External**

This legal writing has target outcomes, including:

1. Increase public awareness about the law.
2. Providing knowledge to the community about the legal consequences of debt and receivable agreements with the transfer of land rights as repayment of debts of defaulting debtors.

## **RESEARCH METHODS**

The research method used in this legal research is normative, prescriptive and applied with case studies [3]. The sources of legal materials used in this research are primary legal materials and secondary legal materials. The legal material collection technique used is literature study and uses the deductive syllogism method as a technique for analyzing the legal material used.

## **RESULTS AND DISCUSSION**

In debts and receivables, it is common for there to be collateral in the form of property owned by the party proposing the debt (the debtor). This collateral is given with the aim of anticipating that if the debtor is unable to pay off the debt, the collateral can be used as a means of paying off the debtor's debt. That for collateral in the form of land, mortgage rights apply as regulated in Law Number 4 of 1996 concerning Mortgage Rights. The Mortgage Rights Holder is an individual or legal entity whose position is the party that owes the debt [4]. The definition of mortgage rights is contained in Article 1 number 1 UUHT which reads *"Mortgage Rights are security rights imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or not including other objects which are an integral part of the land, for the repayment of certain debts, which gives priority position to certain creditors, compared to other creditors."* From this definition, actually, with the existence of a mortgage right, the benefit is the creditor, this is because with the existence of a mortgage right, the creditor, as the provider of funds lent to the debtor, gets certainty regarding the repayment of the debtor's debt or the implementation of an achievement by the debtor or his guarantor, if the debtor does not able to complete all obligations related to the credit [5]. The priority position in Article 1 number 1 of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land contains the meaning of pre-emptive rights (*rightspreferencet*) in connection with credit agreements made between Debtors and Creditors in connection with debts and receivables [6]. The rights of mortgage holders are regulated in Article 6 UUHT, which states: *"If the debtor breaks his contract, the first Mortgage Rights holder has the right to sell the Mortgage Rights object under his own authority through a public auction and collect the receivables from the proceeds of the sale."* The rights to land that can be encumbered with dependent rights are property rights, business use rights, and building use rights.

If the guarantee of ownership rights to the land is carried out without using a mortgage procedure, then the guarantee falls into the general guarantee category. According to Article

1131 of the Civil Code, guarantees in general are all obligations owned by a person, whether in the form of movable or immovable assets, which already exist or will exist in the future, become a responsibility or obligation for all individual agreements or contracts. Furthermore, Article 1132 of the Civil Code reads: "*These objects become a joint guarantee for all those who owe them money. The income from the sale of these objects is divided according to the balance, namely according to the size of each receivable, unless there are valid reasons for priority among the debtors. .*"

That based on the provisions above, of course a creditor can take advantage of the guarantee provided by the debtor if the debtor breaks his promise (default). *defaultis* "non-fulfillment of achievements or obligations as appropriate imposed by the contract on para parties"[7]. The debtor has an obligation to submit achievements to the creditor, therefore the debtor has an obligation to pay the debt (schuld) [8]. That before a default occurs, it is necessary to have an agreement, where the conditions for the validity of the agreement are regulated in Article 1320 of the Civil Code. This article regulates 4 conditions for the validity of the agreement. Based on article 1320 of the Civil Code, the terms of an agreement are the agreement of those who bind themselves, the ability to make an agreement, a certain thing, and a lawful cause [9]. By fulfilling these four conditions, the agreement is considered valid and legally binding for the party making it. It creates a clear legal basis for assessing the validity of an agreement and involves key elements that support fairness and reasonableness in the legal relationship between the parties. [10]. Apart from the provisions of Article 1320 of the Civil Code, in the case of borrowing money, the parties must comply with the regulations in the agreed debt and receivables agreement, including that the creditor may not request or collect receivables in excess of the amount in the agreement. Creditors only have the right to collect the amount of money in accordance with what was agreed upon [11].

That when the debtor is in default, the creditor is not permitted to have collateral in the form of the land by transferring rights. This is because this action is contrary to Supreme Court Jurisprudence No. 2877 K/Pdt/1996, which states: "The sale and purchase of land that originates from a debt and receivable relationship (the creditor is the buyer because the debtor is unable to pay the debt), then the sale and purchase is null and void." Jurisprudence itself is a judge's decision which then, after time has passed, the decision is used as a reference by another judge with a note that the same event has occurred regarding the previous judge's decision. Even though jurisprudence has an important function, it does not have a clear legal position in Indonesia, both at the theoretical and practical levels [12]. However, according to expert M. Yahya Harahap, jurisprudence itself has several vital functions, including creating legal certainty, this is because jurisprudence itself is the discovery of a law that is not regulated by law. In line with M Yahya Harahap's statement, Blanc-Jouvan and Boulouis expressed the opinion that "*Even though it does not have de jure binding authority, judicial decisions at least have de facto authority. This authority varies depending on the circumstances*" [13]. Therefore, Supreme Court Jurisprudence No. 2877 K/Pdt/1996, Care must be taken when making an agreement because if an agreement is made in violation of this

jurisprudence, of course this will disturb public order. Public Order itself, if interpreted broadly, includes all legal values and principles that live and develop in society, including the values of propriety and principles of general justice (*general justice principle*) [14].

In addition, based on the Procedure for the Transfer of Land Rights according to the provisions of Article 26 paragraph 1 of Law No. 5 of 1960 Regarding the Basic Regulation of Agrarian Trees (UUPA), is as follows:

1. Buying and selling, exchange, gift, giving by will, giving according to custom:
  - Sale and purchase: Transfer of rights through a land sale transaction.
  - Exchange: The exchange of land between the parties involved.
  - Grant: Transfer of rights free of charge or without compensation.
  - Grant by Will: Transfer of rights based on a will or grant through a will.
  - Grant According to Custom: Transfer of rights that follows the customary norms or customs of the local community.
2. Other Acts Intended to Transfer Ownership:
  - Including all other forms of legal action aimed at transferring land ownership rights.
3. Supervision is regulated by Government Regulation:
  - The implementation, regulation and supervision of the process of transferring land rights is regulated by government regulations

Whereas based on the provisions above, debt and receivable agreements which contain a clause regarding the transfer of land rights as debt repayment if the debtor defaults do not fulfill the legal requirements for an agreement as regulated in Article 1320 of the Civil Code. The conditions that are not fulfilled are objective requirements in the form of a lawful cause. Failure to fulfill the objective conditions of the agreement in the debt and receivables agreement will result in the agreement being legally null and void.

## **CONCLUSIONS AND SUGGESTIONS**

Debt and receivable agreements are regulated in Article 1754 of the Civil Code, in debt and receivable agreements it is common to use collateral. The collateral used in debt and receivable agreements is something that has sales value, one of which is land. The provisions of Law Number 4 of 1996 concerning Mortgage Rights apply to collateral for debts and receivables. Collateral for debts and receivables in the form of land may not be subject to transfer of rights in the event of default, this is because it conflicts with Supreme Court Jurisprudence No. 2877 K/Pdt/1996, Mortgage Rights Law and Basic Agrarian Law. Therefore, debt and receivable agreements which provide collateral as repayment of debts by transferring rights in the event of default are null and void.

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