

Legal Consequences of Roya Mortgage in The Banking Practices Credit Contract

Nurmawati¹ and Dewi Nurul Musjtari²

^{1,2} Universitas Muhammadiyah Yogyakarta, Yogyakarta, Indonesia

*email: nurmawati684@gmail.com

DOI: <https://doi.org/10.31603/variajusticia.v16i1.3071>

ABSTRACT

Keywords:
*Credit Contract,
Legal
Consequences,
Roya Mortgage*

Roya is charged to the debtor without notice of additional obligations after paying off the mortgage. The purpose of this study is to identify the legal consequences for debtors if the debtor does not perform Roya in the implementation of credit contracts in PD BPR Bank Bantul. This research was conducted through empirical legal analysis, the data obtained were then analyzed qualitatively, primary data collected through interviews from debtors, creditors and the National Land Agency (BPN) combined with secondary data. The results show that legal protection for debtors in the implementation of Roya is provided in Article 18 of Law Number 8 of 1999 concerning Consumer Protection, protection for customers from exclusion clauses in standard contracts. Contracts that violate this law will be considered null and void. Article 22 of Law Number 4 of 1996 concerning Mortgages states that Roya's application was submitted by interested parties which considered as creditor. The legal consequences if the debtor does not do Roya is the Land Certificate is still administratively considered a mortgage and the land certificate owner cannot take legal action against it.

1. INTRODUCTION

The average person who implemented Roya in the last five years at the Bantul National Land Agency shows a gap between those who get credit and those who do Roya.¹ This condition is illustrated by a case study of someone interested in buying land, while the certificate is used as collateral at the bank. Legal capacity is an urgency because the number of people who get funds guaranteed by the mortgage for five years is 1,466 in PD BPR Bank Bantul. Based on the data above, it is an interesting issue to discuss the legal consequences of roya credit contracts for debtors in banking practices.

Roya is a write-off of the mortgage right attached to the land book that is the object of the mortgage right because the abolition of the mortgage right is a burden on

¹ Sigit, "Interviews with Representative of Bantul District Land Office" (2018).

the land.² Roya occurs when someone has made a credit contract to the party. Based on Law number 4 of 1996 on Mortgage, Roya is concerned on a note shall be given to the abolition right, while it is about the abolishment of the certificate. The certificate of land rights that have been affixed with the note is returned to the rights holders. It is emphasized in Article 22, Paragraph 4 of Mortgage Law, which stated that:

"Interested parties apply to removal (Roya) by attaching a certificate of mortgage that has been given an annotation by the creditor. The annotation is required regarding the write-off of the mortgage because the debt has been paid, or a written statement by the creditor that the mortgage has been written off".

In conducting a credit contract, the creditors shall receive the guarantee that is handed over by the debtor. A guarantee is something given to a creditor to assure that the debtor will fulfil the obligations that can be valued with money arising from a contract.³ If the debtor has fulfilled the default on the deal, then there will be a Roya.⁴ It is emphasized in Article 22 of Mortgage Law of 1996, which stated that the land office shall do Roya of the Mortgage in the book of land ownership and certificate.

The credit contract contains the first agreement that is followed by the collateral contract as an additional contract. Both are made separately, and the position of the guarantee contract depends on the main contract under the Mortgage Act of 1996, which refers to the 1945 Constitution and the Basic Agrarian Law of 1960.⁵ Indonesia's national development, as a strength of the country's economic potential, will be strengthened by utilizing facilities as substantial funding. The role of the community in financing will be even more significant because of the funds needed in developing the country.⁶ Based on the description above, it is necessary to research on the legal consequences of roya mortgages in bank credit contracts.

2. RESEARCH METHODS

This research conducted through empirical legal research, which is a type of legal research that analyses and examines how the law works in society. This can be assessed from the level of effectiveness of the law, compliance with the law, the role of legal institutions in law enforcement, implementation of the rule of law, the influence of social

² Syuryani, "Pelaksanaan Roya Hak Tanggungan Sebagai Upaya Menjamin Kepastian Hukum Di Kantor Pertanahan (BPN) Kota Bukittinggi," *Pagaruyuang Law Journal* 2, no. 1 (2018): 116–29.

³ Badriyah S.M, "Problematika Pembebanan Hak Tanggungan Dengan Objek Tanah Yang Belum Bersertifikat," *Masalah-Masalah Hukum* Vol 45, no. 3 (2006): 173–80.

⁴ Efty Hindaru Sudibyo and Amin Purnawan, "Peran Notaris Dalam Pembuatan Akta Izin Roya Hak Tanggungan Karena Hapusnya Hutang Dalam Perspektif Kepastian Hukum," *Jurnal Akta* 4, no. 2 (2017): 183–96, <https://doi.org/10.1017/CBO9781107415324.004>.

⁵ St. Nurjannah, "Eksistensi Hak Tanggungan Sebagai Lembaga Jaminan Hak Atas Tanah (Tinjauan Filosofis)," *Jurisprudentie* 5, no. 1 (2018): 195–205, <https://doi.org/10.24252/jurisprudentie.v5i2.5439>.

⁶ Yuyuk Herlina, "Review of The Law Against Debt Absorption Banking Credit Agreement," *Jurnal Ilmu Hukum Legal Opinion* 3, no. 5 (2015): 1–10.

problems on the rule of law. The techniques for collecting data in empirical legal research is interviews. Interviews are intended to conduct a question and answer directly between researchers and respondents or informants to get information. Data obtained from both empirical research and library research then processed and analyses qualitatively. The definition of descriptive is to clearly describe the actual conditions and qualitative analysis of the data stated by the respondent, and the resource person was then described so as to obtain an understanding⁷. Descriptive qualitative is an analysis that describes the legal consequences of roya mortgage in the implementation of credit contract in banking practices.

3. LITERATURE REVIEW

According to J. Satrio, the definition of roya is the elimination of expense records. Whereas in the explanation of Article 22 Paragraph (1) of Mortgage Law, it is stated that Roya is equated with a scribbling of a record.⁸ The termination of the mortgage in the provisions of Article 18 Paragraph (1) of the Mortgage Law explains that the mortgage is removed because of the following matters:

1. Write off debt guaranteed by the mortgage.
2. Release of a mortgage by the mortgage Holder.
3. Clearance of Mortgage based on ranking by Head of District Court.
4. The abolition of land rights that are burdened with Mortgage Rights.

From the provisions of Article 18 Paragraph (1) of the Mortgage Law, it can be seen that the mortgage can be intentionally written-off and can also be removed due to the law. The mortgage can be abolished due to the release of the mortgage by the holder of the mortgage or due to clearing the mortgage based on a ranking determined by the Head of the District Court. In contrast, the mortgage can be abolished due to the law, because the write off of the debt guaranteed by the mortgage and because of the abolition of the right to the land encumbered by the mortgage. The Civil Code adheres to the principle of attachment, while the Mortgage Law adhere to the principle of horizontal separation. Mortgage Law adheres to the principle of horizontal separation because Mortgage Law is a derivative of the Basic Agrarian Law based on customary law. Land law based on customary law adheres to the principle of horizontal separation. The principle of attachment adopted by the Civil Code is reflected in the provisions of Article 1163 of the Civil Code and Article 1165 of the Civil Code.

⁷ Mukti Fajar Nur Dewata and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka pelajar, 2010).

⁸ J. Satrio, *Hak Jaminan: Hak-Hak Jaminan Kebendaan* (Bandung: Citra Aditya Bakti, 2002).

4. RESULT AND DISCUSSION

Discussion on the legal consequences cannot be separated from the rights and obligation of the subject of law, which in this context is the debtor. The debtor must pay off the credit or money to the debtor's responsibility is to pay off the loan or money to the creditor, and the creditor shall receive the principal instalments and interest. Customers are considered as a debtor when they entered the credit contract. Credit Contract is subject to Banking Law. The banking law appears as the *Lex Specialis* of the chapter on lending and borrowing in the thirteenth Civil Code Book III, which serves as the *Lex Generalis*.⁹ The consensual aspect of a contract is subjected to Banking Law and general part of Book III of the Civil Code. Meanwhile, the real element of the contract is subjected to the Banking Law Number, and the provisions contained in the standard credit contract, which used in the banking environment, credit contract in this real aspect are not subject to Chapter XIII Book III BW.

Article 1163 the Civil Code states that these rights, in essence, cannot be divided and rests on all immovable objects which are bound in its entirety in each of these objects and above each part thereof. In contrast, Article 1165 of the Civil Code states that every mortgage includes all future repairs to the object that is burdened, as well as everything that is united with that object due to growth or development. The principle contained in the Mortgage Law is an absolute principle that must exist in the implementation of granting land rights guarantees, in this case, the allowing of Mortgage Rights on land.

The emergence of the Mortgage Law is expected to make the collateral that imposed on land rights which may become an arrangement and can be clear about the guarantee imposed on land rights. Mortgage Rights, in its implementation, has a variety of principles, namely:¹⁰

1. They were giving a preferred position to the creditor. This means that the creditors who have the mortgage have the right to take precedence in obtaining repayment of their receivables from other creditors on the proceeds of the sale of objects that burdened by the mortgage.
2. Following the object in whoever has the object.
3. This means that the objects which used as objects of the mortgage are still burdened by the mortgage even though it in the hands of whoever. So, even though the land rights are the object of the mortgage have been moved to others, the mortgage is remains attached to the object and still have binding legal force.
4. Meet the principle of speciality and publicity.
5. The principle of specialty means that objects burdened with a mortgage must be specifically appointed. In the Deed of Granting Mortgage Rights, it must be stated

⁹ Hatta.

¹⁰ Adrian Sutedi, *Hukum Hak Tanggungan* (Jakarta: Sinar Grafika, 2010).

clearly what the burdened object is, where it is located, how wide it is, what the boundaries are, and what is the proof of the owner.

6. The principle of publicity means that the imposition of the mortgage must be known by the public, for that the certificate of making mortgage rights must be registered.
7. Secure and specific implementation of execution. This means that it can be executed as a decision of a judge who has permanent legal force.

The mortgage is imposed on several land rights consisting of several parts, an independent entity and can be assessed individually. To be burdened with land rights, the object of the mortgage must meet four conditions, namely:

1. Can be valued in money, because debt is guaranteed in the form of money
2. Include the rights registered in the public register because they must meet the requirements of publicity.
3. Has transferable nature because if the debtor fails to promise the object that is used as a debt guarantee will be sold in public.
4. Appointed by law. In Article 4 of Mortgage Law explicitly designated land rights that can be used as collateral for the debt.

In addition to the applicable principle, the mortgage has the nature of not being divided, unless agreed in the Deed of Granting Mortgage.¹¹ This means that a Mortgage encompasses the object as a whole and every part of it. Therefore, if a portion of the debt is paid, the payment does not free a portion of the object burdened by the mortgage. Meanwhile, in Mortgage Law Article 2 Paragraph (1) cannot be divided from the mortgage, it is not absolute, it can be distorted with the agreement set forth in the Deed of Granting Mortgage (Article 1 Paragraph (2)) with the following conditions:

1. Mortgage rights are imposed on several land rights.
2. Repayment of guaranteed debt is made in instalments.

However, if the debtor then has funds to repay a portion of the debt, the repayment of the loan instalments in the amount equal to the value of each object encumbered by the mortgage will free the object from the mortgage on condition that it has been agreed in advance, so the mortgage only burdens the remaining debt. Therefore, if the debtor has paid off the debt, it means that the debt agreement between the debtor and the creditor has ended.

Suppose considering that the mortgage is a material right, the right that can be claimed by the right holder from a third party who controls or owns the object of the mortgage. The object abolition of the mortgage must also be accompanied by the exclusion from the recording in the land book of the mortgage which becomes the object of the Rights Hold on or do *Roya*. Before submitting *Roya's* application, several requirements must be met, these requirements are under the Regulation of the Head of

¹¹ Sutedi.

the National Land Agency of the Republic of Indonesia Number 1 of 2010 on Service Standards and Article 22 of Regulation of Land Affairs, as follows:

1. After the mortgage is removed as intended in Article 18, the Land Office crossed out the mortgage note in the land rights book and its certificate. Scribbling notes or *Roya* Mortgage is done for the sake of administrative order and has no legal effect on the mortgage concerned that has been deleted.
2. With the termination of the mortgage, the certificate of the mortgage concerned shall be withdrawn and together with the Land Book of the Mortgage shall be declared no longer valid by the Land Office.
3. If the certificate of mortgage for some reason is not returned to the Land Office, the matter is recorded in the Land Rights Document.
4. The request for deletion is submitted by the parties concerned by attaching a certificate of mortgage that has been given a note by the creditor that the mortgage is written off because the receivables guaranteed for repayment with the mortgage are paid in full, or a written statement from the creditor that the mortgage has been written off because the credit is has been paid in full or because the creditor has released the mortgage in question.
5. If the creditor is not willing to give the written statement, the interested parties can submit a request for a crossing order to the Head of the District Court whose jurisdiction covers the place of the mortgage in question is registered.
6. If the request for a crossing out order arises from a dispute that is being examined by another District Court, the application must be submitted to the Head of the District Court who is exploring the case in question.
7. The application for recording the Mortgage Right based on the order of the District Court is submitted to the Head of the Land Office by attaching a copy of the determination or decision of the relevant District Court.
8. The Land Office shall cross out the Mortgage record according to the procedure specified in the legislation in force within 7 (seven) working days from the receipt of the application as referred to in Paragraph (4) and Paragraph (7).
9. If the repayment of the debt is made by instalments as referred to in Article 2 Paragraph (2), the cancellation of the mortgage on the portion of the object of the mortgage concerned is recorded in the land book and certificates of mortgage and on land-books and documents of land rights that are free from the mortgage that originally burdened them.

The debt agreement is an individual nature, only parties to the agreement, not the third party (the public) are aware of the situation. For the public to be aware of this event,

it is necessary to fulfil the principle of publicity by publishing it in the Land Office.¹² If not, then, in general, the mortgage is still valid. The abolition of the mortgage must be followed by removing the mortgage from the land title book which is charged with the mortgage. Removing the registration of a mortgage is a civil act. In granting a mortgage to fulfil its business capital needs, a debtor can submit more than one Mortgage object to the creditor. All objects of the mortgage will later be guaranteed to become a unity in the mortgage to get a capital/ money loan as expected.

From the explanation above, *Roya* must be promised in advance in the Deed of Granting mortgage, and if it is not agreed in advance in the Deed of Granting Mortgage, then *Roya* cannot be done to the object of the mortgage. The mortgage must be registered at the Land Office, and this is in accordance with Article 13 Paragraph (1) of Mortgage Law. Registration of Mortgage is done at the local land office by making a Book of Mortgage and recording it in the land rights book which is become the object of the mortgage as referred to in Article 13 Paragraph (3) of Mortgage Law whereas the entry into force and the birth of the mortgage is on the date of the said mortgage Book (Article 13 Paragraph (5) of the mortgage Law).

In Government Regulation Number 24 of 1997 on Land Registration, registration of the removal of the mortgage is part of the form of maintaining land registration data. Therefore, the implementation of *Roya* Mortgage must also be carried out based on the principles set out in the land registration system, namely simple, safe, affordable, up-to-date and open. Provisions in Article 22 Paragraph (4) of Mortgage Law stated that the deletion is carried out at the request of the interested parties by attaching the Mortgage certificate which has been given a note by the creditor, that the mortgage has been paid off or a written statement from the creditor that the mortgage has been deleted because the receivables guaranteed for repayment with the mortgage have been paid in full or because the creditor relinquished the mortgage of interest concerned.

The above article does not mention directly related to who should apply for the removal of the mortgage right (*Roya*). Therefore the word of interest can be meaningful from the creditor or debtor. However, in practice, the bank or creditor interprets the term "interested parties" refers to the debtor because they have a direct interest related to the removal of the mortgage right, which is related to the ownership status. Therefore the debtor must take care of himself associated with the removal of the mortgage. Based on Bank Bantul BPR Customer, Mr Yulianto said that when he considered taking the credit contract, the form of the credit contract had been provided by the bank. At the same time, the debtor did not learn and understand it, apart from that sometimes the debtor considered the contents of the contract to be insignificant, the debtor immediately sign

¹² Wiwiek Wahyuningsih, Arba, and Shinta Andriyani, "Kajian Yuridis Pelaksanaan *Roya* Obyek Hak Tanggungan Atas Tanah Oleh Badan Pertanahan Kota Mataram," *Jurnal Jatiswara* 33, no. 1 (2018): 13–22, <https://doi.org/10.29303/jatiswara.v33i1.150>.

the credit contract without first reading the contents. It happened because the credit contract contains too many articles so that it will take quite a long time for the customer to read it, while the customer wants quick disbursement of funds. Then, during the credit contract signing process, the bank as a creditor only explained the contents of the credit contract verbally or briefly.

Regarding the *Roya*, the credit contract does not state that the customer must perform *Roya* after the credit contract ends. So the customer does not know or understand that after the credit contract has ended, *Roya* has to do with the removed the record of the mortgage right on the land title book and its certificate. Meanwhile, to conduct *Roya* did cost some money. The bank as a creditor did not explain this at the beginning of the credit contract. The bank or creditor tells *Roya* and its costs after the customer has made a credit contract.

The Head of Credit Section in Bank Bantul, Ranga Kurniawan, said that related to the obligation to do *Roya* is on the bank as a creditor. Still, in the practice of the banking world, it is common that debtor has a responsibility to do *Roya*. In the credit practice carried out by the bank, the implementation of *Roya* on specific objects of the mortgage without prior agreement is common, even though this is on the contrary to Article 2 Paragraph (1) and Paragraph (2) of Mortgage Law, which in the provisions of Article 2 of that law stated that if *Roya* wanted to be conducted, they should first mention it in the Deed of Granting mortgage.

Based on the Government Regulation on Land Registration, the records of removing the mortgage shall be carried out on both the certificate and the land title book on the encumbered land. This is also confirmed in the provisions of Article 22 Paragraph (1) of the Mortgage Law that with the removal of the mortgage, the Head of the Land Affairs Office crossed out the mortgage note in the land book and the certificate. The *Roya* of the mortgage record is done within seven working days from the receipt of the request for deletion (Article 22 Paragraph (8) of the mortgage Law). The land of the mortgage is declared no longer valid the certificate of mortgage that has been ransacked has been destroyed/eliminated.

The legal aspect that arises from the removal of the Mortgage (*Roya*) on the certificate of land is To provide legal certainty and legal protection to the holders of rights on a plot of land, apartment units and other registered rights so that they can easily prove themselves to be the relevant rights holder and To provide information to the interested parties including the Government, so its going to be easy to get the data needed in carrying out legal actions regarding plots of land and units of flats that have been registered, for good administrative records.¹³ In addition, the *Roya* was carried out for the sake of

¹³ Wahyu Pratama, "Tinjauan Hukum Tentang Sertifikat Hak Tanggungan Menurut Undang-Undang Nomor 4 Tahun 1996," *Jurnal Ilmu Hukum Legal Opinion* 3, no. 6 (2015): 1-9.

executive order and had no legal effect on the mortgage that had been deleted. If the certificate of land rights is not immediately removed/ tried, then the land certificate is still in the name of the creditor (bank). The owner of the certificate of land rights cannot carry out legal actions, before the certificate of land rights is removed/ *Roya*.

5. CONCLUSION

The legal consequences if the debtor did not do the *Roya* in the credit contract with guarantee in PD BPR Bank Bantul is The Land Certificate still administratively considered as a mortgage. Therefore, the owner of the certificate cannot carry out any legal action towards its certificate. The legal consequences if the debtor did not do the *Roya* in the credit contract with guarantee in PD BPR Bank Bantul is The Land Certificate still administratively considered as a mortgage. The *Roya* was carried out for the sake of administrative order and aimed to fulfil the principle of publicity by publishing it on the Land Office. Article 22 of Law Number 4 of 1996 on Mortgage stated that the plea for *Roya* as referred in Article 22 Paragraph (1) is submitted by the interested party. Therefore, the burden of conducting *Roya* shall be in the hand of the creditor (bank). The law opens another option regarding who shall do the *Roya*, which is the bank shall conduct the *Roya*, and the debtor pays for it, but this option comes with a condition. The condition is that the bank shall write it in the credit contract and explained it to the debtor in the first steps of applying for credit. Obligation to conduct or pay for the *Roya* shall be written down in the Credit Contract. In making a Credit Contract, there shall be an explanation by the creditor to the debtor not only regarding all of his rights and obligations but also the legal consequences of avoiding it, including *Roya*.

REFERENCES

- Dewata, Mukti Fajar Nur, and Yulianto Achmad. *Dualisme Penelitian Hukum Normatif Dan Empiris*. Yogyakarta: Pustaka pelajar, 2010.
- Hatta, Sri Gambir Melati. "Perkreditan Dan Tantangan Dunia Perbankan." *Jurnal Legislasi Indonesia* 3, no. 4 (2006).
- Herlina, Yuyuk. "Review of The Law Against Debt Absorption Banking Credit Agreement." *Jurnal Ilmu Hukum Legal Opinion* 3, no. 5 (2015): 1–10.
- Nurjannah, St. "Eksistensi Hak Tanggungan Sebagai Lembaga Jaminan Hak Atas Tanah (Tinjauan Filosofis)." *Jurisprudentie* 5, no. 1 (2018): 195–205. <https://doi.org/10.24252/jurisprudentie.v5i2.5439>.
- Pratama, Wahyu. "Tinjauan Hukum Tentang Sertifikat Hak Tanggungan Menurut Undang-Undang Nomor 4 Tahun 1996." *Jurnal Ilmu Hukum Legal Opinion* 3, no. 6 (2015): 1–9.
- Purnama, Yusuf Bagus, and Rusdianto Sesung. "Kewenangan Notaris Dalam Membuat Akta *Roya* Hak Tanggungan." *Al-Qānūn, Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 21, no. 1 (2018): 85–100.
- S.M, Badriyah. "Problematika Pembebanan Hak Tanggungan Dengan Objek Tanah Yang Belum Bersertifikat." *Masalah-Masalah Hukum* Vol 45, no. 3 (2006): 173–80.
- Satrio, J. *Hak Jaminan: Hak-Hak Jaminan Kebendaan*. Bandung: Citra Aditya Bakti,

2002.

Sigit. "Interviews with Representative of Bantul District Land Office." 2018.

Sudibyo, Efty Hindaru, and Amin Purnawan. "Peran Notaris Dalam Pembuatan Akta Izin Royo Hak Tanggungan Karena Hapusnya Hutang Dalam Perspektif Kepastian Hukum." *Jurnal Akta* 4, no. 2 (2017): 183–96. <https://doi.org/10.1017/CBO9781107415324.004>.

Sutedi, Adrian. *Hukum Hak Tanggungan*. Jakarta: Sinar Grafika, 2010.

Syuryani. "Pelaksanaan Royo Hak Tanggungan Sebagai Upaya Menjamin Kepastian Hukum Di Kantor Pertanahan (BPN) Kota Bukittinggi." *Pagaruyuang Law Journal* 2, no. 1 (2018): 116–29.

Wahyuningsih, Wiwiek, Arba, and Shinta Andriyani. "Kajian Yuridis Pelaksanaan Royo Obyek Hak Tanggungan Atas Tanah Oleh Badan Pertanahan Kota Mataram." *Jurnal Jatiswara* 33, no. 1 (2018): 13–22. <https://doi.org/10.29303/jatiswara.v33i1.150>.



This work is licensed under [a Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/)
