

# *Problems in Law of Mortgage Right (Law Number 4 of 1997)*

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**Abstract-** Mortgage Law disregarding a number of civil problems, the rights of the parties in the relationship of mortgage rights cannot be fulfilled equitably, because procedural practices so far have not proceeded properly. Law Number 4 of 1997 does not provide clear rules, therefore creditor tends to dominate in the legal relationship. At the same time, debtor rights are neglected, they do not get justice because of the creditors' negligence. This research is explanatory, laying the footing of knowledge about mortgage rights to be a foothold in further research. This study found non-normative offenses that must be included in the Mortgage Law for legal development and fulfillment of rights in the institutional security rights.

**Keyword -** *The validity of the Underwriting Right can be seen from the Credit Agreement*

## I. INTRODUCTION

The purpose of law enforcement is to ensure certainty about the issues in dispute, and then find a middle ground for the justice of the parties. The law must be implemented and enforced. Everyone expects that a law can be established in the event of a concrete event. How is that law that must apply, basically not to deviate: fiat justitia et perat mundus (although the world will collapse, the law must be enforced). That's what legal certainty wants. Legal certainty is a justifiable protection against arbitrary actions, which means someone will get something that is expected under certain circumstances. The community is very interested that justice or enforcement is taken into account. In the implementation and enforcement of the law must be fair. Law is not synonymous with justice. The law is general, binding on everyone, generalizing. Whoever steals must be punished: whoever steals must be punished, without discriminating who steals. On the contrary, justice is subjective, individualistic, and not generalized.

All elements of mortgage rights must work with cohesive procedures. The rule of law in mortgage rights must be comprehensive, there must be no internal or external conflict, and it cannot violate the principles of law and justice. The existence of certainty in law enforcement is pursued by the presence of a cohesive rule of law and the implementation of comprehensive law enforcement. All people involved in the relevant jurisdiction must obey the law. Therefore the rule of law should pay attention to all the variables of interest in a legal issue. But that is often overlooked because of the interests of the dominative group in law.

Most of the cases in the Court are land, and most are disputes over mortgage rights. This data shows that mortgage rights disputes are very important and serious legal issues. Mortgage law is a legal instrument that was born to provide protection as well as a legal service guide in the relationship between creditors and debtors. The balance of interests and capacities of the parties is very determinant of the sanctity of legal relations. The Bank's decision to provide loans is based on the debtor's positive qualifications, so that the repayment guarantee can be achieved.[1]

Law Number 4 of 1996 concerning Mortgage Rights was born as a guarantee of security and certainty. In line with that Andi said that the other goal was to eliminate the dualism in national land law, which meant the creation of a national land law unification and the creation of legal certainty regarding land rights, in addition to achieving optimal land functions in accordance with the development needs of the Indonesian people.[2]The reason for the dispute is the uncertainty of normative law and procedural weaknesses in upholding the administration of Underwriting Rights. Therefore, this research focuses on conducting studies to find normative settlement efforts for Mortgage. There are two inconsistencies in Law number 4 of 1996, namely: a. What is the position of creditor money given to debtors before the birth of mortgage rights; b. How is the principle of procedural and substantive justice within the creditor's authority to strip execution.

## II. RESEARCH METHOD

This research is based on the philosophical thinking that the two forma objects, namely the point of view or purpose of thought and investigation of material objects, that is, understanding deeply, discovering the truth or nature of something investigated as material objects.[3] This is normative (normative juridical) legal research, through legal and conceptual approaches. use exploration typology, with primary legal material in the form of legal documents and secondary legal material in the form of competent expert and respondent views. This research methodology can deliver the research process to achieve research objectives, namely formulating the concept of novelty in the Mortgage Rights Institution based on the principles of Procedural Justice.

### III. FINDINGS AND DISCUSSION

Our problem in mortgage rights is the injustice between the parties involved in mutual responsibility. Theoretically and philosophically, this law enforcement practice is contrary to concepts and principles. The emphasis of the balance or proportion on Aristotle's theory of justice, can be seen from what he does that the equality of rights must be the same between the same people.[4] The emphasis of the balance or proportion on Aristotle's theory of justice, can be seen from what he did that the equality of rights must be the same among the same people.[5]

#### 1. Problematic Aspects in Mortgage Rights

Money Position Before the Birth of a Mortgage Certificate: The legal relationship between mortgage rights is marked with a Mortgage Right Certificate from the Land Agency. But the validity of the loan agreement if the agreement has been implemented. This provision is listed in Law Number 4 of 1996 Article 6, Furthermore, authority is exercised based on the law in the Mortgage Certificate, such as Article 14. So if money is given before the certificate is issued, then the position becomes pure debt, without binding the object of the mortgage right. This is not explicitly regulated in the law, so it often provides an opportunity for creditors to act against the law. But when credibility deals with smart lawyers, they lose parate execution.

The principle of legal justice in the Execution Parate Authority: In Article 6 and Article 14 it is explained that the creditor has the authority to carry out the parate of execution. Parate execution is an execution without a court decision. When a debtor breaks a promise, the creditor immediately peels the execution. There is no opportunity for the Debtor to make corrections to the creditor's authority, except through legal Resistance after Parate is implemented. The law does not regulate the issue of equal rights, so often creditors violate the principle of law, namely the principle of equality before the law.

Most banks are conducting illegal acts related to Credit Agreements. They, the Creditor, offered the agreement underhanded or not before, then witnessed by a notary, to base the agreement that was charged with mortgage rights in it. The model of the agreement is contrary to the mortgage law, because the law stipulates that the Deed on the Underwriting Right is one of the agreements with the other agreements in the legal relationship. If the agreement on accounts payable that places the mortgage right is not before a notary, then the parties lose the rights to the monuta agreement documents, if in the future the dispute requires evidence. Read the Underwriting Rights Law on Articles related to the agreement. Article 10 (1) The granting of the Underwriting Right is preceded by a promise to provide the Underwriting Right as a guarantee for paying off certain debt, which is set forth in and is an inseparable

part of the agreement on the related debts or other agreements which give rise to the said debt.

#### 2. Legal Settlement

The dilemma of choice is very complicated for the impact it causes, where there will be sacrifices from one or two legal ideals when the choice is made. In law enforcement, when the legal person chooses to prioritize legal certainty, then two legal ideals namely justice and order will be set aside. [6] Amendments to the Mortgage Law, particularly those relating to articles relating to the rights and obligations of the parties, include (a) the debtor's authority to provide money after the certificate is issued, (b) the acceleration of certificate issuance by the Agency Regency Land through the implementation of the Integrated Service System Based on Integrated Information Technology. (c) Availability of legal space for parties to verify outside the court. Strengthening institutional management of Mortgage Rights such as Commercial Banks and Credit Banks, Notaries and Land Registry Officers, National Land Agency.

Immediate Implementation of Underwriting Regulations in the form of Government Regulations. In this GR arranged harmonization under the Minister of Agriculture / Land and the Minister of Finance. The essence of GR is to provide legal certainty and justice for all elements in the Mortgage Rights Institution.

### IV. CONCLUSION

The conclusions in this study were: (i) legal protection in pre-agreement is the parties protected by maladminisrasi and or violation of legal regulations carried out by the creditor in the stage of surveying the decision and determination of credit. (ii) protection at the agreement stage, is the parties protected by an agreement that is not implemented before a Notary and / or OLD. At the approval stage, the parties are protected by the Mortgage Certificate (MC)4. At the implementation stage, the parties are protected by two concepts of abolition of rights, namely abolition due to legal negligence and abolition due to default. Therefore, the renewal of the law is needed which is formulated in a normative legal framework based on procedural justice, so that in its implementation all elements in the institutional security rights are aware of their rights guaranteed by law.

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