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# Status of Mortgage Rights on Building Use Rights on Land Whose Term Has Expired

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## Abstract

Article 18 paragraph (1) of Law No. 4/1996 states that Mortgage Rights are extinguished due to debt repayment, relinquishment by the holder, court order, or extinguishment of land rights. In Batam City, there is a case of a Building Rights Title (SHGB) being used as collateral, but its validity period has expired, and the debtor has not fulfilled their obligations. This research aims to analyze the status and position of Mortgage Rights on an object with an expired Building Rights Title under Indonesian Positive Law, the legal consequences for the holder of the Mortgage Rights on an expired Building Rights Title, and the legal protection for the creditor when the Building Rights Title, as the object of the mortgage, is not extended or renewed. This is normative legal research using the statutory and case approach methods. Data is obtained through literature studies, interviews, and documentation, analyzed using qualitative methods. Mortgage rights are considered extinguished unless the creditor or debtor extends them through a Deed of Mortgage (APHT). The expiration of Mortgage Rights results in the land becoming state property unless it is extended by the debtor or creditor. The expiration of Mortgage Rights does not erase the debtor's debt, but the creditor's position changes from preferred to concurrent, meaning the creditor no longer has priority in repayment. Creditor protection can be achieved through negotiation for an extension or renewal of the SHGB. If this fails, the bank can sell the mortgage underhand, auction the mortgage, file for bankruptcy, or file a lawsuit. It is recommended that further regulation in the Mortgage Rights Law (UUHT) be established regarding the expiration of Building Rights Titles encumbered with Mortgage Rights.

**Keywords:** Status of Mortgage Rights; Building Rights Title; End of Term.

## Introduction

Land is an essential thing in human life because it is closely related to human life, along with the increasingly diverse interests of society and various sectors that require the availability of land that is needed, especially with regard to ownership. Ownership of land rights is a form of legal protection that can be carried out by landowners by binding it in various land rights as stipulated in Law Number 5 of 1960 related to the Basic Regulation of Agrarian Principles (hereinafter referred to as UUPA) (Sunindhia Y.W, et al, 1998).

Ownership of land rights according to Boedi Harsono is a right of control that contains a series of authorities, obligations, and or prohibitions for the right holder to do something about the land to which he is entitled. Something that may, must, or is prohibited to be done, which is the content of the right of control, is the criterion or benchmark for distinguishing between land



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tenure rights regulated in Land Law. Article 4 of the UUPA explains that "the State as the holder of the right to control land can grant land rights to persons and legal entities as referred to, land rights in Article 16 of the UUPA" (Boedi Harsono, 2007).

One of the rights to land is the Right to Use Buildings, based on Article 35 of the UUPA which explains that:

- 1) Hak guna bangunan is the right to construct and own buildings on land that is not one's own, for a maximum period of 30 years.
- 2) At the request of the right holder and having regard to the needs and condition of the buildings, the period referred to in paragraph (1) may be extended for a maximum period of 20 years.
- 3) Building rights can be transferred and assigned to other parties.

Based on the above article, it is clear that the Right to Build (HGB), is the right to build and own buildings on land that is not one's own, with a maximum period of 30 years and can be extended for a maximum period of 20 years. Land that is not one's own is land originating from State land, Management Rights land, and Ownership Rights land. Building Rights of Use are valid for a certain period of time, can be extended, and can be renewed (Urip Santoso, 2011).

Regarding land rights regarding Building Rights of Use is further regulated in Article 25 of Government Regulation No. 40 of 1996 concerning Business Use Rights, Building Rights of Use and Land Use Rights which explains that:

- 1) The Building Use Rights as referred to in Article 22 shall be granted for a maximum period of thirty years and may be extended for a maximum period of twenty years.
- 2) After the term of a building use right and its extension as referred to in paragraph (1) expires, a renewal of the building use right on the same land may be granted to the right holder.

The extension of the HGB is basically a renewal of the HGB itself, in the sense that the extension contains a renewal of the term and there can be a renewal of the HGB subject because of the transfer of HGB either through sale and purchase or inheritance and so on, as long as the term is still valid (Maria S.W. Sumardjono, 2009).

According to Maria S.W. Sumardjono, who argued that, in relation to the period of HGU and HGB in accordance with the development of the situation, realised or not, an extensive interpretation of Article 29 and Article 35 of the UUPA has been carried out. The extension of the HGB is basically an extension of the right, which as previously stated that Article 1 point 6 of Government Regulation No. 40 of 1996 concerning Cultivation Rights, Building Rights and Land Use Rights formulates that "Extension of rights is an increase in the period of a right without changing the conditions in the granting of the right".

Thus, the extension of rights in the context of extending HGB is a procedure or mechanism determined to increase the period, which occurs before the expiration of the first period, namely a period of 30 (thirty) years, to be extended again to 20 (twenty) years (Sitti Rachmi Nadya Mo'o, 2017). Meanwhile, related to the expiration of HGB in Article 40 letter a of the UUPA, that HGB is erased because the term ends, this indicates that the agreement of the Deed of Encumbrance of Mortgage Rights is also no longer valid. This rule records the agreement made between the debtor and creditor to provide collateral in the form of land or buildings that will be utilised to pay off the debtor's debt or obligation to the creditor.



Building use rights can also be transferred and transferred to other parties and can be used as debt collateral encumbered by mortgage rights, in Article 39 of the UUPA Building Use Rights are one of the land rights that can be used as collateral encumbered by Mortgage Rights. Mortgage rights in Indonesia are regulated in Article 1 Point 1 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as UUHT):

"Mortgage on land along with objects related to the land, hereinafter referred to as Mortgage Rights, is a security imposed on land rights as referred to in Law Number 5 of 1960 concerning the Basic Agrarian Regulations, along with or without other objects that are an integral part of the land, for the repayment of certain debts, which gives priority to certain creditors against other creditors."

Based on Article 4 paragraph (1) of Law No. 4 of 1996 on Mortgage Rights (UUHT), land rights that can be used as collateral for Mortgage Rights include Property Rights, Business Use Rights, and Building Use Rights. This provision is an important guideline for financial institutions, especially banks, to apply the precautionary principle in providing credit to debtors. If the Building Rights Title (HGB) used as collateral expires, the Mortgage Rights are also removed as stipulated in Article 18 paragraph (1) letter d of the UUHT. This can cause problems for banks because the debt repayment guarantee is no longer valid (Andi Irmayanti, et al, 2024). However, according to the principle of *droit de suite* or *zaaksgevolg*, as explained by Frieda Husni Hasbullah, property rights are absolute and continue to follow the pledged object into whichever hands it moves. In the context of Mortgage Rights, Article 7 of the UUHT states that the right remains attached to the object, regardless of changes in ownership.

The principle of *droit de suite* provides a special guarantee for the creditor. Even though the object of Mortgage Rights has been transferred to another party, the creditor still has the right to execute if the debtor defaults due to negligence or intent. This is common in business banking practices. Banking plays a strategic role in the national economy with the function of collecting and distributing funds. Banks become intermediaries between parties with excess and shortage of funds to encourage development, economic growth, and improve people's lives. The Banking Law (Law No. 10 of 1998) defines banks as business entities that collect funds from the public and channel them back in the form of credit or other forms to improve people's welfare (Lastuti Abubakar and Tri Handayani, 2018).

Credit activities are the core of the bank's business, because they are the largest source of income. Loans are risky, so their implementation must pay attention to sound credit principles and the principle of prudence. The legality of land ownership is very important in granting credit. However, there are still many properties that are only certified HGB, which is limited in time and rights. Therefore, HGB holders usually want to upgrade their status to Hak Milik to obtain stronger legal certainty (Werdi Haswari Puspitoningrum, 2018). In some areas, upgrading HGB to Freehold is not possible due to regional regulations. For example, in Batam City, all land has HGB status over the Management Rights owned by BP Batam (Batam Authority), so the certificate cannot be upgraded to Hak Milik.



One of the cases occurred in Batam City, where Bank Tabungan Negara (BTN) Batam Branch provided credit facility to PT BA with collateral of Building Rights Title Certificate (SHGB) No. 7648/Tanjung Uncang. In 2011, PT BA received an investment loan of Rp 4.7 billion and in 2012 received a working capital loan of Rp 8 billion. Both loans were secured by the same SHGB and bound by First and Second Mortgage, with a total ceiling of Rp 12.7 billion. However, since 2014 PT BA has experienced legal problems that have affected the company's operations. As a result of these conditions, PT BA was unable to fulfil its loan repayment obligations, resulting in principal arrears of Rp 11.2 billion. Three collateral auctions were conducted by KPKNL but failed due to lack of interest. The HGB certificate also expired in 2020, and the debtor was unable to extend it, causing the auction to be cancelled.

Because the SHGB has expired, the bank can no longer execute the object of the Mortgage. This causes the bank to lose its status as a preferred creditor. The only legal remedy the bank can take is to file an ordinary civil lawsuit based on Article 1131 of the Civil Code, which states that all of the debtor's assets become collateral for all individual obligations. By referring to Article 1131 of the Civil Code, every existing and future wealth of the debtor becomes collateral for his debts, even though it is not specifically agreed. This allows creditors to still have a legal basis to collect through the debtor's property in the event of inability to pay obligations.

## Method

In conducting research, accurate data is needed, both primary data and secondary data. In order to obtain the data required for this writing that meets the requirements, both quality and quantity, certain research methods are used. The research method in this writing is a normative juridical method, where normative juridical research is legal research carried out by researching library materials or secondary data (Soerjono Soekanto & Sri Pamudji, 2011). Based on the background above, the problem formulation in this research focuses on the position of mortgage rights on land use rights that have expired.

## Status and Position of Mortgage Rights Against Objects of Building Rights Title (HGB) That Have Expired According to Positive Law in Indonesia

Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA) stipulates several land rights that can be used as collateral for debts with the encumbrance of Mortgage Rights. Some of these land rights are hak milik, hak guna usaha, hak guna bangunan (Danico Doly, 2011). Since the enactment of the UUHT, the unification of national land law has been completed, which was one of the main objectives of the UUPA. Mortgage Rights is the only land security institution, which is mandated by Article 51 of the UUPA. The preamble of the UUHT states that with the increase in national development that focuses on the economic sector, the provision of substantial funds is needed, thus requiring a strong security right institution that is able to provide legal certainty for interested parties, which can encourage increased community participation in development to realise a prosperous, just and prosperous society based on Pancasila and the 1945 Constitution.



Mortgage Rights is a security right over land for the repayment of certain debts, which gives priority to certain creditors against other creditors. The creditor holding the Mortgage Right has the right to sell through a public auction the land used as collateral according to the provisions of the applicable laws and regulations, with the right to precede other creditors (Juli Asril, 2020). Based on Article 1 point 1 of the UUHT, what is meant by Mortgage Rights is a security right imposed on land rights as referred to in the UUPA along with or without other objects that are an integral part of the land for the repayment of certain debts, which gives priority to certain creditors against other creditors.

The Mortgage encumbrance agreement is not a stand-alone agreement. It exists because there is another agreement called the parent agreement. The parent agreement in the Mortgage Rights agreement is a debt and credit agreement or what is also known as a credit agreement that gives rise to a secured debt. In other words, the mortgage agreement is an *accessoir* agreement. Mortgage Rights are one of the most favoured material collaterals for creditors, especially bank creditors, due to several reasons, among others, that Mortgage Rights give priority to creditors holding Mortgage Rights against other creditors (Danico Doly, 2011).

Article 9 of the UUHT states that those who can act as holders of Mortgage Rights are natural people or legal entities, who act as creditors. Based on the affirmation that "natural persons" or "legal entities" can act as holders of Mortgage Rights, it can be concluded that those who can become holders of Mortgage Rights are natural persons or legal entities, the name of which can be Limited Liability Companies, Cooperatives, and Associations that have obtained status as legal entities or foundations.

The object of Mortgage Rights as stipulated in Article 4 paragraphs (1) and (2) which explain: (Abdul Azis, 2022)

- 1) Law No. 4 of 1996, land rights that can be encumbered with Mortgage Rights are Property Rights, Business Use Rights, Building Use Rights, and in Article 4 of Law No. 4 of 1996.
- 2) Law No. 4/1996 specifies that the object of Mortgage Rights is the Right to Use State Land.

The definition of Hak Guna Bangunan is stated in Article 35 paragraph (1) of the UUPA, which is the right to build and own buildings on land that is not one's own, for a maximum period of 30 years. The origin of the Hak Guna Bangunan land is land that is not owned. Land that is not one's own according to the UUPA is state land and freehold land. Meanwhile, according to Government Regulation No. 40 of 1996, they are State land, managed land, and freehold land.

Hak Guna Bangunan is built on land not owned by the holder with a validity period of 30 years and can be extended for 20 years. If the validity period expires without renewal, the Mortgage Rights will also lapse, weakening the bank's position. If the debtor does not extend or renew the right, the credit provided by the bank is no longer guaranteed for repayment, increasing the risk of loss. This risk increases if the debtor fails to pay, either intentionally or due to financial incapacity, especially if the debtor is difficult to contact or evasive (Novrianda Wina Susman and Benni Rusli, Syuryani, 2023).

One of the regions in Indonesia that has an interesting difference from other regions is the ownership of rights of persons or legal entities over land in Batam City, Batam City has a speciality in the governance of land ownership compared to other regions in Indonesia. The



issuance of Certificates of Ownership (SHM) in Batam only took place between 1998 and early 2000. Since then, there has been no further issuance of SHM in Batam, so that currently the status of land in this city is only in the form of Building Use Rights and Use Rights, without the possibility of upgrading to Property Rights as is applicable in other areas.

In the case of PT BA and Bank BTN KC Batam, the HGB collateral that has matured was not extended, so the credit settlement is still unclear. Auctions have been conducted several times but there were no interesting parties due to high prices. The extension was not carried out because the debtor did not have the funds for the extension fee. Upgrading to SHM is also not possible in Batam due to the status of land in the city. In solving the problem of HGB period according to PP 40/1996, a legal analysis is carried out, especially related to conflicts between norms by applying the principle of preference, which is the principle that determines which rule is more important when there is legal overlap (Shinta Agustina, 2015).

If the HGB is not extended and the term has expired, then the HGB is nullified, and the mortgage right is also nullified, as stated in Article 18 of Law No. 4/1996 on Mortgage Rights on Land and Objects Related to Land. If the Mortgage Rights is erased, there is no longer any collateral held by the bank that can be executed if the debtor fails to pay his debt. However, in general, the bank as a creditor will agree in the Deed of Granting Mortgage that the grantor of the mortgage (debtor/third party) authorises the holder of the mortgage (creditor) to save the object of the mortgage, if this is necessary for execution or to prevent the erasure or cancellation of the right which is the object of the mortgage due to non-fulfilment or violation of the provisions of the law.

With this explanation, the importance of the issuance of the Deed of Grant of Mortgage (APHT) becomes clear, considering that the clauses in the APHT can be used as a legal basis for saving the object of mortgage rights either by extending or renewing. The clauses are in the form of facultative or optional promises and are not limited. In the Deed of Granting Mortgage Rights, facultative promises can be included which do not affect the validity of the deed (Article 11 paragraph (2) UUHT). In this case, the parties are free to determine whether or not the promises will be included in the deed. If the promises are included in the APHT and registered at the Land Office, they also have a binding force against third parties (M. Bahsan, 2012). Thus, the position and status of the Mortgage Right is nullified, unless the creditor or debtor wishes to extend the Mortgage Right that has previously been bound by a Deed of Mortgage.

### **Legal Consequences for Holders of Mortgage Rights Against Land Use Rights that Have Expired**

Talking about legal consequences or commonly called legal consequences starts with the existence of legal relationships, legal events, and legal objects. According to Soedjono Dirdjosisworo, in his book Introduction to Legal Science, legal consequences arise due to legal relationships where in legal relationships there are rights and obligations (Soedjono Dirdjosisworo, 2010). Banks as providers of funds channel credit to debtors by taking into account various feasibility assessment factors, one of which is the existence of collateral.



Collateral is very important for creditors because it guarantees the security of refunds and provides legal certainty. Debtors who need credit facilities are usually required to provide collateral as a form of capital protection and legal certainty for the lender. This guarantee serves as confidence that the debtor will fulfil its obligations, which can be assessed in the form of the monetary value of an engagement (Salim HS, 2004).

In the installation of mortgage rights for various types of credit, Notary, PPAT, and the Bank have an important role starting from the receipt of the order letter to the issuance of the mortgage rights certificate. Every credit is accompanied by an agreement, such as a Credit Agreement (PK) on a business capital loan, which must fulfil the requirements of Article 1320 of the Civil Code: agreement, capacity, certain subject matter, and lawful cause (Shinta Pangesti, 2024). The authority to make a Credit Agreement (PK) lies with the Notary or the bank. If the parties want the PK in an authentic deed, a notary makes it (Article 15 UUJN). If an underhand letter is sufficient, the bank drafts it. The Power of Attorney to Enforce Mortgage Rights (SKMHT) and Deed of Granting Mortgage Rights (APHT) are made by a Notary or PPAT. If the collateral object is in the working area of a PPAT, the SKMHT is made by a PPAT; if outside the working area, it is made by a Notary.

In the case of a Credit Loan using Hak Guna Bangunan as collateral, the Mortgage ends when the land title is extinguished. This means that the creditor no longer has a security interest in the property. This puts the creditors in a vulnerable position, as they are no longer guaranteed to be paid in full if the borrower defaults on the loan. To protect themselves, Banks must carefully evaluate the creditworthiness of borrowers before granting loans. Article 37 and Article 38 of Government Regulation No. 40/1996 regulate the legal obligations for former holders of Building Rights Title as a result of the abolition of Building Rights Title, namely:

- 1) Building rights on state land will expire if revoked, and the land reverts to state ownership. If the right is not renewed, the holder must dismantle the building and vacate the land within one year of the revocation.
- 2) If the Building Rights Title on Management Rights land is revoked, the right holder must return the land to the management rights holder and fulfil the terms of the use agreement. If the agreement does not regulate the building on the land, the building remains the property of the previous holder of the Building Rights Title.
- 3) If the Right to Build on Freehold land is revoked, the right holder must return the land to the owner and fulfil the conditions of the agreement granting the right to build.

Article 6 of the UUHT states that if the debtor fails to fulfil the obligation, the holder of the first Mortgage Right has the right to sell the object through auction to settle the receivables. If the receivables are paid off or other causes occur, the mortgage right is automatically extinguished. The right holder can also relinquish the mortgage, which causes the land title to also lapse in accordance with Articles 27, 34, and 40 of Law No. 5/1960 and other relevant regulations (Soedjono Dirdjosisworo, 2010).

If the Mortgage Rights is extinguished, the bank creditor loses its status as a preferred creditor that has priority of repayment over other creditors because the Mortgage Rights grants that privilege. Although Mortgage Rights is extinguished, the secured debt remains. However,



the creditor no longer has collateral that can be auctioned off if the debtor does not pay the debt. With the abolition of the Mortgage Rights on the Building Rights Title, the creditor can still collect the debt, but his position changes to a concurrent creditor, which is a creditor without priority rights of repayment and without security for his debt (Dwi Tatak Subagiyo, 2018).

The logical consequence of the concept of mortgage rights for preferred creditors is the change in the status of the creditor to a concurrent creditor and the loss of separatist rights previously held. This separatist right is a right of execution over the collateral that should not be hindered, but in bankruptcy law, such execution can be suspended to give concurrent creditors and debtors time to consider joint protection measures. The securitisation creditor, despite having the right to execute the security, must wait for a waiting period of approximately 90 days before it can execute the security (Elyta Ras Giting, 2018).

Separatist creditors still have a special position because their property security rights allow them to execute the debtor's assets even if the debtor is declared bankrupt. They are outside the bankruptcy event, so the principle of *paritas creditorium*, which requires all creditors to be treated equally based on their portion, does not apply to separatist creditors. Legally, if the Mortgage Rights is extinguished, the pledged land will revert to state property unless there is an extension by the creditor or debtor. However, the abolition of the Mortgage Rights on Building Rights does not abolish the creditor's right to collect the debt, it only changes the creditor's position from preferred to concurrent. This means that the creditor no longer has priority of repayment and the debt is no longer secured by certain property rights.

### **Legal Protection for Creditors of Mortgage Holders When the Building Rights Title as a Mortgage Object is Not Extended or Renewed**

Legal protection can mean protection given to a person by law. The law should be able to provide protection to all parties in accordance with their legal status because everyone has the same position before the law. Credit is a money lending and borrowing agreement between the bank as a creditor and the customer as a debtor. In this agreement, the bank as a lender believes that the customer within the agreed period of time will be returned (paid) in full. The grace period between giving and receiving back the achievement according to Mgs. Edy Putra Tje' Aman is an abstract thing that is difficult to perceive, because the period between the provision and receipt of the achievement can run in a few months, but it can also run for several years (Adrian Sutedi, 2006).

Land security with Mortgage Rights is considered the most effective and secure by banks because the object is easily recognisable and the execution is clear and certain. The debt secured by the Mortgage must be paid first from the proceeds of the land auction. Legal protection for creditors is very important, especially when the debtor defaults. The benefit of the execution of Mortgage Rights is to accelerate the repayment of receivables so that the funds borrowed by the bank can be immediately returned and used to smooth the economy. Article 1131 of the Civil Code states that collateral is all property belonging to the debtor, both movable and immovable,



both existing and new ones that will exist in the future, which become collateral for all individual obligations (Retnowulan Sutantio, 1999).

The request for legal assistance through the court is actually regulated in Article 1131 BW, which regulates the execution of the defaulting party's property through auction to pay the losses of the injured party. However, this general guarantee is not always sufficient to guarantee the fulfilment of the creditor's rights, because the auction proceeds may be insufficient and the creditor's position is only as a concurrent creditor. Therefore, in credit practice, creditors want special guarantees in the form of certain objects that are used as property or personal guarantees in order to provide a greater sense of security. Article 1131 BW acts as a general security that can be overridden by special security agreements by the parties, so that creditors get the main protection from material security first. If the special security fails, then the general security of Article 1131 BW serves as a backup. Thus, Article 1131 BW is a *regelend recht* that can be changed by agreement, without eliminating its existence (Harfiati, 2019).

Mortgage rights as material security have executorial power without going through the courts, but in practice, courts are often still needed to execute mortgage rights. Land rights that can be encumbered by mortgage rights include ownership rights, business use rights, building use rights (HGB), and use rights (Rizka Putri Febritama, 2024). Specifically, HGB can be used as an object of mortgage rights with the process of granting and registering at the land office. To protect the interests of the creditor, the Deed of Granting Mortgage can include an authorisation clause for the creditor to take care of the extension of the land rights so that the mortgage rights are not erased if the land rights expire. If the HGB expires, the mortgage right is also cancelled so that the bank loses its preferred position and becomes a concurrent creditor. Therefore, banks often ask for replacement collateral and endeavour to get the debtor to extend or convert the HGB into a *hak milik*.

Bad debts are often caused by economic factors and debtor behaviour, so financial institutions must understand these risks for more prudent credit management. In handling bad debts, banks often choose to sell collateral under hand rather than through auction because the auction process is more expensive and time-consuming, and low auction results can be detrimental to banks. The provisions regarding bankruptcy are regulated in the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK), which provides a mechanism for confiscation of the bankrupt debtor's assets and management by the curator. Creditors holding mortgage rights still have the right to execute their collateral even if the debtor is declared bankrupt, as long as they register as creditors within a certain time limit. Mortgage rights are not included in the bankruptcy estate, thus providing legal protection for creditors (J. Satrio, 2002).

In banking practice, the settlement of bad debts through the courts often incurs large costs, so the auction as the execution of mortgage rights must be carried out optimally and professionally for optimal results. However, the auction process can take up to 5-6 months, so cooperation with related agencies such as KPKNL and the District Court is needed. The bank's last resort in resolving bad debts is through litigation or bankruptcy if negotiations and execution of collateral do not produce results. Legal protection for creditors can also be obtained through the Mortgage Law and the State Administrative Court. Negotiations with the debtor to extend or



improve the status of the SHGB collateral are very important so that the guarantee remains valid and provides legal protection (Muh Agung Fajar, 2024).

Overall, the combination of special guarantees, general guarantees, legal protection, and bad debt resolution strategies through negotiation, execution, auction, and bankruptcy are a series of important mechanisms to maintain legal certainty and protection for creditors in the banking system in Indonesia.

## Conclusion

With the abolition of the Mortgage Rights, the land becomes the property of the state unless there is an extension by the creditor or debtor. However, the extinguishment of the Mortgage Deed does not extinguish the debtor's debt. The creditor is still entitled to collect, but no longer as a preferred creditor, but as a concurrent creditor whose debt is not secured by certain property rights.

Protection of creditors can be done through negotiations with the debtor to extend or upgrade the SHGB, so that it can be re-encumbered with Mortgage Rights. If this is not possible, the bank can ask for replacement collateral. If replacement collateral is also not available, the bank can sell the collateral object under hand, and if it fails, proceed with an execution auction. As a last resort, the bank can file a lawsuit to the District Court.

It is recommended that further regulation in the UUHT regarding the expiration of Mortgage Rights, especially when the Building Rights Title (HGB) expires, because this can harm creditors and weaken their position financially. Before the binding, it is necessary to make a detailed APHT between the creditor and the debtor regarding the possibility of the HGB expiring, including an agreement on who will extend it, so as not to cause confusion when the HGB expires. Also, legal protection for the creditor is needed if the Mortgage is removed due to the expiration of the HGB, so that the creditor is not disadvantaged due to the debtor's default. This arrangement should be further regulated in the Banking Law and UUHT.

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