

**STATUS OF MORTGAGE RIGHTS OVER LAND POST-LIQUEFACTION IN PALU CITY****Dewi Kemala Sari<sup>1</sup>, Moh Fayed Alkatiri<sup>2</sup>, Helvy Mutiara Rizky<sup>3</sup>**<sup>1</sup>Tadulako UniversityJL. Soekarno Hatta Km. 9, Tondo, Palu, Sulawesi Tengah, 94148, Indonesia  
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**Abstract**

*The earthquake and liquefaction disaster in Palu in 2018 caused complications in structuring and rediscovering the identity of private land, especially those burdened with mortgages due to the destruction of land boundaries and loss of evidence of land ownership due to the earthquake. The legal status of ownership rights to land subject to liquefaction, either the Basic Agrarian Law or Government Regulation No.27 of 1997 concerning Land Registration, states that it is null and void. The elimination of mortgage rights due to liquefaction in the city of Palu did not result in the loss of the debtor's obligation to pay off his obligations to the creditor. This obligation must continue to settle following the credit agreement, which is the basis for the birth of the mortgage. This research is normative legal research using a statutory approach and a conceptual approach, were to answer legal issues, it will be based on the applicable laws in Indonesia and examine related concepts.*

**Keywords:** Agrarian; Liquefaction; Mortgage Right; Property Rights**INTRODUCTION**

In the framework of national development to create a just and prosperous society based on Pancasila and the 1945 Constitution, the land is one of the main assets, in which land can function as a medium for the implementation of development and as a production factor to produce trading commodities that are needed

to increase National income.<sup>1</sup>. Property Rights Based on article 20 paragraph (1) of the Basic Agrarian Law, it states that property rights are hereditary rights, the

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<sup>1</sup> Sri Hajati *et al.*, *Politik Hukum Pertanahan*, Airlangga University Press, Surabaya, 2018, p. 1.

strongest and the fullest, taking into account the provisions of Article 6.<sup>2</sup>

In Article 1, number 1 of Law Number 4 of 1996 concerning Mortgage Rights on land and objects related to land (from now on referred to as the MR Law). Mortgage Rights are collateral rights imposed on land rights as referred to in Basic Agrarian Law, along with other objects that are an integral part of the land, are for the settlement of certain debts, which give priority to certain creditors over other creditors. The birth of the security right is that when the security rights are registered, the authority to take legal action against the object of the mortgage rights is required to be with the guarantor of the mortgage right at the time of making the mortgage land books. For this reason, it must be proven the validity of the said authority at the time the list of mortgage rights concerned is listed.<sup>3</sup>

Regarding ownership rights over land, of course, there are many problems. Several factors caused problems in the land sector in Indonesia, one of which is natural disasters, such as natural disasters, tsunamis, landslides, floods, and other

natural disasters. A natural disaster that caused such severe damage was an earthquake in Palu City, Central Sulawesi Province, which occurred on September 28, 2018. The earthquake that occurred in Palu City was one of the major natural disasters because it had caused multidimensional damage. In addition to causing many casualties, infrastructure damage, even civilization has also become paralyzed. The earthquake disaster also made the people of Palu City lose their homes and everything they owned on the ground.<sup>4</sup>

An earthquake preceded the disaster; then, a land liquefaction event occurred, eliminating land and ownership boundaries. Land ownership is also lost because the land collapses into the ground, which turns into mud. Likewise, land boundaries are becoming increasingly difficult to trace, especially after cleaning and repairing heavy equipment. Based on the legal and physical status of the land, several land problems occurred after

<sup>2</sup>Maria S.W Sumardjono, "Telaah Konseptual Terhadap Beberapa Aspek Hak Milik", Makalah, Medan, 1990, p. 2.

<sup>3</sup>Trisadini P Usanti dan Leonora Bakarbesy, *Hukum Jaminan*, Revka Petra Media, Surabaya, 2013, p. 69.

<sup>4</sup>Putri Septiani, "Penataan Kembali Struktur Penguasaan Hak Atas Tanah Pasca Bencana Alam Gempa Bumi Di Kota Palu Ditinjau Dari Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah Jo Peraturan Kepala Badan Pertanahan Nasional Nomor 6 Tahun 2010 Tentang Penanganan Bencana Dan Pengembalian Hak-Hak Masyarakat Atas Aset Tanah Di Wilayah Bencana", *Skripsi, Fakultas Hukum Universitas Pasundan, Bandung, 2019, p. 2.*

the earthquake in Palu City, Central Sulawesi Province, including the following:<sup>5</sup>

1. The land still exists but does not have boundary marks on the parcels of land,
2. The land still exists, but administrative documents proving land rights are lost,
3. The land still exists, but the owner of land rights was also lost when the natural disaster occurred,
4. Evidence of Ownership of land rights still exists, but the form of the land has undergone a change in physical form, or the land has been destroyed as a result of a natural disaster and cannot be physically controlled or can no longer be used according to its function.

This disaster caused complications in restructuring the rediscovery of the identity of property rights due to the destruction of land boundaries and loss of evidence of land ownership due to the earthquake disaster. Ownership certificates owned by the community were also lost because the land submerged at the disaster. Even those who survived did not necessarily have land ownership certificates. In addition, related institutions that had copies and archives of documents on

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<sup>5</sup>*Ibid.*, p. 3.

community land ownership were also destroyed and lost because their offices were also affected by the disaster.<sup>6</sup> Based on the background description above, the problem formulations to be analyzed in this study include:

1. Ownership Status of Post-Liquefaction Land Rights in Palu City.
2. Legal Protection for Holders of Mortgage Certificate if their object destroyed due to natural disasters of liquefaction in Palu City.

The writer's purpose in writing this research is to determine how the status of Ownership of land rights after liquefaction in the city of Palu. Furthermore, determine the certificate holder's legal protection for encumbrance by collateral in the form of land in terms of the object is destroyed by liquefaction in the city of Palu.

## METHODS

### Research Type

This type of research in this writing uses normative legal research. According to Peter Mahmud Marzuki, "Legal research is carried out to solve legal issues at hand."<sup>7</sup> This study focuses more on a phenomenon or condition of the object of

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<sup>6</sup>*Ibid.*, p. 4.

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2006, p.133.

research, namely the status of land rights, in detail by collecting the facts that occurred, namely after the occurrence of liquefaction in the city of Palu, by developing existing concepts.

### **Research Location**

In this legal research, the author used the statute approach and conceptual approach.<sup>8</sup> Meanwhile, the conceptual approach departs from the views and doctrines developed in the science of law.<sup>9</sup> as a supporting basis for discussing land ownership rights encumbered by mortgages on land objects affected by liquefaction in Palu.

### **Source of Legal Materials**

The sources of legal research used in this research divided into two, namely primary legal materials, namely binding legal materials consist of applicable laws and regulations, official records, or minutes in the making of other legislation. Secondary legal materials are legal materials that describe primary legal materials, in the form of all publications about the law, including literature, legal dictionaries, and legal journals, and comments related to the status of mortgage rights to land objects affected by liquefaction in Palu.

### **Data Collection Technique**

<sup>8</sup>*Ibid.*, p.93.

<sup>9</sup>*Ibid.*, p.135.

The authors conducted an inventory of legal material sources grouped and studied with a statutory approach to obtain synchronization in connection with the primary and secondary legal materials obtained. Furthermore, systemization and classification are carried out and then studied and compared with the theory and legal principles put forward by experts to make it easier to analyze the problems posed.

### **Data Analysis**

In the next stage, the authors conducted an analysis using critical descriptions using qualitative methods, namely the method of analyzing legal materials by examining the systematics of applicable laws and regulations related to issues regarding the status of mortgage imposed on land objects affected by liquefaction in Palu which stated and the truth can be justified.

## **ANALYSIS AND DISCUSSION**

### **Post-Liquefaction Status of Land Rights in Palu City**

Land includes part of the earth underneath and space above based on Article 1 paragraph (4) of the Basic Agrarian Law. It determined that the State can grant various land rights to and owned by the subject rights, which are individuals, either alone or together with other people as

well as legal entities with authority to use the land, including the body of the earth and water and space thereon, which needed for interests directly related to the use of the land. Within limits determined by statutory regulations.<sup>10</sup>

Land problems that occur are pretty complex and require a long time to solve. It explained that land issues are pretty complex and sensitive problems because they involve various aspects that arise in social, economic, psychological, and other life, but must also pay attention to various aspects of life so that the settlement of problems that occur does not develop into a restlessness that can disrupt the stability and welfare of the community.<sup>11</sup>

This disaster caused problems in restructuring and rediscovering the identity of property rights, land shifting due to liquefaction that occurred in Palu City, destroying land boundaries, and loss of evidence of land ownership.<sup>12</sup> Settlement of property rights over land can be completed, among others, by guaranteeing certainty and adequate legal protection by the government and related institutions of

<sup>10</sup>Chairul Azmi, *Pertahanan di Aceh Pekerjaan Rumah Pemerintah yang Belum Usai*, Opini, Banda Aceh., 2007, p. 1.

<sup>11</sup>Abdurrahman, *Ketentuan-Ketentuan Pokok Tentang Masalah Agraria, Kehutanan, Transmigrasi dan Pengairan*, Alumni, Bandung, 1999, p.13.

<sup>12</sup>A. P. Parlindungan, *Komentar Atas Undang-Undang Pokok Agraria*, Alumni, Bandung, 1990, p. 25.

land ownership rights. The provisions for land registration in Indonesia regulated in article 19 of the Basic Agrarian Law, which orders the implementation of land registration in the framework of guaranteeing legal certainty and legal protection for land rights holders, with evidence produced at the end of the registration process in the form of land books and land certificates consist of a copy of the land book and measuring documents.<sup>13</sup>

Liquefaction is a state of loss of soil strength; on the other hand, soil that was once dense becomes shifting quickly. This phenomenon occurs in the land that contains much water, then it is impacted by seismic waves when an earthquake occurs, so in this case, liquefaction is a natural disaster beyond human will. The rules stated in Article 27 of the Basic Agrarian Law are divided into two classifications, namely land that has fallen to the State and land which has been destroyed. These provisions do not state that property rights can be abolished due to liquefaction.

In article 27 b of the Basic Agrarian Law, ownership rights are abolished if the land is destroyed. There are no further regulations regarding the destroyed land. Land destroyed due to liquefaction in the

<sup>13</sup>Adrian Sutedi, *Peralihan Hak Atas Tanah dan Pendaftaran*, Sinar Grafika, Jakarta, 2007, p.12.

Basic Agrarian Law is not regulated. It only determines that the land is removed so that the status of the land is lost. At this point, it is understandable that if there is liquefaction in an area and a parcel of land destroyed, then one's ownership rights to the land will be erased or lost. In this case, the landowner cannot reclaim the boundaries because the land has been lost.<sup>14</sup>

Article 19 paragraph (1) of the Basic Agrarian Law stipulates that the government carries out land registration to ensure legal certainty. The existence of a certificate indicates legal certainty as proof of legal land ownership. The provisions of this article are implemented by Government Regulation No. 24 of 1997 concerning Land Registration. The purpose of land registration is to guarantee legal certainty and protection for land rights holders as described in Article 3 of Government Regulation No. 24 of 1997. Land registration aims for legal certainty and protection, providing information for both right-holders and the government to maintain administrative order. Land registration itself maintains physical data and juridical data regarding land parcels carried out in order, continuously, and continu-

<sup>14</sup>Achmad Ali Chomzah, *Hukum Pertanahan; Pemberian Hak Atas Tanah Negara, Sertipikat dan Permasalahannya*, Prestasi Pustaka, Jakarta, 2002, p. 5.

ously utilizing collecting, processing, and bookkeeping. What is meant by physical data is information regarding the position, boundaries, extent of land parcels, and units of flats that have been registered, including information on the existence of buildings on it. In contrast, juridical data is information on the legal status of the registered land or flat units. According to Article 32 paragraph (1) Government Regulation no. 24 of 1997 Certificate as a certificate of evidence acts as solid evidence related to physical and juridical data, as long as the data is following the data contained in the measurement letter or book concerned.<sup>15</sup>

Regarding the status of Ownership of land affected by liquefaction in the city of Palu, if it is reviewed from Government Regulation No. 24 of 1997 concerning Land Registration, the legal status is abolished because it is no longer following physical data and juridical data as solid evidence. The situation confirms that the regulation cannot provide legal protection for holders of land title certificates whose land was destroyed due to liquefaction, which means no legal rule regarding the land is subject to liquefaction. If the land can still be identified with its location and boundaries, then the land can be proven

<sup>15</sup>*Ibid.*, p.229

with a certificate, but if the land is destroyed, the people whose land is subject to liquefaction can only register with the abolition of their rights to land subject to liquefaction. The Land Office shall carry out the registration of the abolition of land rights, the certificate of rights concerned and shall destroy them or be recorded in the land book and measuring documents

The legal status of ownership rights to land subject to liquidation, either the Basic Agrarian Law or Government Regulation No. 27 of 1997 regarding land registration states that it is null. People must register their land to regain their legal status and legal guarantees with a land title certificate.

### **Legal Protection For Holders Of Mortgage Certificate If Their Object Is Destroyed Due To Natural Disasters Of Liquefaction In Palu City**

In Article 27 of the Basic Agrarian Law, land rights can be canceled if the land is destroyed, for example, because of a natural disaster.<sup>16</sup> One of them was due to a natural disaster that destroyed the land. However, in Law Number 4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land, from now on referred to as the MR Law, it does not mention in detail, or there is no clause stating

<sup>16</sup>Urip Santoso, *Hukum Agraria : Kajian Komprehensif*, Prenadamedia Group, Jakarta, 2015, p. 101.

that the abolition of land rights is due to the destruction of the land, as is the case liquefaction that occurred in Palu City. The termination of the mortgage right states in the provisions of Article 18 paragraph (1) of the MR Law, which states that the mortgage will expire or canceled due to several reasons, namely as follows :<sup>17</sup>

1. Write-off of debt guaranteed by Mortgage Rights,
2. Release of Mortgage by Mortgage Holders,
3. Cleansing of Mortgage Rights based on the ranking by the Head of the District Court, and
4. Abolition of land rights encumbered with Mortgage Rights.

It is interesting, where the MR Law as a legal basis for imposing a Mortgage Rights, either through a Power of Attorney to Impose Mortgage Rights or a Deed of Granting Mortgage Rights to the object guaranteed by the debtor, does not explicitly mention the consequences of the destruction of the land of the object of the mortgage to the certificate of the mortgage. Based on the provisions of Article 18 paragraph (1) letter d of the MR Law,

<sup>17</sup>Trisadini P. Usanti, dan Leonora Bakarbesy, *Hukum Jaminan*, Revka Petra Media, Surabaya, 2013, p. 109 - 110.

it can be interpreted in depth that Law Number 4 of 1996 concerning Mortgage Rights formulates one of the factors that can abolish mortgage rights. The abolition of land rights that encumbered with mortgage rights, so the entire land becomes the object of the mortgage due to an event beyond the wishes of the debtor and creditor, namely liquefaction, will result in the nullification or invalidity of the certificate of a mortgage on the object.

The guarantee right certificate is null and void because a natural disaster has destroyed the entire object, so it does not fulfill one of the legal requirements of an agreement, namely in some issues (objects) as regulated in Article 1320 BW. The executorial power of a certificate of mortgage whose entire object has been destroyed due to natural disasters is abolished, as formulated in Article 18 paragraph (1) letter d of Law Number 4 of 1996 concerning Mortgage Rights, which states that the mortgage rights nullified due to the abolition of land rights which burdened with mortgage rights. Furthermore, if the MR Law does not yet regulate the legal strength of the guarantee right certificate in detail if the object was destroyed due to a natural disaster, it can use the provisions in the Basic Agrarian Law.

In general, guarantees are divided into 2 (two), namely general guarantees and unique guarantees. The general guarantee is regulated in Article 1131 BW. Based on the formulation of the article, the general guarantee is all assets owned by the debtor, both existing and future, or in other words, the total assets of the debtor is a general guarantee for the agreement made by the debtor. Unique guarantees are guarantees that the debtor has determined as collateral for the engagement he has done. Unique guarantees are contractual because they are issued from certain agreements aimed explicitly at particular objects and confident people.

Mortgage object destruction has consequences for both parties, the holder of the mortgage/creditor and the recipient of the mortgage/debtor. Even though the mortgage encumbered land has been destroyed due to a natural disaster, it is beyond the power of the creditor or debtor itself, it creates a state of force, or an overmacht can also be called a force majeure. The consequence for the debtor that even though the pledged land has been destroyed due to natural disasters, the debtor still has to pay off all his obligations to the creditor. It does not benefit the debtor since he is still obligated to pay



off the debt when the encumbered land with mortgage rights was destroyed.

The termination of the mortgage rights does not result in the loss of the debtor's obligation to pay off its obligations to the creditor. This obligation must continue to settle following the credit agreement, which is the basis for the birth of the mortgage. In addition, creditors as the holder of the mortgage rights also experience unfavorable conditions. The creditor has carried out his obligations to the debtor, but the creditor has lost the object that used as a guarantee to be charged the mortgage and the status of the creditor.

At which the time the mortgage is born, the status of the creditor is the preferred creditor, but due to the destruction of the object of the mortgage, the status changes to a concurrent creditor so that the creditor does not have substantial collateral rights and legal certainty that the debtor repaid the debt. This dependency will create legal uncertainty for the Bank as a creditor; for this uncertainty, it requires legal protection.

If the object of the mortgage right is protected by insurance, then the legal protection for the parties in the event of the destruction of the mortgage object due to the natural disaster of the liquefaction

consists of 2 (two) forms. Legal protection, namely the first is preventive legal protection, which means that preventive steps are taken by preparing options to prevent disputes from occurring. The second is a repressive legal protection that aims to resolve disputes that arise. Preventive legal protection for creditors and debtors is carried out by ensuring the object used as collateral so that if the object of the mortgage is destroyed, the insurer will provide compensation used to pay off the debtor's credit.

The repressive legal protection that can be carried out for creditors is by payment of insurance claims to creditors to destroy the mortgage object, which is the collateral for the debtor based on the bankers' clause on the guarantee insurance policy as repayment of debtor debts to creditors. Repressive protection that can be carried out for debtors is by paying the remaining claim money after deducting the debtor's credit to the creditor, if the remaining claim money can be given to the debtor, besides that repressive protection that can be provided to the debtor is by restructuring the facility. Credit is owned by the debtor so that the debtor can still pay his obligations to the Bank on terms that further relieve the debtor.

For further information, Bank Indonesia issued regulations protecting debtors when a natural disaster occurred, namely through Bank Indonesia Regulation Number 8/15 / PBI / 2006 concerning Special Treatment for Bank Credit for Certain Areas in Indonesia Affected by Natural Disasters (State Gazette of the Republic of Indonesia 2006 Number 72 DPNP / DPBPR / DPbS Supplement to the State Gazette of the Republic of Indonesia Number or 4641 DPNP / DPBPR / DPbS). This Bank Indonesia regulation only applies to areas affected by the Tsunami disaster in 2005, such as Aceh and North Sumatra. However, the Bank can save debtor credit by assisting the debtor to restructure debtor credit through changes (addendum) to the previous credit agreement. In the addendum to the credit restructuring agreement, changes in the agreement clause are made, changes in interest rates by lowering debtor's credit interest rates and extending the credit period, so that it will provide relief to debtors in fulfilling their obligations to the Bank.

## CONCLUSION

Regarding the status of Ownership of Land which is affected by liquefaction in the city of Palu, if it is reviewed from Government Regulation No. 24 of 1997

concerning Land Registration, the legal status is abolished because it is no longer following physical data and juridical data as solid evidence. The situation confirms that the regulation cannot provide legal protection for holders of land title certificates whose land was destroyed due to liquefaction, which means no legal rule regarding the land is subject to liquefaction. If the land can still be identified with its location and boundaries, then the land can be proven with a certificate, but if the land is destroyed, the people whose land is subject to liquefaction can only register with the abolition of their rights to land subject to liquefaction. The Land Office shall register the abolition of land rights, the certificate of rights concerned and shall destroy them or be recorded in the land book and measuring documents. The legal status of ownership rights to land subject to liquefaction, either the Basic Agrarian Law or Government Regulation No.27 of 1997 concerning Land Registration, states that it is null and void. People must register their land to regain their legal status and legal guarantees with a certificate of land title.

The termination of the mortgage rights does not result in the loss of the debtor's obligation to pay off its obligations to the creditor. This obligation must

continue to be settled following the credit agreement, which is the basis for the birth of the mortgage. In addition, creditors as the holder of the mortgage rights also experience unfavorable conditions. The creditor has carried out his obligations to the debtor, but the creditor has lost the object that is used as a guarantee to be charged the mortgage and the status of the creditor. However, the Bank can save debtor credit by assisting the debtor to restructure debtor credit through changes (addendum) to the previous credit agreement. In the addendum to the credit restructuring agreement, changes in the agreement clause are made, changes in interest rates by lowering debtor's credit interest rates and extending the credit period, so that it will provide relief to debtors in fulfilling their obligations to the Bank.

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