

CHAPTER ONE INTRODUCTION

A. Background

Indonesia is a state of Law based on the 1945 Constitution, then everything should be based on Law. It was emphasized in Article 33 Paragraph (3) of the 1945 Constitution Indonesia in essences has such a large wealth of natural resources covering the earth, water, space, and natural resources as the grace of God the Almighty given to the Indonesian nation. In relation to that, the Government has issued Law No 5 of 1960 on Basic Agrarian Law (BAL). The BAL is the main foundation for regulating agrarian problems in Indonesia, which regulates the issue of land right, rights to water and space. It was illustrated with the case of study where someone has interested to buy piece of land and the certificate of it already used as the guarantee in the bank.¹ The legal capacity, in this case, is crucial because the number of people who got funds by guaranteed mortgage for 5 years is 1.466 in PD BPR Bank Bantul.² Meanwhile the number of people who did the *Roya* for 5 years in National Land Agency Bantul³ if averaged is under the number of people who got funded. It is shown that there is a gap between the people who got credit and people who conducted the *Roya*.

¹Yulius Setiarto, 2012, “Bagaimana Membeli Tanah Berstatus Diagunkan Bank”,<https://regional.kompas.com/Bagaimana-Membeli-Tanah-Berstatus-Digunakan-di-Bank>, Accessed on 5th March 2019 at 9.45am.

² Interview with Rangga M Kurniawan, Head of Credit Subsection PD BPR Bank Bantul, on 21st May 2019, at 10.00am.

³ Interview with Sigit, The head of land registration Subsection at the NLA Bantul, on 30th September 2019, at 1.15pm.

Based on data above, it is interesting issue to discuss on how to implement the legal capacity based on the regulation in mortgage. *Roya* is a write-off of a mortgage in the land book of mortgage because the mortgage has been deleted.⁴ *Roya* occurs when someone has made a credit contract to the party.⁵ Based on Law number 4 of 1996 on Mortgage, *Roya* is concerned on a note shall be given regarding to the abolition of the right, while it is about the abolishment of certificate. The certificate of land rights that have been affixed with the note, is returned to the rights holders. It is emphasized on Article 22 Paragraph 4 of Mortgage Law, which stated that:

"The plea for write off (*Roya*) as referred in Paragraph (1) is submitted by the interested party by attaching the mortgage Rights certificate that has been given an annotation by the creditor about the removal of the mortgage because of the debt has been paid off, or a written statement by the creditor that the mortgage has been removed because the repayment has been paid off or because of the creditor has deleted the mortgage Right of the interested party".

In conducting credit contract the creditors shall receive the guarantee that is handed over by the debtor. The Guarantee is something that is given to creditors to give rise to confidence that the debtor will fulfill obligations that can be assessed with money arising from a contract.⁶ If the debtor has fulfilled the default on the contract, then will be a *Roya*.⁷ It was emphasized in Article

⁴ Kartini Muljadi and Gunawan Widjaja, 2005, *Hak Tanggungan*, Jakarta, Prenada Media, p. 272-273.

⁵ *Ibid.*

⁶ Badriyah and Siti Malikhatun, 2016, "Problematika Pembebanan Hak Tanggungan Dengan Objek Tanah Yang Belum Bersertifikat", *Masalah-Masalah Hukum*, vol. 45 No. 3, p. 173-180.

⁷ Kashadi, 2000, *Hak Tanggungan dan Jaminan Fidusia*, Semarang, Badan Penerbit Universitas Diponegoro, p. 64.

22 of Mortgage Law of 1996, which stated that the land office shall to do *Roya* of the Mortgage in the book of land ownership and certificate.

Every credit issued by the bank must be accompanied by the guarantee provided by the guarantee provider to the recipient of the guarantee. The credit contract contains the principal agreement which was followed by a guarantee contract as additional contract.⁸ Both are made separately, and the position of the guarantee contract depends on the main contract based on Mortgage Law of 1996, which refers to the 1945 Constitution and Basic Agrarian Law of 1960. The national development of Indonesia, as the power of economic potential in a nation will be strengthened by utilizing facilities as substantial funds. The role of community in financing it will be even greater due to the funds needed in development of state.

Based on the basic principle of rights on the surface of the earth, which referred to Article 2 of Basic Agrarian Law of 1960, it is stated that authority to use the land can be given and owned by people, both person and legal entities. The Government of Indonesia is obliged to utilize and manage these natural resources optimally, especially in providing legal certainty for the management of agrarian resources or natural resources which includes the earth, water, space and natural resources contained in it. Based on the description of the problems above, the researcher is interested to do research

⁸ S. Mantayborbir and Jauhari Imam, 2003, *Hukum Pengurusan Piutang Negara Indonesia*, Jakarta, Pustaka Bangsa, p. 21.

entitled "The Implementation of *Roya* Mortgage on Credit Agreements in PD BPR Bank Bantul".

B. Statement of Problems

Based on the background above, the Statement of Problem of this research are:

1. How the Legal Protection for the Debtor in the Implementation of *Roya* in the credit contract with guarantee in PD BPR Bank Bantul?
2. What are the legal consequences if the debtor did not do the *Roya* credit contract with guarantee in PD BPR Bank Bantul?

C. Objectives of Research

1. To analyze and understand the Legal Protection for the Debtor in the Implementation of *Roya* in the credit contract with guarantee in PD BPR Bank Bantul.
2. To know the legal consequences if the debtor did not do the *Roya* in the credit contract with guarantee in PD BPR Bank Bantul.

D. Benefits of Research

1. Theoretically

The research would grant a better and deeper theoretical understanding of the Legal Protection of the Debtor in the Implementation of *Roya* in credit contract. The research would serve as an addition to the

literature of mortgage, which might be useful for the advancement of civil law especially credit contract.

2. Practically

The research would give a recommendation to all involved parties, include the Financial institution that provides the credit contract with a guarantee to the creditor. The research would provide additional knowledge to the wider community who are interested and related to the problem under study.

