CHAPTER FOUR
FINDING AND ANALYSIS

A. Legal Protection for Debtors in the Implementation of *Roya* in the Credit Contract with guarantee in PD BPR Bank Bantul

Legal protection is the protection of dignity and the recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that may protect one thing from another. In the *Kamus Besar Bahasa Indonesia* (KBBI), what is briefly referred to protection is the processes and actions to protect. Whereas, the law is a regulation made by the government or whose data applies to all people in society (the state).[52] Therefore, legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by law is also related to the existence of rights and obligations, in this case, which is owned by humans as legal subjects in their interactions with fellow humans and their environment. As subjects of human law, they have the right and obligation to take legal action.[53]

Legal protection do not only shall be adaptive and flexible but also be predictive and anticipatory. The adaptivity and flexibility of legal protection shall be according to situational conditions and developments. The Predictivity and anticipatory obliged the law to be able to reveal the possibility of providing

[52] Alwi Hasan, 2017, *Kamus Besar Bahasa Indonesia (KBBI*), Jakarta, Balai Pustaka, p. 864.
[53] CST Kansil, 2004, *Pokok-pokok Hukum Pidana*, Jakarta, Pradnya Paramita, p. 102.

protection if action is caused by one of the parties.[54] There are two kinds of legal protection tools, namely:

1. Means of Preventive Legal Protection

   In preventive legal protection, legal subjects are given the opportunity to raise their objections or opinions before a dispute resolution gets a definitive form. The aim is to prevent disputes. Preventive legal protection means a great deal of governmental action based on freedom of action because with preventive legal protection the government is driven to be careful in making decisions based on discretion. In Indonesia, there are no specific arrangements regarding preventive legal protection.

2. Facilities for Repressive Legal Protection

   Repressive legal protection aims to resolve disputes. The legal protection by the General Courts and Administrative Courts in Indonesia falls into this category. The principle of the legal protection of the government actions rests and comes from the concept of recognition and protection of human rights. Historically, this comes from the west, as the birth of the concepts of the recognition and protection of human rights is directed at limiting the restriction and placement of community and government obligations. The second principle that underlies legal protection against governmental acts is

[54] Sholahudin Ranggawuni, et al, 2018, "Enforcement of Simple Claim Process as a Role Model of Credit Agreement Conflict Resolution in Bank Perkreditan Rakyat (BPR)", *International Journal of Multicultural and Multireligious Understanding,* Vol. 5 No. 4, p. 23.

> the principle of the rule of law. Associated with the recognition and protection of human rights, the recognition, and protection of human rights takes first place and can be linked to the goals of the rule of law.[55]

The law functions as a protection of human interests so that human interests are protected, therefore the law must be carried out professionally. The implementation of the law can take place normally, peacefully and in an orderly manner. Laws that have been violated must be enforced through law enforcement. Law enforcement requires legal certainty, legal certainty is justifiable protection against arbitrary actions. Citizens rely on legal certainty because the existence of legal certainty may create the community to be in order, safe and peaceful. Citizens expect benefits in implementing the law. The law is for humans, so the implementation of the law must provide benefits. The implemented law shall not cause public unrest. People who get good and right treatment will create a state of right affairs.

The strong legal protection will be realizing the objectives of law such as order, security, peace, welfare, peace, truth, and justice. Thus, legal certainty contains two meanings, namely, first, the existence of general rules that make individuals know what actions may or may not be done. Second, in the form of legal security for individuals from government arbitrariness, the existence of general rules that individuals may find out what may be charged or done by the State to individuals. Legal certainty is not only in the form of Articles in the

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[55] *Ibid.*

law, but also the consistency in the decisions of judges between the decisions of one judge and other judges' decisions for similar cases that have been decided.[56] Based on the description above it might be seen that legal protection is all forms of effort to protect the dignity of human beings and the recognition of human rights before the law. The principle of legal protection for Indonesians is based on the Pancasila and the concept of the rule of law, both of which prioritize recognition and respect for human dignity. The interests of consumers are detailed in the United Nations Resolution Number 39/248 of 1985. In the 106th UN General Assembly held on April 9, 1985, it was outlined that the consumer rights are: [57]

1. Protection of consumers from hazards to their health and safety.
2. Promotion and protection of consumer socio-economic interests.
3. The availability of adequate information for consumers to give them the ability to make the right choices in accordance with their personal desires and needs.
4. Consumer education.
5. The availability of effective compensation efforts.
6. Freedom to form consumer organizations and give them the opportunity to express their opinions from the moment the decision-making process is related to consumer interests.

[56] Peter Mahmud Marzuki, 2008, *Pengantar Ilmu Hukum*, Jakarta, Kencana, p. 157.
[57] See United Nation Resolution Number 39/248 of 1985 on Consumer Rights, On April, 9.

1. Legal Protection for Debtors

The existence of legal protection for customers as consumers in the banking sector becomes urgent, because of the position between the parties that is often not equal.[58] Legal protection for the debtor is provided by law number 8 of 1999 on Consumer Protection. In terms of banking service, consumers are better known as customers. Customers in the context of Law Number 10 of 1998 on the Amendments of Law Number 7 of 1992 on Banking are divided into two types, which are the depositor and debtor. A depositor is the customers who place their funds in a bank in the form of deposits based on a bank contract with the concerned customer. Whereas, the debtor is customers who obtain credit facilities.

The legal protection for a customer in banking services is particularly in terms of consequences by standard contract which may arise in the form of credit contract or bank financing.[59] It is unfair to consumers if the interests of consumers are not in par with the entrepreneurs. There are several rights of consumer stated in Article 4 of Chapter III of Consumer Protection Law, specifically mentioning consumer rights, namely:

a. The right to comfort, security and safety in consuming goods and/ or services.

[58] Marhais Abdul Miru, 2004, *Hukum Perbankan di Indonesia*, Bandung, Alumni, p. 6.
[59] Dahlan Siamat, 1993, *Management Bank Umum*, Jakarta, Intermedia, p. 17.

b. The right to choose goods and/ or services and obtain the exact goods and/ or services in accordance with the exchange rate and conditions and guarantees that promised.

c. The right to correct, clear and honest information about the conditions and guarantees of goods and/ or services.

d. The right to be heard opinions and complaints on goods and / or services used.

e. The right to obtain advocacy, protection, and efforts to resolve consumer protection disputes appropriately.

f. The right to receive guidance and consumer education.

g. The right to be treated or served properly and honestly and not discriminatory.

h. The right to obtain compensation, compensation and/ or replacement, if the goods and/ or services received do not comply with the agreement or are not as intended.

i. All the rights regulated in the provisions of other laws and regulations.

Despite all of those rights, customers have special rights in terms of its position regarding the bank as an institution, which are as follows: [60]

a. The customer has the right to know in detail about the offered banking products. This right is the main right of the customer because, without a detailed explanation from the bank through

[60] Marhais Abdul Miru, *Op. Cit.*, p. 31.

its customer services, it is very difficult for customers to choose what banking products are in accordance with their needs. What rights and obligations that will be received by the customer if the customer wants to submit funds to the bank to be managed.

b. The customer has the right to get interested in the savings and deposit products that have been agreed upon in advance.

Discussion on rights in the legal sphere cannot be separated from the obligation of the subject of law, which in this context is debtor. The debtor's obligation is to pay the credit or money to the creditor with the right to receive the principal installments and interest. Customer considered as a debtor when he entered the credit contract. Credit Contract is subjected 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*.[61] The consensual aspect of a contract is subjected to Banking Law and general part of Book III of the Civil Code. Meanwhile, the *riil* aspect 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.[62]

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[61] Sri Gambir Melati Hatta, 2007, *"*Perkreditan dan Tantangan Dunia Perbankan*",* www.legalitas.org, accessed on 14th May 2019, at 07.29pm.

[62] Mariam Darus Badrulzaman. 1978, *Perjanjian Credit Bank*, Bandung, Alumni, p. 40.

Although a credit contract is subjected to banking law, there is no explicit statement on the legal requirements as a basis for making credit.[63] However, from the definition of credit as stipulated in Article 1 Number 13 of Banking Law, can be concluded that the legal basis for granting credit is a contract. Therefore, a credit contract may be defined as a contractual form outlined in clauses.[64] In order to enter a credit contract, there are several credit elements to met by the customer, namely:[65]

a. Trust

The creditors believed that the credit he gave will be paid back within a certain period in the future. From the definition of credit, the relationship between a bank and a debtors is not merely a contractual relationship but also a relationship of trust. Banks only willing to provide credit to debtor based on the trust that the debtors are able and willing to repay the credit. [66]

b. Time

This implies that the value of money at the time of crediting (agio value) is higher than the value of money that will be received at the time of credit return later.

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[63] Kasmir, 1998, *Bank dan Lembaga Keuangan Lainnya*, Jakarta, Raja Grafindo Persada p. 78-79.

[64] Sri Gambir Melati Hatta, *Loc. Cit.*

[65] Rudyanti Dorotea Tobing, 2014, *Hukum Perjanjian Kredit: Konsep Perjanjian Credit Sindikasi yang Berasaskan Demokrasi Ekonomi*, Yogyakarta, Laksbang Grafika, p. 181-182.

[66] Sutan Remy Sjahdeini, 1993, *Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia*, Jakarta, Institut Bankir Indonesia, p. 175.

c. Degree of Risk

There is a level of risk that will be faced as a result of a time-frame that separates the give and the return of credit in the future. The longer the repayment period means the higher the risk level. Therefore credit contract needs a guarantee.[67]

d. The Deeds

In the development of credit in the modern world, what is meant by deeds in granting credit is money.[68] In theory, credit might be given in the form of money or goods but in modern economic is always based on money.[69]

In addition to the four elements, the credit also has the fifth element. The fifth element is the "agreement" that written in the contract between the creditor and the debtor. This agreement shall set forth in a contract where each party signed their respective rights and obligations.[170] Therefore, credit might be considered as an activity of lending and borrowing. The legal framework of the lending and borrowing are regulated in Book III of the Thirteenth Civil Code. Article 1754 of the Civil Code explained that lending as a contract whereby one party gives the other party a certain amount of goods that are used up for use, on condition that the latter party will return also in the same amount of the

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[67] Muchdarsyah Sinungan, 1991, *Dasar- dasar dan Teknik Managemen Kredit*, Bandung, Bina Aksara, p. 3-4.
[68] *Ibid.*
[69] Thomas Suyatno, 1990, *Dasar-dasar Perkreditan*, Jakarta, Gramedia, p. 12-13.
[70] Kasmir, *Op. Cit.*, p. 78-79.

same type and condition. From the above understanding, it appears that the elements of lending and borrowing are:

a. There is an agreement between the borrower and the lender.
b. A certain amount of goods is used up because of lending.
c. The party receiving the loan will replace the same item.
d. Borrowers are required to pay interest if agreed.

Based on the concept of banking financial management, there are some criteria for assessment/ examination that must be carried out by banks. This criteria aims to find customers who are truly profitable and able to pay their credit is carried out by analyzing aspects based on Article 8 Paragraph (1) Banking Law, which came to be known as the 5C Principle, namely:

a. Character

   This assessment is intended to determine the good faith of the customer or honesty owned by the prospective debtor so that if there is a credit problem, it is not too risky for the bank.

b. Capacity

   This is an assessment of the capacity or ability of prospective debtors. The bank assesses the capabilities owned by customers such as the owned businesses and business management. It is aimed at the bank to be able to give confidence to customers to be able to repay their loans in accordance with the time period.

c. Capital

The bank must conduct an assessment of the capital that owned by the credit applicant or prospective debtor, this assessment shall be focused on the distribution of capital placed by the entrepreneur so that the sources can already be run effectively.[71]

d. Condition of Economy

The bank evaluates the business prospects of the debtor. Banks must know the general economic conditions and business conditions of the credit applicant need to get the attention of the bank to minimize the risks that may occur due to these economic conditions.

e. Collateral

This is a form of assessment of collateral, where the procedure for making loans to banks that is a debtor requires a guarantee for approval of credit which is a means of security for banks against possible risks or defaults in the future, such as bad loans, the guarantees that guaranteed must be higher in quality than the amount of the borrowed loan. [72]

Credit contract has an important function in granting and managing credit. The importance of making a credit contract is its function as

[71] Chatamarrasjid Ais, 2005, *Hukum Perbankan Nasional Indonesia*, Jakarta, Prenadamedia, p. 65.
[72] Malayu S.P.Hasibuan, 2009, *Dasar-Dasar Perbankan*, Jakarta, Sinar Grafika Offset, p. 107.

evidentiary for parties related to credit. Aside from being evidence, Credit contract serves to limit the rights and obligations between creditors and debtors.[73] As stated by Hasanuddin Rahman, credit agreements have several functions. First, as the main contract that determines the cancellation or non-cancellation of another contract that follows. Second, as proof of the boundaries of rights and obligations between creditors and debtors. Third, as a tool for monitoring credit.[74] More specifically expressed by Sutan Remy Sjahdeini, the inclusion of words for consent on loan in the sense of credit as referred to the Banking Law may have several purposes. First, the legislators intend to emphasize that a bank credit relationship is a contractual relationship between banks and debtors in the form of loans. Second, the legislators intend to require bank credit relationships to be based on a written agreement.[75]

In addition, the bank shall know the purpose of using the credit and also the plan to develop its creditors and the urgency of the credit requested by the prospective debtor.[76] The creditor usually recognizes and sees how the background of the prospective debtor's life. This is done to prevent the occurrence of problem loans in the future.[77] Based on opinions expressed

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[73] H.R. Daeng Naja, 2005, *Hukum Credit dan Bank Garansi the Bankers Hand Book*, Bandung, Citra Aditya Bakti, p. 181-182.

[74] Hasanuddin Rahman, 2007, *Aspek-aspek Hukum Pemberian Credit Perbankan di Indonesia*, Bandung, PT Citra Aditya Bakti, p.150.

[75] Sutan Remy Sjahdeini. *Op. Cit.*, p. 181.

[76] Djoni S, Gajali, Rachmadi Usman, 2010, *Hukum Perbankan*, Jakarta, Sinar Grafika, p. 274.

[77] Darmaangga I. Rudy and D. Darmakusuma , 2013, "Penerapan Prinsip Kehati-Hatian Sebagai Analisis Dalam Pemberian Credit Pada PT BPR Gianyar Partasedana*", Jurnal Ilmiah Ilmu Hukum Kertha Semaya*, Vol. 1 No. 8, p. 4.

by banking experts, it appears that the legal relationship between the bank as a business entity (creditors) and borrower customers (debtors) is bound by written agreements. Therefore, in various regulations of the implementation of banking laws issued by Bank Indonesia, stated that banks are not permitted to provide credit without written agreements.[78] The credit contract is divided into two parts, namely the main contract and *accessoire* contract. The main contract regulates the main matters, while the *accessoire* serves as an additional contract that describes what is regulated in the main agreement.[79] Credit contracts between creditors and debtors are generally in the form of standard contracts. As stated by Mariam Darus Badrulzaman, in practice each bank has provided a blank/ credit agreement form whose contents have been prepared in advance. This form is offered to credit applicants.

In Dutch, the term standard contract is known as *standaardregeling and algamene voorwaarden.* In German literature, the term used is *algemeine geschafts bedingun, standaardvertrag, and standaardkonditionen.*[80] Mariam Darus Badrulzaman defines the standard agreement as an agreement in which the terms of exoneration are standardized and set forth in the form of contract.[81] In other words, standard contract is a default contract which made only one-sided which

[78] M. Bahsan, 2003, *Hukum dan Ketentraman Perbankan di Indonesia*, Jakarta, Grafiti, p. 81.
[79] Mariam Darus Badrulzaman, *Op. Cit.*, p. 37.
[80] Sutan Remy Sjahdeni, *Op. Cit.*, p. 66-68.
[81] Mariam Darius Badrulzaman, *Op. Cit.*, p. 47-48.

creates several clauses that may be burdensome for one party. This one-sided clause is usually called the exemption clause or in Dutch is called the *exoneratie clausule*. An exemption clause is a clause in the agreement that exempts or limits the liability of one of the parties in the event of default, whereas according to the law, such responsibility should be imposed on him.[82]

It might be concluded that the exemption clause is a clause aimed at freeing or limiting the responsibility of one party to the other party's claim in the case the person does not or should not carry out his obligations specified in the contract.[83] Meanwhile, according to the provisions in the Civil Code Article 1233, agreements can only arise because of consensus and law. Because a contract is a deed of a person to binds oneself to another or more persons, then the legal act of 'binding itself' creates an agreement containing a "statement of will" between the parties. With this, then there is a burden of deeds that must be completed by both parties with their respective capacities. The burden sometimes only put on one-sided profit.[84] Based on Article 18 Paragraph (1) of Consumer Protection Law stated that the business actors in offering goods and services intended for trading are prohibited to includes standard clauses on the contract. [85] This

[82] M. Yahya Harahap, 1986, *Segi-Segi Hukum Perjanjian*, Bandung, Alumni, p. 23.

[83] *Ibid.*

[84] Munir Fuady, *Op. Cit.*, p. 98.

[85] Rendra Yozar Dharmaputra and Januari Siregar, 2010, "Pelaksanaan Perjanjian Credit Modal Kerja di Bank Mandiri (PERSERO) Tbk. Cabang Binjai di Tinjau dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen", *Mercatoria,* Vol. 3 No. 2, p. 80-81.

Article emphasizes that there are 8 (eight) standard clauses that prohibited to be included in the deed/ contract, namely:

a. Declare the transfer of responsibility of the business actor.
b. State that the businessman has the right to refuse to return the goods purchased by the consumer.
c. State that the business actor has the right to refuse to return the money paid for goods and / or services purchased by consumers.
d. Declare authorization from consumers to business actors, both direct and indirect to carry out all unilateral actions relating to goods purchased by consumers in installments.
e. Regulate the matter of proof of the loss of the use of goods or the use of services purchased by consumers.
f. Grant the right to business actors to reduce the benefits of services or reduce the assets of consumers who are the object of the sale and purchase of services.
g. Declare that consumers are subject to regulations in the form of new, additional, advanced and/or continued changes made unilaterally by the business actor in the time the consumer utilizes the services he bought.
h. Declare that the consumer authorizes the business actor for the imposition of mortgage, liens, or guarantee rights on goods purchased by consumers in installments.

The practice of including the exemption clauses as referred to in Article 18 Paragraph (1) and (2) is contrary to the law, so such contract does not meet the legal conditions of the agreement which has to be fulfilled cumulatively. The provisions of Article 1320 of the Civil Code stipulate that an agreement is declared valid if it has fulfilled the 4 cumulative conditions contained in that Article, namely:

a. There is a contract of the parties to commit themselves

   A contract must contain an agreement between the parties, such as a statement of will between the two parties, the absence of coercion, with the entry into force of the agreement to enter into a contract, which means that both parties must have free will. The parties did not receive any pressure which resulted in a "flaw" for the realization of this will.

b. The capability of the parties to make a contract

   Capability is the ability of the parties to carry out legal actions. Capable people are adults who are 18 years old or married.

c. There is a certain thing

   A contract must have certain objects, at least it can be determined that certain objects can be the objects that are present and/ or will be, for example, the number of types and shapes. In various literature it is stated that the object of the agreement is a

deed. A deed is the debtor's obligation which serves as the creditor's right. Deed in Article 1234 of the Civil Code consists of:

1) Give something.
2) Do something.
3) Do not do anything.

d. There is a halal cause

A contract is needed a halal cause, which means that there are legal causes that form the basis of the contract. A reason is said to be halal if it is in accordance with the provisions of Article 1337 of the Civil Code, namely:

1) Does not contrary to public order
2) Not contrary to decency
3) Not against the law (in this case it is not contrary to the Consumer Protection Law).

Article 1320 of Civil Code, Article 1337 of the Civil Code and Article 18 Paragraph of Law Consumer Protection Law are related. All of those provision prohibits the inclusion of exemption clauses in a standard credit contract which results the contract to be considered as null and void. Although both parties agree with the standard clause, in the eyes of the law the agreement is invalid, because it violates the legal requirement of a contract.[86] Not only the Paragraph (1) of Article 18 of Consumer

[86] Bruggink, 1999, *Refleksi Tentang Hukum*, Bandung, Citra Aditya Bhakti, p. 149.

Protection Law that regulates the prohibition of standard clause but also its Paragraph (2) until (4). The prohibition is as follows:

a. Business actors are prohibited from including raw clauses that are located or whose form is difficult to see or cannot read, which are difficult to understand.
b. Each standard clause is determined by a business entity for documents or contracts in accordance with the statement on Paragraph (1) and Paragraph (2) is determined based on the law.
c. Business Actors attempt to set standard clauses that are contrary to this Law.

Considering the substance of Article 18 Paragraph (1) and Paragraph (2) of Consumer Protection Law, it can be understood that the terms and definitions of standard clauses are not the same as those in terms of exoneration clauses. The standard Clausa emphasizes the procedure of making or drafting the contract unilaterally, while the exoneration clause not only emphasizes the procedure of making the contract but also its contents which aim at the transfer of obligations or responsibilities of the business actor.[87] Combinative, based on Article 1337 and Article 1339 of the Civil Code, it can be understood that the material requirements (substantive) to determine the validity of a standard agreement that contains clauses that are unreasonably and unbalanced can harm one party to a contract, are the law, public order, decency, propriety and habit.

[87] Munir Fuady, *Op. Cit*., p. 236-237.

Provisions regarding the standard clause stipulated in the consumer protection law are a repressive form of an error, while there are preventive efforts that can be made.

2. Legal Protection for Debtors in The Implementation of *Roya* in Credit Contract

Related to that, the bank has a role as a creditor that creates and provide form of the contract while the debtor only served to learn and understood it well. Such a contract is commonly referred to as a standard contract[88] wherein in the contract the debtor is only in the position of accepting or rejecting it without any possibility to negotiate or bargain[89] which eventually gives birth to a “not too profitable" contract for one party especially debtors. Therefore, legal protection is needed to provide protection for human rights that are harmed by others and the protection is given to the community so that they may enjoy all the rights granted by the law. In other words legal protection is a variety of legal efforts that shall be given by law enforcer to provide a sense of security, both mental and physical from disturbances and various threats from any party.

Associated with consumers, Consumer Protection Law provides protection for the customer's rights from something as a result of the

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[88] Mohammad Tjoetem, 1999, *Perkreditan Bisnis Inti Bank Komersial (Konsep, Teknik, dan Kasus*), Jakarta, Gramedia Pustaka Utama, p. 4.

[89] Results of interview with Yulianto, Debtor BPR Bank Bantul, May 23rd 2019, at 7.25 pm.

unfulfillment of the debtor rights.[90] After the debtor gets his rights, then the debtor must carry out their obligations, which are repaying the debt to the creditor. The next step after the debt is repaid are the debtor will do the *Roya*. Then, the creditor will make a *Roya* request letter to the Land Office which states that because the loan contract with guaranteed has been paid, there shall be write-off or *Roya*. In other words, it is a write-off of the loan contract on the debtor's land certificate. Based on the provisions of Article 22 Paragraph (1) of Mortgage Law, *Roya* refers to the recording of the cancellation of the mortgage. The Head of the Land Office shall write the written-offs of the mortgage right by crossing out the record of the related mortgage right on the land book and the certificate of the object being used as collateral.

Based on Article 10 Paragraph (2) of Mortgage Law, it is stated that the granting of the mortgage is carried out by making the Deed of Granting Mortgage by the Land Drafting Official in accordance with the prevailing laws and regulations. This aimed for the fulfillment of interests of the parties, it should be promised good and right anyway. In addition, the contract must be equal between the rights and obligations between the parties that bind themselves to each other.[91] The nature of the guarantee contract is accessory, which always associated with the main contract that

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[90] Philipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya: Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara,* Surabaya, PT Bina Ilmu, p. 25.

[91] Dewi Nurul Musjtari. *Op. Cit.*, p. 69.

in this case is the credit contract. Based on the Article 18 Paragraph (1) of Mortgage, the write-off of the mortgage might be due to the write-off of the debt that guaranteed by the mortgage or in other words the credit contract has ended. The termination of the credit contract basically refers to the provisions in Article 1381 of the Civil Code on the abolition of the agreement. Some reasons for the abolition of the agreement referred to in Article 1381 of the Civil Code, the deletion or termination of the credit agreement are mainly due to the payment which served as the obligation of the debtor voluntarily to fulfill the contract that have been entered in.

Based on the Article 22 Paragraph (1) of Mortgage Law, after the mortgage are writen-off as referred to in Article 18, the Land Office crossed out the notes of the mortgage on the land book of land rights and certificates. Specifically, the cancellation of the mortgage due to the payment of receivables or repayment in accordance with Article 22 Paragraph (4) on the write-off in Mortgage Law is the request for deletion as referred to in Paragraph (1) shall be submitted by the interested parties by attaching a certificate of mortgage that has been given a note by the creditor that the mortgage is waived because the receivables guaranteed for repayment with the mortgage have been paid in full, or a written statement from the creditor that the Mortgage has been written off due to the debt the repayment guaranteed with the mortgage has been repaid or because the creditor releases the said mortgage.

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 word "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 related to the removal of the mortgage.

Based on Bank Bantul BPR Customer, Mr. Yulianto said that when he considered to take the credit contract, the form of the credit contract had been provided by the bank while the debtor did not really learn and understand it, apart from that sometimes the debtor considered the contents of the contract to be insignificant, the debtor immediately sign the credit contract without firstly reading the contents. It is happened because the credit contract contains too many Articles so that it will take quite a long time, the customer wants the capital or funds can be quickly used. Then, during the credit contract signing process the bank as a creditor only explained the contents of the credit contract verbally or briefly.[92]

Regarding the *Roya*, the credit contract does not stated 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 crossing-out the record of the mortgage right on the land title book and its certificate. Meanwhile, to conduct *Roya* did costs a

[92] Interview with Yulianto, Debtor PD BPR Bank Bantul, May 23rd 2019, at 7.25 pm.

fortune. The bank as a creditor did not explain this at the beginning of the credit contract. The bank or creditor explains *Roya* and its costs after the customer has made a credit contract.[93]

The bank credit contract is made in a standard form by the bank so that the contents are more beneficial to the creditors. Creditors have a stronger bargaining position in comparison to debtors. The bank or creditor does not explain related to *Roya* and its costs. While the contents of the credit contract are only read briefly by the debtor, so the debtor does not know if he has to do *Roya* and there are costs. The bank also shows several Articles of contract to the author, indeed there the author sees that there is no provisions that clearly mention about the *Roya* and its cost after the credit contract has been paid. Indeed, from a legal standpoint, bank credit contract implemented as standard contracts have caused many problems but will still be needed.

The existence of a banking credit contract as a standard contract has not yet been normatively regulated through positive law, but its existence has gained a place in daily banking practices. F.A J Grass, in his three-year study of standard contracts through a sociological approach to law concluded that this agreement grew and developed in a modern society that used organization and planning as a way of life.[94] The risks contained in bank credit agreements can be seen from two sides, the sides of the risk

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[93] *Ibid.*

[94] F. A. J. Gras, 1979, *Standaarrdcontracten, een Rechtssosilogische Analyse*, Kluwer-Deventer, p. 8.

borne by the bank as a creditor and the sides of risk borne by the customer as a debtor. The risk borne by the debtor is due to the form of a standard bank credit contract so that the debtor cannot participate in determining the contents of the contract.[95]

The Head of Credit Section in Bank Bantul, Mr. Rangga M Kurniawan, said that related to the obligation to do *Roya* is on the bank as a creditor, but in the practice of banking world, it is common that debtor has an obligation to do *Roya*. He said that a few years ago, all the heads of the Bank's credit section were actually collected by the chairman of the National Land Agency which was then briefly National Land Agency (NLA) Bantul, to talk about the cost of *Roya*. NLA has received reports from several community members related to *Roya*, but currently no conclusion regarding this problem. Then, another problem is added, the chairman of the National Land Agency Bantul has now replaced it with a new one.[96]

In the credit practice carried out by the Bank, the implementation of *Roya* on certain objects of Mortgage without prior agreement is common,[97] even though this is on contrary to Article 2 Paragraph (1) and Paragraph (2) of Mortgage Law, which in the provisions of Article 2 of those law

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[95] David Y. Wonok, 2013, "Perlindungan Hukum Atas Hak-Hak Nasabah Sebagai Konsumen Pengguna Jasa Bank Terhadap Risiko Yang Timbul Dalam Penyimpangan Dana", *Lex Crimen*, Vol. VI No. 1, p. 69.

[96] Interview with Rangga M Kurniawan, Credit Section Head on BPR Bank Bantul, May 21st 2019, at 10.00am.

[97] *Ibid*.

stated that if *Roya* wanted to be conducted, they shall firstly mention it in the Deed of Granting Mortgage. The bank credit contract is made in a standard form by the bank so that the contents of the standard credit contract are more beneficial to the bank while the customer can only accept it. The different position between the bank and the debtor customer, as the bank has a stronger bargaining position when compared to the customer (the debtor) causes an imbalance in making bank credit agreements. The bank can enter clauses that benefit itself but disadvantage the debtor by an exoneration clause that may free the bank as a creditor from its obligations.

Based on the results of interviews with the head of the credit department Rangga M. Kurniawan what is practiced in banking related to the standard credit contract actually violates the consumer protection law but in fact almost all banks still use the standard credit agreement.[98] The limitation or prohibition on the use of this exoneration clause can be found in Article 18 of Consumer Protection Law. In this Consumer Protection the exoneration clause is one form of "standard clauses" that is prohibited by the Act. In the explanatory section of Article 18 Paragraph (1) of Consumer Protection Law states that the purpose of the prohibition of inclusion of a standard clause is intended to place the position of consumers on a par with business actors based on the principle of freedom of contract. Because of the treaty law in Indonesia adheres to the principle

[98] Interview with Rangga M Kurniawan, Credit Section Head on BPR Bank Bantul, May 21st 2019, at 10.00am.

of freedom of contract (Article 1338 of the Civil Code).[99] Each party that entered into a contract is free to make a contract as long as the contents of the contract are not contrary with the applicable legal principles, do not violate decency and public order (see Article 1337 of the Civil Code).[100]

This kind of credit contract needs special attention from both the bank as the creditor and the customer as the debtor, because the credit contract has important function in granting, managing the credit. In this regard, credit agreements have the following functions:[101]

a. The credit agreement serves as the principal agreement.
b. Credit agreements serve as evidence of the limitations of rights and obligations between creditors and debtors.
c. The credit agreement serves as a tool for monitoring credit.

As a conclusion, credit contract is a law that was born because of a contract. So, in making a credit contract, the bank should include *Roya* as well so that the debtor understands and is clearly related to after the mortgage rights are settled then the *Roya* must be done. *Roya* already exists in the law but was not implemented in the agreement even when the agreement was made was not explained by the credit department so the public did not know.

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[99] Diana Kusumasari, 2011, "Klausula Eksonerasi", https://www.hukumonline.com/klinik/detail/ulasan/lt4d0894211ad0e/klausula-eksonerasi, accessed on August 25th 2019 at 8.45am.
[100] I.P.M. Ranuhandoko B.A, 2013, *Terminologi Hukum Inggris-Indonesia*, Jakarta, Sinar Grafika, p. 99.
[101] Hermansyah, 2005, *Hukum Perbankan Nasional Indonesia*, Jakarta, Kencana Prenada Media Group, p. 72.

We can understand that there are still many people who do not understand about the law so that many people are disturbed by administrative problems; in fact this must be contained in the agreement and it has been the duty of the bank to inform and explain to the debtor since the first will do a credit agreement, because sometimes if it is already in the agreement, the debtor does not know that he must do *Roya* after the mortgage is removed because many debtors simply want to get capital quickly without reading and understanding the contents of the agreement. Therefore, to provide legal protection, *Roya* should be written into the contract because not all debtors understand the existence of the law. Thus, the debtor understands to do *Roya* after the mortgage rights are removed.

B. Legal Consequences if the Debtor Does Not Make the *Roya* Loan Contract with Guarantee in PD BPR Bank Bantul

The birth 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 collateral imposed on land rights. Mortgage Rights in its implementation has a variety of principles. These principles are, namely:[102]

1. Giving a preferred position to the creditor. This means that the creditors who have the Mortgage have the right to take precedence in

[102] Adrian Sutedi, 2010, *Hukum Hak Tanggungan*, Jakarta, Sinar Grafika, p. 55.

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 specialty 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 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. Easy and certain 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 part, an independent entity and can be assessed individually. To be encumbered with

land rights, the object of the mortgage in question must meet 4 conditions, namely:[103]

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 debt.

In addition to those principles, the Mortgage has the nature of not being divided, as determined in Article 2 of Mortgage Law. That is, the Mortgage imposes a whole burden on the mortgage object and every part thereof. A partial payment of the guaranteed debt does not mean that a portion of the mortgage object is free from the burden of the mortgage, but the mortgage still burdens the entire mortgage object for the remaining outstanding debt. Based on this nature, *Roya* against Mortgage Rights is impossible, unless agreed in advance in Certificate of making mortgage rights. This can only be done as long as:

1. The mortgage is imposed on several land rights.

[103] Salim. H. S, 2006, *Perkembangan Hukum Jaminan Di Indonesia*, Jakarta, PT Raja Grafindo Persada, p. 104.

2. Repayment of debt guaranteed by the mortgage shall be made in installments in the amount of the same as each of the land rights which are part of the mortgage object, which will be freed from the mortgage, so then only burden the remaining mortgage object to guarantee the remaining outstanding debt.

The Civil Code adheres to the principle of attachment, while the Mortgage Law adhere to the principle of horizontal separation.[104] Mortgage Law adheres to the principle of horizontal separation because Mortgage Law is a derivative of the BAL based on customary law. Land law based on customary law adheres to the principle of horizontal separation.[105] 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.

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. Whereas 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

[104] St. Nurjannah, 2018, "Eksistensi Hak Tanggungan sebagai Lembaga Jaminan hak atas Tanah (Tinjauan Filosofis)", *Jurisprudentie* Volume 5 Nomor 1 p. 195-205.
[105] Dyah Devina, 2017, "Kriteria Asas Pemisahan Horizontal terhadap Penguasaan Tanah dan Bangunan", *Yuridika fakultas hukum universitas Airlangga*, Volume 32 Nomor 2 p. 228-259.

guarantees, in this case the granting of Mortgage Rights on land.[106] In addition to the applicable principle, the mortgage has the nature of not being divided, unless agreed in the Deed of Granting Mortgage.[107] 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 mortgage. Deviations from this principle can only be done if it is agreed expressly in the relevant Certificate of making mortgage rights.

Article 2 Paragraph (2) of the Mortgage Law opens opportunities to deviate from the application of the Mortgage Right. Elimination or *Roya* of mortgage is partially called *Roya*.[108] The existence of *Roya* cannot be released with the Mortgage, it is due to the Mortgage which is a material right that is a right that can be sued by the holder of a third party who controls or owns the Mortgage object if the mortgage object is transferred by the original mortgage provider.[109] So the abolition of the mortgage must also be removed from the recording in the land rights book which is the object of the mortgage. If this is not the case, the third party will never know that the mortgage has been abolished, so that it is no longer binding on the third party.[110] The termination

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[106] Nunik Yuli Setyowati, 2016, "Prinsip-Prinsip Jaminan dalam Undang-Undang Hak Tanggungan", *Jurnal Repertorium* Volume III Nomor 2 p. 97-105.

[107] Adrian Sutedi, *Op. Cit*., p. 57.

[108] Boedi Harsono, 2003, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jakarta, Djambatan, p. 151.

[109] Sutan Remy Sjahdini, 1999, *Hak Tanggungan, Ketentuan-Ketentuan Pokok dan Masalah yang Dihadapi oleh Perbankan (Suatu Kajian Mengenai Undang-Undang Hak Tanggungan)*, Bandung, Alumni, p. 148.

[110] Rachmadi Usman, 2008, *Hukum Jaminan Keperdataan*, Jakarta, Sinar Grafika, p. 508.

of the mortgage in the provisions of Article 18 Paragraph (1) of the Mortgage Law explains that the mortgage is deleted because of the following matters:

1. Write off debt guaranteed by the mortgage.
2. Release of 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 encumbered 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 deleted 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 determination by the Head of the District Court. Whereas the mortgage can be abolished due to the law, because the write off of the debt guaranteed by the mortgage and because the abolition of the right to the land encumbered by the mortgage.

The mortgage is a debt guarantee whose burden is in the interest of the creditor, so it is logical that the mortgage can be intentionally written off, both at the will of the mortgage holder itself and because of cleansing based on the determination of the Chair of the District Court. Whereas the mortgage is not possible to free the mortgage. In accordance with the nature of the Mortgage Right that is accessor, the existence of the Mortgage depends on the existence of receivables that are guaranteed to be repaid with that Mortgage. Therefore, if the receivables are written off due to repayment or by other reasons, the relevant Mortgage will be written off.

If the debtor has paid off the debt, it means that the debt agreement between the debtor (creditor rights) and the creditor has ended.[111] As has been explained that the debt agreement is an individual nature, only parties to the agreement, not the third party (the public) are aware of the situation. In order for the public to be aware of this event, it is necessary to fulfill the principle of publicity by publishing it in the Land Office. If not, then in general the Mortgage are still valid. The abolition of the mortgage must be followed by deleting the mortgage from the land title book which is charged with the mortgage. Crossing the registration of Mortgage is a civil act that follows the removal of the Mortgage. In granting Mortgage to fulfill 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 in order to get a capital/ money loan as expected.

Mortgage cannot be divided as determined in Article 2 of the Mortgage Law. This means that the Mortgage imposes a whole object of the mortgage and every part of it. The partial repayment of the guaranteed debt does not mean freeing a portion of the mortgage object, but the mortgage still imposes on the whole each object encumbered by the mortgage for the remainder of the debtor's debt to the creditor that has not been repaid. However, if the debtor then has funds to repay a portion of his debt, the repayment of the loan installments in the amount equal to the value of each object encumbered by the

[111] Susanto, 2017, "Perjanjian Kredit yang Dibuat Secara Baku pada Kredit Perbankan dan Permasalahan Pilihan Domisili Hukum Penyelesaian Sengketa", *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*, Volume 4 Nomor 1 p. 122-139.

mortgage will free the object from the Mortgage on condition that it has been agreed in advance, so the Mortgage only burden the remaining only debt.

The nature can't be divided is also regulated in Article 2 Paragraph (1) *juncto* Paragraph (2) Mortgage Law. In Mortgage Law Article 2 Paragraph (1) the nature cannot be divided from the mortgage, it is not absolute, but it can be distorted with the agreement set forth in the Deed of Granting Mortgage (Article 1 Paragraph (2)) with the following conditions:[112]

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

From the explanation above it is clear that *Roya* must be promised in advance in the Deed of Granting Mortgage,[113] 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 definition of *Roya* according to J. Satrio in his book is the elimination of expense records.[114] 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. In the Mortgage Law, there are two types of *Roya*, namely:

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[112] Mariam Daruz Badrulzaman, 2004, *Hukum Perdata Buku II Kompilasi Hukum Jaminan*, Jakarta, CV Mandar Maju, p. 19.

[113] Nina Paputungan, 2016, "Kajian Hukum HakTanggungan Terhadap Hak Atas Tanah Sebagai Syarat Memperoleh Kredit", *Lex Privatum*, Volume IV Nomor 2 p. 13-25.

[114] J. Satrio, 1998, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan*, Bandung, PT Citra Aditya Bakhti, p. 296.

1. Entirety *Roya*

   As regulated in Article 2 Paragraph (1) of the Mortgage Law, which states that the mortgage has the nature of not being divided, unless agreed in the Deed of Granting Mortgage as referred to in Paragraph (2).

2. Partial *Roya*

   As stipulated in Article 2 Paragraph (2) of the Mortgage Law that if the mortgage is imposed on several land rights and agreed in the Certificate of making mortgage that the repayment of the guaranteed debt can be done in installments at an amount equal to the value of each land rights which is part from the mortgage object which is to be freed from the Mortgage. The mortgage shall only burden the remaining object of the Mortgage to guarantee the remaining outstanding debt.

In addition to those principles, the Mortgage has the nature of not being divided as determined in Article 2 of the Mortgage Law. That is, the Mortgage imposes a whole burden on the mortgage object and every part thereof. A partial payment of the guaranteed debt does not mean that a portion of the mortgage object is free from the burden of the mortgage, but the mortgage still burdens the entire mortgage object for the remaining outstanding debt. Based on this nature, *Roya* against Mortgage Rights is impossible, unless agreed in advance in Certificate of making mortgage rights. This can only be done as long as:

1. The mortgage is imposed on several land rights.
2. Repayment of debt guaranteed by the mortgage shall be made in installments in the amount of the same as each of the land rights which are part of the mortgage object, which will be freed from the mortgage, so then only burden the remaining mortgage object to guarantee the remaining outstanding debt.

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). Considering that the mortgage is a material right, that is, the right that can be claimed by the rights holder from a third party who controls or owns the object of the mortgage if the object of the mortgage, the abolition of the mortgage must also be excluded 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, there are several requirements that must be met, these requirements are in accordance with the Regulation of the Head of 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 deleted 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.[115]
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.

[115] Efty Hindaru Sudibyo, Amin Purnawan, 2017, "Peran Notaris dalam Pembuatan Akta Izin Roya Hak Tanggungan karena Hapusnya Hutang Dalam Perspektif Kepastian Hukum", *Jurnal Kat*, Volume 4 Nomor 2 p. 183-196.

6. If the request for a crossing out order arises from a dispute that is being examined by another District Court, the request must be submitted to the Head of the District Court who is examining 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 done by installments 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 certificates of land rights that are free from the Mortgage that originally burdened them.

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.[116] 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

[116] Harris Yonata Parmahan Sibeuea, 2011, "Arti Pendaftaran Tanah Untuk Pertama Kali", *Negara Hukum: Membangun Hukum Untuk Keadilan dan Kesejahteraan,* Volume 2 Nomor 2 p 287-306.

Article 22 Paragraph (4) of Mortgage Law. The mortgage is 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 deletion of Mortgage Rights can be done in the case of:

1. Order of the Head of District Court on the request of interested parties if the creditor is willing to give a statement (Article 22 Paragraph (5) Mortgage Law).
2. *Roya's* statement is partial if the debt repayment is agreed to be done in installments (Article 22 (9) of the Mortgage Law.
3. The object of Mortgage is auctioned or sold through/under the hand (Article 6 in conjunction with Article 20 Paragraph (2) of the Mortgage Law)

Based on the Government Regulation on Land Registration, the recording of the removal of 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 7 (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 that with the removal of the Mortgage/*Roya* title on the certificate of land, then this will be known to the public and the public will know that the land that was charged was free and returned in a state originally. In addition, the *Roya* was carried out for the sake of administrative order and had no legal effect on the Mortgage that had been deleted and if the certificate of land rights is not immediately removed/ tried, then the land certificate is still in the name of the creditor (bank), then the owner of the certificate of land rights cannot carry out legal actions, before the certificate of land rights is removed/*Roya*.[117]

[117] Interview with Anik the head of the section on land rights and registration of the NLA Bantul, on May 22nd 2019, at 2.27pm.