

**DISPUTE RESOLUTION OF DESTROYED  
MORTGAGE GUARANTEE  
(Case Study of Petobo Village, South Palu District, Palu City)**

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**Abstract :** This study aims to determine the legal status of the destroyed mortgage object and to determine the dispute over the destroyed mortgage object. The research method used in this paper is the empirical normative method and qualitative data analysis. The results of this study are when a liquefaction disaster causes the object of the mortgage to be destroyed, the debtor's responsibility ends when the object of the mortgage is destroyed as regulated in Law Number 5 of 1960 article 27 b, the Mortgage Law, the abolition of property rights if the land is destroyed. and Creditors in handling or providing solutions to disputes over the destruction of the object of mortgage guarantee, namely the granting of relaxation or delay by the State Savings Bank. Suggestion, It is better for the government as soon as possible to make a policy for the sake of legal stability again in order to create legal certainty related to the dispute. And the creditor should make a rule which relates to the settlement of disputes over collateral objects that were destroyed due to liquefaction after the previous relaxation policy so that in the future this can be a guide or reference by the parties concerned easily without any hesitation with the existence of legal certainty.

**Keywords:** Mortgage Guarantee, Legal Consequences, Destruction of Mortgage Object

## **I. Introduction**

Community economic activities are very common, these activities ultimately require credit facilities to run their business, then in lending and borrowing activities in credit that occur in the community, it can be noted that generally it is often required by the submission of guarantees by debtors to creditors. Banks in providing credit to debtors are required to submit collateral in the form of movable and immovable objects. The rights to these objects will then be encumbered by the Bank with mortgage rights. Credit agreements given by banks to customers are not without risk, because a risk may occur. The risk that generally occurs is failure/jamming in repayment, this situation is very influential on the health of the bank, because the money lent in repayment, this situation is very influential on the health of the bank, because the money lent to debtors comes from the public which is deposited in the bank so that the risk This is very influential on the public's trust in the bank as well as on the security of the public funds.

Banking institutions as providers of funds have a strategic role in helping the success of national development. Banks as financial institutions have an effort to collect funds from the public and channel funds to the public through credit activities. As stated in Article 3 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, that the main function of banking in Indonesia is to collect and distribute public funds. Credit agreements that occur between the bank and the debtor in practice sometimes occur not in accordance with the wishes of the parties. The credit agreement

can cause unwanted problems. The destruction of collateral objects can be caused by theft, fire, and others. However, there was an unforgettable incident by Indonesian citizens, especially the people of Palu while waiting for the birthday celebration of the Palu city with the name "Palu nomoni" which was attended by many people suddenly, when the appointed time arrived and the preparations had been done, right on On 28 September 2018 while having fun celebrating the birthday of Palu City at 18.02 WITA there was a powerful earthquake measuring 7.4 on the Richter scale which devastated Palu City and claimed many lives.

In addition to ravaging Palu City, the earthquake also caused a tsunami along the bay coast of Palu City and the occurrence of liquefaction (soil liquefaction) which claimed many lives and materials. The two places that are most markedly affected by this liquefaction disaster are Petobo and Balaroa Housing Center in Palu City. Balaroa Village is located in the middle of the Palu-Koro fault where during liquefaction the land level rises and subsides, some parts of the land sink up to 5 meters, and some parts rise up to 3 meters. Meanwhile, the liquefaction that occurred in Petobo resulted in hundreds of houses being buried in black mud with a height of 3-6 meters. This liquefaction occurred after the earthquake shook, the ground in the area quickly turned to mud which immediately dragged the buildings above it. The liquefaction that occurred at Perumnas Balaroa drowned around 1,747 housing units, while in Petobo Village about 744 housing units drowned. The latest news, after being announced by BNPB on October 10 that the death toll from the earthquake reached 2,045 people, Meanwhile, 82,775 people were displaced, and 8,731 refugees were outside Sulawesi.

With this natural disaster, not only lives but some of the rights of the community are also taken, one of which is the right to ownership of their property which could be the only property owned by the community and some of these assets are used as collateral. by some people. However, the incident that happened in the city of Palu resulted in the destruction of the property. Some people who do understand the process or resolution of the incident may immediately take care of all the things needed, but then what about the people who don't know? What should they do?

Regarding the existence of a legal basis, this is not in line with what is happening now. There are still many people who have debts that have not been repaid, they still pay and even they are still being billed for these debts. Thus, on that basis, the author concludes that there is an imbalance between what should happen or what is dreamed of and what has happened. That is related to the description as mentioned above, the main issue in this paper is the debtor's right in the settlement of the destroyed mortgage object.

Based on the background of the problem as described above, the problem to be studied is the legal status of the object of guarantee for mortgages that are destroyed due to liquefaction based on legislation. How are the efforts to resolve disputes over the destruction of the mortgage object after the liquefaction disaster.

## **II. Method**

### **1. Research Type**

The type of research used is empirical normative which means that it departs from the articles of the provisions of the law which are appropriate or not in reality.

### **2. Nature of Research**

This research is descriptive because it assesses the implementation of several articles and the Civil Code as appropriate or not.

### **3. Data Types and Sources**

The types and sources of data used in this study are as follows:

- a. Primary data, namely empirical data obtained from respondents based on the results of interviews.
- b. Secondary data, namely data obtained through literature studies, legal references, statutory regulations relating to contract law, books of civil law and regulations on agrarian and security laws.

### **III. RESULTS AND DISCUSSION**

#### **1. The Legal Status Of The Mortgage Guarantee Object That Is Destroyed Based On The Legislation**

The earthquake, tsunami, and liquefaction natural disasters that rocked Palu City in Central Sulawesi on October 28, 2018 caused very detrimental damage. The occurrence of the disaster resulted in a very large impact on the financial sector and others, especially in the field of credit to financial institutions. The number of land or collateral objects, especially mortgage objects that were destroyed due to liquefaction that occurred in Palu City, especially in Petobo Village, where the object was the mortgage guarantee. The data on the number of objects of mortgage that were destroyed in the Petobo sub-district are described in table 1

**Table 1**  
**The Amount Of Land That Became Mortgage Destroyed**  
**In The Petobo Village**

No	Total land area	Liquefied land	Destroyed mortgage object
1.	1.040 hectares	181 hectares	90,62 hectares of land

Table 1 explains that the total land area of Petobo Village is 1,040 hectares of which 181 hectares is land affected by liquefaction, while 90.62 hectares of land is the object of guarantee for destroyed mortgages. In connection with the loss of the object of mortgage guarantee in which the land is no longer controlled by the owner because in this case the land that is the object of the guarantee or not, which has been destroyed, automatically the rights attached to the land will also be destroyed or lost. It is said that ownership rights are nullified if the land is destroyed as stated in Article 27 b.

The destruction of the land which is the object of the mortgage will have legal consequences. In fact, the object of the mortgage has been destroyed by a natural event. The object of the mortgage is the land and other objects embedded in it which have been clearly stated in the APHT. The object of the mortgage is the land with the right of ownership, the right to use the building, the right of use, both to the right of ownership and to the state and the right to the land including buildings, plants, and works that already exist or will exist are an integral part of the land and are property rights. the holder of land rights whose burden is expressly stated in the APHT for the land in question. If a natural event occurs that results in the destruction of the object of property rights, building rights and use rights, it will affect the status of the rights attached to them. This condition creates a norm vacuum in the Mortgage Law, because the Mortgage Law does not regulate the legal consequences of the destruction of the land which is the object of the Mortgage. The destruction of the object of mortgage can be interpreted with other legal systems in

Indonesia. The closest interpretation is to interpret the Mortgage Law with the Basic Agrarian Law. Article 18 of the Mortgage Law is interpreted using Articles 27, 34, and 40 of the Basic Agrarian Law. Article 18 paragraph (1) of the Mortgage Law formulates: Mortgage rights are abolished for the following reasons:

- a) Elimination of debt guaranteed by Mortgage;
- b) Release of Mortgage by the holder of Mortgage;
- c) Clearing Mortgage based on the determination of the ranking by the Head of the District Court;
- d) The abolition of land rights burdened with Mortgage Rights.

The destruction of the object of property rights will result in the status of property rights. The abolition of the object of property rights will result in the abolition of the status of property rights as formulated in Article 27 of the Basic Agrarian Law which formulates: Property rights are abolished if:

- A. The land is given to the state
  1. Due to the revocation of rights under Article 18
  2. Due to voluntary submission by the owner
  3. Because abandoned
  4. Due to the provisions of Article 21 paragraph 3 and 26 paragraph 2.
- B. The land is destroyed.

Article 34 of the Basic Agrarian Law regulates the reasons for the abolition of the Right to Cultivate. Article 34 of the Basic Agrarian Law formulates:

The right to cultivate is abolished because :

- a) the time period is over
- b) terminated before the term expires because a condition is not met;
- c) released by the right holder before the term expires;
- d) revoked in the public interest;
- e) abandoned;
- f) the land is destroyed;

The provisions in Article 30 paragraph (2) Article 40 of the Basic Agrarian Law regulates the reasons for the abolition of the Right to Build. Article 40 of the Basic Agrarian Law formulates:

The right to use the building is abolished because:

- a) the time period expires;
- b) terminated before the term expires because a condition is not met;
- c) released by the right holder before the term ends
- d) revoked in the public interest;
- e) abandoned;
- f) The land is destroyed

The provisions in Article 36 paragraph (2). Based on the explanation above, it can be said that based on the provisions of Article 27, Article 34, and Article 40 of the Basic Agrarian Law which regulates the abolition of property rights, cultivation rights, and building rights, it is wrong the other is caused by the same factor, namely the destruction of the land. Based on the provisions of Article 18 paragraph (1) of the Mortgage Law, one of the factors that can eliminate mortgage rights is the abolition of land rights that are burdened with mortgages, so the destruction of land with the status of ownership rights, business rights or building rights due to disasters nature will result in the abolition of the mortgage over the object. The

destruction of the object of the mortgage due to natural disasters results in the creditor losing the object of collateral, the debtor losing the right to land, and the creditor not being able to sue the debtor for the destruction of the object of the mortgage.

Based on Article 1 paragraph (1) of Law Number 2 of 1992 concerning Insurance Business, the definition of Insurance or Insurance is an agreement of two or more parties by which the insurer binds himself to the insured party, by receiving insurance premiums to provide compensation to the insured due to loss, damage or loss of expected profits or legal liability to third parties that may be suffered by the insured arising from an uncertain event, or to provide a payment based on the death or life of the insured person.

That this situation is a situation that occurs beyond the expectations of the parties and in civil law this event is known as a state of coercion or also known as force majeure, namely a situation where the debtor does not carry out his obligations or delays the implementation of the debtor. Unlike the case with default, non-performance or delay in the implementation of obligations in force majeure occurs not due to negligence but due to circumstances or events that are beyond the control of all parties.

Elements of circumstances beyond the control of the parties are elements that eliminate the negligence of parties who are late or do not carry out their obligations. As a consequence, the debtor may be released from claims for compensation. Force majeure is regulated in article 1245 of the Civil Code, where it is stated that there is no reimbursement of costs, losses and interest, if due to forced circumstances or due to things that happen by chance, the debtor is prevented from giving or doing something that is required, or doing an act that is prohibited for him.

The basis is the difficulty of fulfilling achievements because there are events that prevent the debtor from taking action. The state of coercion that hinders the fulfillment of achievement must be about the achievement itself, because we cannot say that there is a coercion if it occurs later. The implication of the law is force majeure, that the conditions that hinder the fulfillment of achievements exist not only if it is impossible for everyone to fulfill their achievements, even the debtor himself concerned is impossible or very difficult to fulfill achievements.

From the results of the research, the author also obtained data on the number of mortgage objects that were destroyed, namely about 70 objects that were used as collateral by the community in Petobo such as gardens, yards, and houses.

## **2. Efforts to resolve disputes over the destruction of collateral rights after the liquefaction disaster**

With the disaster that occurred in Palu City, especially Petobo Village, it is also hoped that there will be laws or regulations that can provide solutions and later become the basis for decision making related to the destroyed mortgage object. conditions that are very concerning for the community, especially those who have dependents in financial institutions who only want to make life better, but in fact with the conditions they are experiencing, they complain and struggle to pay off due to their lack of property left due to the disaster.

Talking about the problem of dispute resolution related to the object of this destroyed mortgage, it can be explained that force majeure is a condition that causes one of the reasons the debtor cannot carry out his obligations under the agreement which is not caused by the debtor's fault or negligence.

The object of the guarantee of the mortgage is destroyed due to the liquefaction natural disaster, then based on the provisions of Article 27 b of Law Number 5 of 1960 concerning agrarian matters, it is stated

that one of the abolitions of property rights is if the land is destroyed. Furthermore, in Article 1381 which states that the abolition of one of the engagements is due to the destruction of the goods owed. Based on the UUPA and the Civil Code, it can be concluded that the debtor's responsibility in paying off debt or paying dues is automatically removed.

Associated with the earthquake, tsunami, and liquefaction that occurred in the city of Palu on September 28, 2018, this makes one of the influences on some laws or regulations in creating justice, so legal uncertainty can occur. Bank BTN responded that with the occurrence of this incident, it could conclude with two treatments, namely a 2-year delay in payment for debtors who were seriously damaged and related contract renewals, from other creditors, namely Mandiri Bank, where the Bank only gave a short answer, namely by deleting the agreement but the debtor is categorized as bad credit.

#### **IV. Conclusion**

In Article 27 b of the UUPA basically states that natural disasters cause the owner of land rights to be nullified if the land is destroyed, in Article 18 paragraph 1 UUHT one of the abolition of mortgage rights is the abolition of land rights that are burdened with Mortgage Rights, Article 1381 that one of the If the debtor and creditor are abolished when the debtor's debt is destroyed, then there is no longer any bond between the debtor and the creditor, related to the disaster that hit Palu City, then based on article 1245 that there is no reimbursement of costs, losses and interest if due to compelling circumstances or due to coincidences, and Related to earthquakes, tsunamis, liquefaction in response to the attitude of lack of equality carried out by financial institutions such as several financial institutions that have been researched, namely the State Savings Bank (BTN) stated that temporarily delaying payments for 2 years to debtors who experienced the impact.

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