

## Original Research Article

# Legal Force of Certificate of Mortgage Rights Issued Upon the Existence of the Element of Onbeschikking Bevoeg of the Mortgage Grantor Over the Object of Mortgage Rights

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**Abstract:** The lack of authority of a party that does not have the right to place a mortgage on a creditor, which in the future results in a dispute, whether criminal or civil, has different legal consequences. So, it is appropriate to know the legal strength of proof of the mortgage right certificate in terms of the registration system in Indonesia and the legal consequences of issuing mortgage rights, which occur based on the mortgagor's lack of authority over the object of the mortgage right. The research uses normative research methods with analytical descriptive analysis techniques. The Mortgage Rights Certificate (SHT) has strong evidentiary power if it meets three main aspects. First, the existence of cadastral data plots, namely data related to land conditions, such as location, area, and land boundaries, which are obtained from accurate measurements of land plots. Second, a public register should be created that records the names of land rights holders. The relevant agencies officially manage this general list and are a trusted source of information. Third, implementing a publication system that shows openness of information to the public allows other parties to know the status of land rights. In issuing an invalid mortgage right due to non-compliance with applicable legal provisions, a mortgage right can have no legal force if the party providing the mortgage right is not registered as the legal owner of the object in question. This will cause losses for the party who receives the mortgage right because they cannot rely on the mortgage right to execute the debt if the debtor does not fulfill his obligations. Non-compliance or violation of the authority and provisions governing legal validity can result in serious legal consequences, such as cancellation of mortgage rights, loss of rights to objects guaranteed, or even material losses for interested parties.

**Keywords:** Authority, Rights, Certificate, Legal.

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## 1. INTRODUCTION

The position of a mortgage certificate is a legal instrument that has binding force on the parties involved in a debt agreement, especially between creditors and debtors. The mortgage certificate, which is regulated in Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, hereinafter abbreviated as UUHT, provides legal certainty for creditors in protecting their receivables by providing property rights attached to the collateral object (Bahsan, 2007). The mortgage holder has the right to be given priority in terms of payment of his receivables from the proceeds of the sale of the mortgage object. This provides legal protection for the mortgage holder to obtain payment for his receivables.

Ease and Certainty of Execution - Mortgage holders can directly execute the mortgage object without going through a long and complicated court process. This provides legal certainty and convenience for mortgage holders in obtaining payment of their receivables. Executorial Power - Mortgage Certificates issued by the National Land Agency have the same executorial power as court decisions that have obtained permanent legal force. This provides a strong legal basis for mortgage holders to carry out execution.

In practice, problems were found that could affect the legal force of this mortgage certificate. Mortgage Holders cannot always feel safe because there is an example of a case/dispute such as a special criminal case Number 4275 K / Pid.Sus / 2023 Jo 6 / Pid.Sus /

2023 / Pt Dps Jo 8 / Pid.Sus / 2022 / Pn Gin, where, in this case, the Creditor of the Mortgage Holder should have obtained his rights if there was a default by the debtor in the Decision of special criminal case Number 4275 K / Pid.Sus / 2023 Jo 6 / Pid.Sus / 2023 / Pt Dps Jo 8 / Pid.Sus / 2022 / Pn Gin did not receive what should have been the rights of the Creditor of the Mortgage Holder because the object that had been placed with the Mortgage Right was not returned to the Creditor of the Mortgage Holder but was returned to the Reporter / Victim of the Money Laundering Crime so that indirectly this is very detrimental to the Mortgage Holder who has nothing to do with the criminal act committed by the Defendant.

One of the important issues obtained from the aqua cases that require in-depth study is the existence of the element of *onbeschikking* belonging or the lack of authority on the part of the party granting the mortgage right over the collateral object bound in the mortgage right. *Onbeschikking* belongs to a situation where the mortgagee does not have full authority over the collateralized object, which can occur in various forms, such as the invalid ownership status of the object or the collateralized object being in dispute. This lack of authority raises serious problems for the validity of the mortgage right because the valid requirements for granting the mortgage right, as regulated in Article 8 of the UUHT, include that the grantor must have full authority over the object. Therefore, the validity of this authority must be proven when registering the Mortgage Rights (Usanti & Bakarbesy, 2013). This raises legal ambiguity about the status of the Mortgage Certificate given to the creditor. However, it was later discovered that the debtor was not the party authorized to grant the mortgage certificate in question.

This article examines the legal force of proof of the Mortgage Certificate reviewed from the registration system in Indonesia and the legal consequences of the issuance of Mortgage Rights that occur based on the lack of authority (*onbeschikking bevoeg*) of the Mortgage grantor over the object of the Mortgage Right.

## 2. RESEARCH METHODS

This research method is normative research with a statutory approach (Statute Approach) and a case approach (The Case Approach), using secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The collection method uses literature study techniques, and legal material analysis techniques use analytical descriptive techniques.

## 3. RESULT AND DISCUSSION

### Legal Power of Evidence of Mortgage Certificates Reviewed from the Registration System in Indonesia

The mortgage registration system in Indonesia adheres to the principle of publicity, which aims to inform the public regarding the status of land used as

collateral for debt. With registration, third parties can determine the land has a mortgage burden, thus avoiding conflict or double claims. The Mortgage Certificate is the main document containing information about the rights holder, collateral value, and collateralized object. This certificate provides strong legal protection to creditors by prioritizing their rights in the debt repayment process, especially if the debtor is in default (Hidayat *et al.*, 2019).

The validity of the Mortgage Certificate is highly dependent on the registration system (Putra, 2015). In UUHT, registration of mortgage rights is declarative, which means that the mortgage rights already exist since the debt agreement was agreed upon and the land was used as collateral. However, registration is still needed to inform the public and strengthen these rights. Article 13 of UUHT regulates this, which states that mortgage rights are deemed to have been born since the date the Mortgage Land Book was recorded at the Land Office. Thus, registration provides additional legal force so that mortgage rights can be executed in the event of a default.

One of the advantages of the mortgage registration system in Indonesia is the existence of a certificate with executorial power, which means it can be executed directly without going through a court decision. This is emphasized in Article 14 of the UUHT, where the SHT contains the *irah-irah* "For the Sake of Justice Based on the Almighty God." This *irah-irah* gives the creditor the power to carry out direct execution of the collateral object if the debtor does not fulfill his obligations. With this power, the creditor can take the auction mechanism through the Auction Office only with the determination of the head of the court so that time and cost efficiency are more guaranteed. However, although the registration system and the existence of certificates provide legal certainty, their implementation in the field is not free from challenges. One of the obstacles often faced is data inconsistency between certificates and factual conditions in the field (Ghaniyyu, 2022). For example, there are cases where the land used as the mortgage object has an ownership dispute or overlaps with the rights of another party. This situation can reduce the legal force of the certificate as evidence and make it difficult for creditors to execute their rights. Therefore, it is important to ensure the validity of the data before the registration process is carried out.

From an evidentiary perspective, SHT is strongly valued in the Indonesian legal system. As authentic evidence, this certificate meets the provisions of Article 1868 of the Civil Code, which states that an authentic deed is a document made by an authorized official and has perfect evidentiary power before the court. In the context of a dispute, SHT provides a stronger position for creditors than other private documents. This certificate is also priority evidence allowing creditors to repay debt before unsecured creditors.

However, the success of executing the mortgage rights still depends on the debtor's condition and the collateral object. If the land used as collateral has a decreasing economic value or is facing a legal dispute, the certificate may not provide optimal benefits to the creditor. Therefore, besides ensuring the certificate's validity, creditors must consider the risks associated with the collateral object before providing a loan.

Mortgage Certificate is an important instrument in collateral law in Indonesia. Its legal force, supported by the registration system, provides significant legal protection for creditors and certainty for all parties involved. However, to ensure its effectiveness, it is necessary to strengthen the registration system through modernization and efforts to resolve disputes related to collateral objects. Thus, this system can continue to develop to be more reliable and provide optimal benefits in supporting financial transactions in Indonesia. Therefore, the law can always provide a solution to the goals that society wants to achieve (Limpong, 2012). From the perspective of positive Indonesian law, the legal force of proof of Mortgage Certificate (SHT) is regulated in depth in Law No. 4 of 1996 concerning Mortgage Rights (UUHT). This law outlines the mechanisms and principles that ensure that mortgage rights as collateral have strong legitimacy, can protect the interests of creditors, and provide legal certainty. Article 1, paragraph (1) of the UUHT defines mortgage rights as security rights over land that give creditors the right to obtain debt repayment from the proceeds of the sale of land that is the object of the mortgage right. This right is an accessory, meaning that mortgage rights can only exist if there is a debt-receivable relationship as the main agreement. Article 13 of the UUHT further emphasizes that mortgage rights are only considered legally born on the date of registration at the Land Office.

This refers to the Registration Theory, which places the registration process as an absolute requirement for legal recognition. The legal force of proof of SHT is also emphasized in Article 14 of the UUHT, which states that the mortgage certificate contains the *irah-irah* "For the Sake of Justice Based on the Almighty God." These graphs give the certificate an executorial nature, so it has the same legal force as a court decision with permanent legal force. In other words, creditors can immediately execute the collateral object through auction without having to file a lawsuit in court as long as the debtor is in default. This provision strengthens the principle of *droit de préférence*, namely the creditor's right to precede other creditors in paying off debts, as adopted in the Theory of Property Rights.

Land rights registration is important to provide legal certainty for rights holders and avoid land disputes. Land rights are the authority held by the holder to manage, utilize, sell, transfer, or use the land that is the object of the rights by applicable provisions (Tanawijaya, 1994).

Every encumbrance of land rights must be registered to obtain a Mortgage Certificate (SHT), which is strong evidence of the right. This registration process clarifies the land's legal status and records certain rights in the general register managed by the National Land Agency (BPN). With registration, information about the condition of the land, area, boundaries, and rights holders becomes more transparent, thus supporting orderly land administration in Indonesia.

From the Legal Certainty Theory perspective, the UUHT provisions demonstrate the commitment of Indonesian law to provide clarity, predictability, and legal security for the parties involved in credit transactions. The procedures that are regulated in detail, starting from preparing the Mortgage Grant Deed (APHT) by the Land Deed Making Officer (PPAT) to registration at the Land Office, aim to ensure that every mortgage is registered legally and can be accounted for. A mortgage Certificate (SHT) has strong evidentiary power if it meets three main aspects. First, the existence of cadastral data plots, namely data related to land conditions, such as location, area, and land boundaries, which are obtained from accurate land plot measurements. Second, a general list should be created that records the names of land rights holders. The relevant agency officially manages this general list and is a trusted source of information. Third, implementing a publication system that shows openness of information to the public allows other parties to know the status of land rights.

This legal certainty is important to prevent disputes from arising in the future, especially regarding the ownership or status of the collateralized object. However, challenges often arise in its implementation, especially regarding data consistency in the field. For example, Article 19 of Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA) states that land registration aims to provide legal certainty, UUPA has laid the foundations for providing legal certainty regarding land rights, where to realize this is done through registration (Santoso, 2007). Where registration acts as a strong means of proof, however, data inconsistencies or negligence in the administrative process can lead to overlapping land rights. Therefore, the electronic registration system through Electronic Mortgage Rights (HT-el) introduced by the Regulation of the Minister of ATR/Head of BPN No. 5 of 2020 is a progressive step to reduce this potential problem. In addition to the UUHT, the legal force of proof of SHT must also be understood in civil procedural law. Article 224 HIR/258 RBg provides a legal basis for executing mortgage rights through a public auction, where SHT plays a central role as an executorial document.

Registration Theory provides the basis that registration is essential in forming and validating property rights. In the context of mortgage rights, the registration process is a requirement to obtain legal

legitimacy and public recognition. Based on Article 13 of Law No. 4 of 1996 concerning Mortgage Rights (UUHT), mortgage rights are deemed to have arisen from the date of recording in the Land Book at the Land Office. Thus, registration is not only administrative in purpose but also declarative. In this context, registration provides evidentiary power to the existence of a mortgage right and provides information to third parties about the status of the object being pledged. This process ensures that the mortgage right is open and transparent, thus preventing disputes or double claims on the same object.

However, in the negative system applied in land registration and formal evidence in civil procedure law, there is a gap for speculators and land mafia to manipulate land ownership. This practice often triggers prolonged land disputes, thus disrupting the development process planned on the land (Syarif, 2014). Accuracy in checking the status of land ownership and conducting checks in the land system will reduce the risk of the issuance of illegal mortgage rights and protect the interests of all parties involved. Therefore, the process must be adjusted to applicable laws or regulations (Isnaini *et al.*, 2017).

Legal protection must consider certain stages, starting from the community's legal rules and regulations. These rules are a mutual agreement to regulate relations between members of society and relations between individuals and the government as a representation of public interests. In the modern context, current law has formal, rational, and systematic characteristics and applies equally to everyone. The implementation of the law is carried out by law enforcers who have been appointed and formed to carry out their duties with their professional expertise. Context of Property Rights Theory, SHT is part of property rights that are absolute and attached to the object being pledged. Mortgage rights give creditors the authority to precede other parties in paying off debts by selling the object being pledged through an auction mechanism. This characteristic aligns with the principles of *droit de suite* and *droit de préférence* in property law. *Droit de suite* allows creditors to retain rights to the object of collateral even though the object changes ownership. At the same time, *Droit de préférence* gives priority rights to creditors compared to creditors without collateral. The Theory of Property Rights also emphasizes that mortgage rights are accessory, namely following the existence of a debt-receivable relationship as a principal agreement. Because the function of law is to protect the interests of society (Mertokusumo, 2014). Therefore, although the mortgage has strong legal force, its existence still depends on the existence and validity of the secured debt. This shows that the Indonesian legal system consistently regulates mortgages within the framework of property law, thus providing certainty to creditors that their rights will be protected as long as legal procedures are followed.

Mortgage Rights by Mortgage Law Number 4 of 1996 (HT Law) have strong and special characteristics. Mortgage Rights follow the principle of *droit de suite*, namely that the rights remain attached to the land object even though land ownership changes hands. In addition, Mortgage Rights can only be imposed on land that meets the principles of specialization and publicity. The principle of specialization ensures that the land that is the object of the Mortgage Right is identified. In contrast, the principle of publicity ensures that the Mortgage Right is known to the public through official registration. Thus, Mortgage Rights provide high legal certainty for creditors. Mortgage Rights holders have a higher legal standing than other creditors in the event of default. Mortgage Rights provide convenience in executing through the parade executive institution regulated in Article 6 of the HT Law. Through this mechanism, creditors can directly execute the land that is the object of the Mortgage Rights without requiring court approval, provided that the debtor is negligent in fulfilling his obligations. This advantage makes Mortgage Rights a very effective guarantee in banking credit transactions and other financing. This aligns with the HT Law's purpose to provide legal certainty and protection for creditors in legal relations with debtors.

#### **Legal Consequences of Issuance of Mortgage Rights Which Occur based on Lack of Authority (Onbeschikking Bevoeg) on the Mortgage Grantor over the Mortgage Right Object**

The difference between property rights and individual rights is clear. In the *Burgerlijk Wetboek*, property rights are divided into two categories, namely property rights that provide collateral (*zakelijk zakenheidsrecht*), such as pawns, mortgages, collateral rights, and fiduciaries, and property rights that provide enjoyment (*zakelijk genotrecht*), such as possession and ownership rights (Usanti, 2012).

In principle, a mortgage is a property right attached to land and/or buildings used as collateral for debt. Based on Law No. 4 of 1996 concerning Mortgage Rights, the mortgagee must have the authority or rights to the object used as collateral to issue a mortgage right. If the mortgagee does not have legal authority over the land or building, then the mortgage issued is legally flawed and has no binding force. In this case, there is an error in the basic stage of granting a mortgage right, which should consider the mortgagee's ownership status or authority over the object. The mortgagee's lack of authority over the object can occur due to several factors, one of which is because the land status is still in dispute, has not been registered, or does not fully belong to the mortgagee. For example, land still registered as belonging to someone else or in the process of sale and purchase that has not been completed, but a mortgage certificate has been issued in the name of an unauthorized party.

This also applies to granting a mortgage right carried out by a party who does not have authority over the object being pledged. In this case, the mortgage issued cannot be used as a basis for executing the debt because, from the beginning, the legal act has been legally flawed. This leads to legal uncertainty for the creditor who has tried to obtain collateral to fulfill his debt. In this case, the creditor must bear the risk of the invalidity of the mortgage issued, even though they have verified the status of the land or building used as collateral. On the other hand, the legal consequences of the lack of authority of the mortgagee also have the potential to cause disputes between interested parties. For example, if the land pledged does not belong to the mortgagee or there is a claim to the land rights from another party, a legal dispute will arise between the creditor and the party claiming the rights to the land. This dispute has the potential to be long and involve various parties, which in turn can cause the freezing or delay of the execution process of the mortgage rights by the creditor. In more complex cases, the party claiming the rights to the land can sue the mortgagee or even the creditor because the mortgage rights are invalid and detrimental to third parties with a legitimate interest in the land.

In addition, the invalidity of the issuance of mortgage rights can cause material losses for creditors who have provided financing or loans by relying on mortgage rights as collateral. This loss can be in the form of loss of ability to execute debt if the debtor fails to fulfill payment obligations. This loss can be even greater if the creditor does not immediately realize the deficiency or invalidity of the mortgage rights issued. This creates losses that are not only financial but also reputational for the creditors involved in the transaction. The issuance of invalid mortgage rights can also have further implications in the context of land registration and transparency of the land system in Indonesia. One of the objectives of the land registration system regulated in Law No. 5 of 1960 concerning the Principles of Agrarian Law is to provide legal certainty regarding the legal status of land and other objects so that every transaction involving land can be carried out clearly and legally. This process is carried out as an agrarian legal policy to adjust to generally applicable legal norms, which are also adjusted to the specific circumstances and interests. It is needed in Indonesia, which thus has pedagogical value, namely providing guidance that functions as a guideline in agrarian development to support development in the agrarian sector that is needed (Wardani, 2018).

However, there is an error or invalidity in the issuance of mortgage rights caused by the lack of authority of the mortgage grantor. In that case, this creates legal vulnerabilities in the registration system and can reduce the level of public trust in the integrity of the land system in Indonesia.

The Indonesian legal system protects parties involved in legitimate legal transactions but requires stricter supervision and procedures to issue mortgage rights. In this case, registration carried out by the Land Office and supervision carried out by the National Land Agency (BPN) is crucial in ensuring that the mortgage rights issued have a legitimate basis of authority. The legal consequences of the issuance of mortgage rights that occur based on the lack of authority (onbeschikking belonged) of the mortgage grantor over the object of the mortgage right in Indonesia are a very important problem in the practice of agrarian law and civil law. Mortgage rights as collateral for debt have an important role in providing certainty to creditors regarding the fulfillment of debtor obligations.

Land rights, as a legal relationship, can be interpreted as rights to the surface of the earth that give the owner the authority to utilize the land, including parts of the land, water, and air space above it, to the extent necessary for purposes directly related to the use of the land. This authority remains limited by the provisions of the UUPA and other applicable legal regulations (Sumardjono, 2009).

Land has a very important and strategic role in human life. Land is needed as a basis for various facilities and infrastructure, such as roads, markets, buildings, housing, and defense and security needs. The expression "human life cannot be separated from the land" is very relevant because even after death, humans still need land as their final resting place (Mantovani *et al.*, 2021). Based on Law No. 4 of 1996 concerning Mortgage Rights, a party with legal authority over the object used as collateral can only grant mortgage rights.

The provision that the person who must or may grant rights to the recipient of the mortgage right is the person who is authorized to do so, the authority referred to in this study is not an authority in the sense of the power to organize government but rather the Rightful Authority (beschikkingsbevoegdheid) over land. The grantor of the mortgage right must be the legal owner of the pledged object, either in the form of land or buildings registered in the land system, like the Eigendom right in ancient times, which can be interpreted as the perfect right to an object. The owner with the Eigendom right to an object has the authority to do anything to the object, such as selling, pawning, giving, or even destroying it, as long as the action does not violate the law or harm the rights of other parties.

The provisions of Article 584 of the Civil Code regulate various ways to obtain ownership rights. However, the regulation is enumerative, meaning it only lists some ways, while outside of Article 584 of the Civil Code, there are still other ways to obtain ownership rights. One of the most common and important ways in community practice is through transfer (levering/overdracht), either in the form of absolute or

relative rights. Absolute rights to an object are known as property rights. Relative rights (relative or personal rights) arise from a debt relationship and can only be enforced against certain people. Transfer (levering/overdraft) is valid if it meets the following requirements: first, a property agreement is an agreement that causes the transfer of property rights, for example, ownership rights, possession, mortgage, and pledge; second, the basis of the transfer of ownership rights. Title or basis of rights is a legal relationship resulting in the transfer of objects in a sale and purchase, exchange, and the Authority of the Right (*beschikkingsbevoegdheid*). In the lack of authority of the mortgagee can occur in various forms. One is when the mortgagee is not the legal owner of the land or building being pledged. For example, the pledged land is still registered as belonging to someone else or is in dispute, but the mortgagee has transferred the rights to the land to the creditor as collateral for the debt.

In this case, the mortgagee does not have the authority to transfer the rights to the land, which results in the mortgage rights issued being invalid and null and void by law. Lack of authority can also occur if the pledged land is still being sold and purchased but has not been completed or registered at the Land Office.

In conditions like this, even though administratively, the land has changed hands, the rights to the land are not yet fully valid and have not been verified in the Indonesian land system. Suppose the mortgagee provides land that is not yet fully valid as collateral for debt. In that case, this can damage the integrity of the land registration system and cause the mortgage rights issued to be legally flawed.

The first legal consequence that arises due to the lack of authority of the mortgagee over the object being pledged is the cancellation of the mortgage itself. As regulated in Indonesian civil law, any agreement made by a party that does not have the authority to carry out the legal action is considered null and void because this is one of the requirements for the validity of the agreement regulated in Article 1320 of the Civil Code. In addition, it is also regulated in Article 1335 of the Civil Code, which states that an agreement that does not have a cause or is made based on a false or prohibited cause has no legal force. In this context, "cause" refers to an agreement's purpose or legal basis. If an agreement is made without a cause, then the agreement is considered to have no valid basis to be recognized legally. A false cause means that the agreement's purpose is based on incorrect information or facts, thus damaging the agreement's validity. Meanwhile, a prohibited cause refers to the agreement's purpose that is contrary to law, morality, or public order. This provision emphasizes the importance of having a valid and lawful cause as an objective requirement in the agreement. If the cause is unmet, the agreement is declared null and void and cannot be implemented.

#### 4. CONCLUSIONS

The Mortgage Certificate has executorial power, which means it can be executed directly without going through a court decision. The SHT contains the *irah-irah*, "For the Sake of Justice Based on the Almighty God." This *irah-irah* gives the creditor the power to carry out direct execution of the collateral object if the debtor does not fulfill his obligations. With this power, the creditor can take the auction mechanism through the Auction Office only with the determination of the Chief Justice so that time and cost efficiency are more guaranteed.

The legal consequences of an unauthorized party's issuance of mortgage rights are the cancellation or invalidity of the mortgage right. Based on the requirements for the agreement's validity, if an agreement is made by a party who does not have the authority to carry out the legal action, then the agreement is considered invalid and null and void. The Mortgage Grantor is not authorized to act freely on the collateral object (*onbechikkingbevoeg*) so that the nature of the burden becomes legally void.

#### REFERENCES

- Bahsan, M. (2007). *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*.
- Bernhard, L. (2012). *Hukum Agraria Nasional*.
- Ghaniyyu, F. F., Pujiwati, Y., & Rubiati, B. (2022). Jaminan Kepastian Hukum Konversi Sertipikat Menjadi Elektronik Serta Perlindungannya Sebagai Alat Pembuktian. *Jurnal USM Law Review*, 5(1), 172-187.
- Hidayat, R., & Soegianto, S. (2019). Penyelesaian Debitor Wan Prestasi Atas Obyek Jaminan Fidusia Yang Telah Didaftarkan. *Jurnal USM Law Review*, 2(2), 288-299.
- Isnaini, H., & Wanda, H. D. (2017). Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah dalam Peralihan Tanah yang Belum Bersertifikat. *Jurnal Hukum Ius Quia Iustum*, 24(3), 467-487.
- Listyawati, H. (2012). "Kegagalan Pengendalian Alih Fungsi Tanah dalam Perspektif Penatagunaan Tanah di Indonesia". *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 22(1), 37. <https://doi.org/10.22146/jmh.16207>.
- Manthovani, R., & Istiqomah, I. (2021). "Pendaftaran Tanah Di Indonesia". *Jurnal Magister Ilmu Hukum*, 2(2), 23. <https://doi.org/10.36722/jmih.v2i2.744>.
- Maria, S.W. (2008). Sumardjono. *Tanah dalam Perspektif Hak Ekonomi Sosial dan Budaya*. Jakarta.
- Prasastina Usanti dan Leonora Bakarbesy, *Hukum Jaminan*. Surabaya. 2013 Sudikno Mertokusumo, Teori Hukum, 2014
- Putra, F. M. K. (2015). "Tanggung Gugat Debitor Terhadap Hilangnya Hak Atas Tanah Dalam Obyek Jaminan Hak Tanggungan". *Yuridika*, 28(2). <https://doi.org/10.20473/ydk.v28i2.1760>.

- Santoso, U. (2007). Sertifikat Sebagai Tanda Bukti Hak Atas Tanah. *Era Hukum-Jurnal Ilmiah Ilmu Hukum*, 10(1).
- Subiharta, S. (2015). Moralitas Hukum Dalam Hukum Praksis Sebagai Suatu Keutamaan. *Jurnal Hukum dan Peradilan*, 4(3), 385-398.
- Sukino, S., Suriaatmadja, T. T., & Syafrinaldi, S. (2023). Penyelesaian Sengketa Non-Performing Loan Melalui Mediasi Dalam Sistem Peradilan Perdata (Eksekusi Jaminan Hak Tanggungan). *Jurnal Hukum Magnum Opus*, 6(2), 137-149.
- Usanti, T. P. (2012). Lahirnya Hak Kebendaan. *Perspektif*, 17(1), 44-53.
- Wardani, W. I. (2018). Kepemilikan Hak Atas Tanah Dalam Kerangka Politik Hukum Agraria Nasional. *Jurnal Ilmiah Hukum Dan Dinamika Masyarakat*, 15(2).

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