

Legal Protection of Building Tenants in the Execution of Land Rights Komang Desy ANGGARINI¹, I Made SUWITRA², Putu Ayu Sriasih WESNA³

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Article Info:

Article History:

Received: 2025-05-24

Revised: 2025-06-16

Accepted: 2025-07-10

Keyword:

Legal Protection, Building
Tenants, Mortgage
Execution, Good Faith

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Paper Type:

Research Paper



Abstract:

Purpose:

The purpose of this study is to find a legal protection model for tenants of buildings whose land is used as collateral by the landowner. Therefore, the relevant issues to be discussed are legal protection for tenants of buildings whose land is used as collateral by the landowner and the function of good faith in protecting tenants of buildings whose land is subject to foreclosure.

Methodology:

The research method used is normative legal research with a legislative approach, a conceptual approach, and a case study. The analysis of legal materials used is an analysis with interpretation and content techniques.

Findings:

The results of the study indicate that the principle of horizontal separation provides a basis for separating building rights from land rights, thereby ensuring that tenants retain a strong legal position. In addition, the principle of good faith is a key consideration in protecting tenants' rights, as emphasised in SEMA No. 4 of 2014, which stipulates that tenants' rights shall be respected throughout the term of the lease.

Implication:

This study recommends strengthening regulations, transparency regarding the status of leased properties, and legal education for the public to create legal certainty and fairness in the practice of leasing buildings on land that is used as collateral for mortgage rights.

INTRODUCTION

Land has a very important role in life, meaning that land has a vital role in life, including the life of the Indonesian nation, in the implementation of national development to create a just and prosperous society based on Pancasila and the 1945 Constitution (UUD 1945). Land is the source of all activities related to humans, namely, related to shelter and a place to carry out an activity (Tirandika & Resen, 2023). So, in a small scope, the land is used as a place to live, and in a large scope, the land is used for social and business needs, so that the land plays a big role in human life every day. Land in Indonesia itself is regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, hereinafter referred to as UUPA.

The growing number of people every day is inversely proportional to the amount of land that will decrease; this is also coupled with increasing human needs for land, both the need for land in the agricultural sector and in the development sector. It is in accordance with the provisions of Article 1 paragraph (2) of the UUPA which stipulates that: "all the earth, water and space, including the natural resources contained therein within the territory of the Republic of Indonesia, as a gift of God Almighty, are the earth, water and space of the Indonesian nation and are national wealth.". Meanwhile, based on the UUPA, the concept of land is regulated in Article 4 paragraph (2) of the UUPA which stipulates that: "on the basis of the right to control from the State as referred to in Article 2, there are various rights to the surface of the earth, called land, which can be given to and owned by people, either alone or together with other people and legal entities". Increasing human needs are not proportional to the increasingly limited land conditions, so it is not uncommon for land to become an object that often causes disputes. In order to maintain its rights to a land, the settlement of land disputes is resolved through the litigation process, as well as non-litigation (L. W. S. Dewi et al., 2016).

In order to provide legal certainty on land issues, the UUPA plays a very important role in providing legal certainty on the issues concerned. In addition to the law relating to land, namely the UUPA, land issues can be resolved based on the Civil Code, hereinafter referred to as the Civil Code, or based on customary law from each region. The purpose of the UUPA based on the general provisions of the UUPA explanation, among others, is as follows: a. "to lay the foundations for the preparation of a national agrarian law, which will be a tool to bring prosperity, happiness and justice to the State and the people, especially the peasantry, in the framework of a just and prosperous society, b. to lay the foundations for unity and simplicity in land law, and c. to lay the foundations for providing legal certainty regarding land rights for the people as a whole."

One of the things related to land issues that often occurs is related to the transfer of land rights. The transfer of land rights will be related to the authority to control a land, which is regulated based on Article 2 paragraph (4) which stipulates that: "The right to control from the State mentioned above may be authorised to Swatantra regions and customary law communities, as necessary and not contrary to the national interest, according to the provisions of a Government Regulation." The transfer of land rights that authorises a person to control land can occur by way of transfer or transfer, where land rights can be transferred due to inheritance, while land rights can be transferred due to a sale, purchase, donation, or exchange.

One of the land transfer rights relating to individuals is land rights. Where land rights consist of two types, namely: (Wulandari, 2018)

1. Primary Land Rights, namely a right obtained based directly granted by the state.
2. Secondary Land Rights are rights obtained based on the results of an agreement, namely, based on an agreement.

Based on the provisions of Article 16 paragraph (1) of the UUPA stipulates that: "Land rights as referred to in Article 4 paragraph (1) are:

1. property rights,
2. business rights,
3. right of use-building,
4. right of use,
5. right of lease,
6. the right to open land,
7. the right to collect forest products,
8. Other rights not included in the aforementioned rights, which will be stipulated by law, and temporary rights as mentioned in Article 53."

One of them is the transfer of rights related to lease rights, namely the transfer of rights to a building that is different from ownership, with the holder of land rights carried out by leasing. One of the lease rights that often occurs is the Right to Rent a Building, where a tenant leases a building that stands on land within a certain period on the basis of an agreement between the owner of the building and the tenant of the building. Leasing is regulated in various provisions, namely based on the Civil Code, namely in the provisions of Articles 1548 to 1600 of the Civil Code and the UUPA. The provisions of Article 1548 of the Civil Code stipulate that: "Lease is an agreement, by which one party binds himself to give the enjoyment of an item to the other party during a certain time, with the payment of a price agreed by the latter party. People can lease various types of goods, both fixed and movable." In addition, Article 44 paragraph (1) of the UUPA stipulates that: "A person or a legal entity has a right of lease over land, if he is entitled to use the land owned by another person for building purposes, by paying the owner a sum of money as rent."

A lease is a form of agreement between the lessee and the lessor to lease an item for a certain period in exchange for payment to the lessor. In this case, based on the provisions of Article 45 of the UUPA, those who can become leaseholders are as follows: a. Indonesian citizens; b. foreigners domiciled in Indonesia; c. legal entities established under Indonesian law and domiciled in Indonesia; and d. foreign legal entities having representatives

in Indonesia." In addition to the above, a lease agreement must basically fulfil the basic provisions, namely the legal requirements of an agreement based on Article 1320 of the Civil Code, which stipulates that the legal requirements of an agreement are as follows: a. an agreement that binds both parties, b. capacity to agree, c. a certain subject matter, and d. a cause that is not prohibited.

So that the elements of an agreement can be fulfilled, in a lease, there are several elements, namely as follows:

1. There is a party to the lease, namely the tenant and the renting party.
2. There is consensus between the two parties.
3. There is an object of lease, either in this case, a movable or immovable object.
4. There is an obligation to give up enjoyment
5. ; here is a rental fee. There is a renting party, namely the renter and the renter.

There are various types of lease right objects, namely as follows: a. land and buildings, b. land, and c. buildings.

The Civil Code has not further regulated the form of a lease agreement, so that this lease agreement can be done either orally or in writing. In relation to a building lease, it is usually done in writing by using the services of a Notary. Lease rights include secondary land rights where the land rights do not come from the state directly but through a transfer of rights, namely lease rights between the landowner and the prospective leaseholder.

The problem that occurs is when the owner of the land makes the land as collateral when the lease is in progress, one of which can be done with Mortgage Rights, or hereinafter referred to as HT. Regulations regarding HT are regulated in Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, which in Article 1 number 1 regulates that: "Mortgage Rights on land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or excluding other objects that are an integral part of the land, for the repayment of certain debts, which give priority to certain creditors against other creditors".

The formulation of the article shows that a mortgage right is a form of debt repayment guarantee, with the right of precedence, with the object of guarantee in the form of Land Rights regulated by UUPA. UUHT regulates that a hak tanggungan is a security right over land related to a certain debt repayment. In this case that when the debtor is in default or unable to fulfil his obligations, the creditor has the right as a holder of a mortgage right to conduct a public auction of the land used as collateral. Where this is in accordance with what is regulated in Article 6 of the UUHT which stipulates that: "If the debtor is in default, the first holder of the Mortgage Rights has the right to sell the object of the Mortgage Rights on its authority through a public auction and take repayment of its debt from the proceeds of the sale."

Based on Article 6 of the UUHT, if the building on the land is in the rental period, of course, this will harm the tenant if the building that is being rented is also the object of the mortgage that must be executed. It is regulated in Article 1150 number 3 of the Civil Code, which states that: "The party who rents because of the nature of the agreement and without the need for a promise, is obliged to give the tenant the right to enjoy the leased goods in peace during the lease." Based on the provisions of Article 1576 of the Civil Code stipulates that: "With the sale of the leased goods, the lease made previously is not terminated unless it has been agreed at the time of leasing the goods. If there is such an agreement, the tenant is not entitled to claim compensation in the absence of an express agreement, but if there is such an agreement, then he is not obliged to vacate the leased goods as long as the compensation owed has not been paid."

So based on these provisions stipulate that the lease cannot be terminated unless it has been agreed beforehand then the tenant is not entitled to claim compensation, but this is different from the provisions of Circular Letter Number 04 of 2014 concerning the Implementation of the Formulation of the Results of the Supreme Court Plenary Meeting in 2013 as Guidelines for the Implementation of Duties for the Court, hereinafter referred to as SEMA Number 04 of 2014 which regulates the vacating execution of the object of mortgage rights

that: "For the auction of mortgage rights by the creditor himself through the auction office, if the auctioneer does not want to vacate the object of the auction, the execution of vacating can be directly submitted to the Chairman of the District Court without going through a lawsuit."

So, in this case, of course, there is a conflict of norms between the provisions of Article 1576 of the Civil Code and SEMA Number 4 of 2014 related to the legal protection of tenants whose land is used as collateral during the lease period. Where based on the provisions of Article 1576 of the Civil Code that the lease relationship is not broken because the object becomes collateral for mortgage rights, while with SEMA Number 4 of 2014 if the auctioned does not vacate the object of the auction, the execution of the vacating can be directly submitted to the Chairman of the District Court without going through a lawsuit, so that with the conflict of norms it cannot provide legal protection to tenants to enjoy their rights during the lease period.

One of the disputes regarding the pledge of land by the owner of the land rights during the lease period occurred based on the Supreme Court Decision Number 804/K/PDT/2019 between PT Bank Pembangunan Daerah Sumatera Selatan and Bangka Belitung against Muginem Bt M Siroh and the Palembang State Wealth and Auction Service Office where there has been a lease relationship relating to an object of two units of shop houses that stand on a plot of land measuring 162 m 2 based on Certificate of Title No. 21 dated 12 November 2001 in the name of Muginem BT. M. Siroh is located in Prabumulih City, South Sumatra Province. The lease took place initially from March 2014 to March 2017 which was made by Notarial Deed Number: 67 dated 28 March 2014 concerning Lease Agreement and extended again in March 2017 to March 2020 by Notarial Deed Number: 01 dated 01 March 2017 concerning Lease Agreement, both of which were made before Notary Desi Susilawati Rachman, SH, M.Kn and the payment has been made in full by PT Bank Pembangunan Daerah Sumatera Selatan and Bangka Belitung since the signing of the deed.

In 2019, Muginem BT. M. Siroh (one) plot of land measuring 162 m 2 was used as collateral at PT Bank Mandiri which will then be auctioned for execution, this is also in accordance with the Deed of Granting Mortgage Rights (APHT) No. 293/2015 dated 10 July 2017 jo Certificate of Mortgage Rights (SHT) No. 543/2015 dated 14 September 2017 and as written notification in the Sriwijaya Post Daily Newspaper dated 27 September 2019 regarding the Second Announcement of Mortgage Rights Execution Auction. As a result, PT Bank Pembangunan Daerah of South Sumatra and Bangka Belitung cannot fulfil its right to enjoy the leased building until March 2020 because an auction will be conducted. However, based on the Supreme Court's decision, it was decided as follows:

1. Rejecting the cassation petition of the Cassation Petitioner, PT Bank Pembangunan Daerah Sumatera Selatan, and Bangka Belitung Bank Sumsel BabeL, mentioned above;
2. Punish the original Cassation Petitioner/Appellant to pay the court costs at this cassation level in the amount of Rp500,000.00 (five hundred thousand rupiah);

Of course, this will be detrimental to the tenants of the building, who cannot fulfil their rights fully and completely, so that legal protection is needed for the tenants of the building. In connection with disputes, the role of notaries is a very important role related to preventive efforts in providing legal protection for building tenants. Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Office of Notary, hereinafter referred to as UUJNP Article 1 point 1 stipulates that: "Notary is a public official authorised to make authentic deeds and has other authorities as referred to in this law or based on other laws". Notary as a public official who has the authority to make authentic deeds, this has been regulated in Article 15 paragraph (1) of the UUJNP which stipulates: "Notaries are authorised to make authentic deeds regarding all deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide a grosse, copy and quotation of the deed, all insofar as the making of the deed is not also assigned or excluded to other officials or other persons stipulated by law".

An agreement made in an authentic deed contains the agreement of the parties in the authentic deed, so the parties have the same position. A notarial deed based on the provisions of Article 38 paragraph (1) of UUJNP

consists of the beginning of the deed, the body of the deed, and the closing of the deed. Notaries have the authority to make a lease deed, which will provide legal protection for the tenant of the building so that the dispute mentioned above does not recur and harm the tenant.

In addition, in the provisions of Article 6 of the UUHT only regulates that if the debtor is in default, the object used as collateral can be executed, in the supreme court's decision it also does not provide legal protection for tenants whose rights should be protected during the lease period, so this creates a blurred norm that has not been regulated, which of course will create legal uncertainty. In addition, in this case it is also necessary to protect the tenant whose object is used as a lease as a form of implementation of good faith from the renting party so that later the tenant gets a legal protection against a legal relationship carried out by the renting party and the tenant, so this is very important to be regulated in the provisions of laws and regulations in Indonesia. So, based on this background, research is needed on how the legal protection of building tenants whose land is used as collateral by the owner of land rights. Moreover, how does good faith function in the protection of building tenants whose land is the object of execution?

METHODS

The type of research used in this legal research is normative legal research. Normative legal research according to Peter Mahmud Marzuki is a study used to examine legal principles, legal principles, to find a rule of law to answer related to legal problems that are happening (Marzuki, 2008). The types of approaches used in writing this research are as follows: Legislation approach, conceptual approach, and case approach. This legislative approach is carried out by examining the laws and regulations that are related to the legal issues under study to find a legal relationship rather than rules that regulate and resolve a legal issue discussed in a study (Diantha, 2017). The conceptual approach in the research is to describe and analyse a legal problem in the form of a concept based on the search for secondary legal materials that provide information related to the concepts related to a legal problem. While this case approach is an approach to research using cases related to the problem under study, where the source of the case that is the focus of the approach is a case that has obtained a court decision, this is related to proving that the case has permanent legal force (Diantha, 2017).

There are 3 (three) types of legal material sources in a study, namely primary legal materials, secondary legal materials, and tertiary legal materials (Soerjono Soekanto, 1983). Legal materials are collected through documentation and recording procedures. Therefore, the legal material collection technique used in this research is Library Research, a technique for collecting legal material by examining books and literature based on other literature references related to the problem under study (Soerjono Soekanto, 1983).

RESULTS AND DISCUSSION

A. Legal Protection for Building Tenants.

1. Lease of Building on Land that is Pledged as Mortgage Collateral. Credit guarantee is the fulfillment of a debtor's obligation to fulfill his responsibility in fulfilling his performance, namely the repayment of his debt to the creditor by providing a guarantee of certain goods which are used as collateral for the creditor to ensure that the creditor carries out his obligations in fulfilling his performance (Pursetyowati & Rahmawati, 2015). It is also regulated in the provisions of Article 1131 of the Civil Code, which stipulates that: "Collateral is the debtor's property which is made a lien to the creditor to guarantee the performance of his obligations, namely the fulfilment of achievements in an agreement."

Article 2, paragraph (1) of the UUHT regulates the nature of mortgage rights, namely as follows: "Mortgage Rights have the nature of indivisibility, unless agreed in the Deed of Granting Mortgage Rights as referred to in paragraph (2)." The elements of a hak tanggungan are as follows (Effendi, 2015):

- a. Security rights that are imposed on land rights: This is the right granted to the creditor to authorise him to sell the security at auction for the repayment of his debts, either in part or in whole, with the right of precedence over other creditors (*droit de preference*) if the debtor fails to fulfil his obligations.
- b. The land right is an integral part of the land.
- c. For a certain debt repayment.
- d. Provides a certain position against other creditors (*droit de préférence*).

Based on the results of an interview with one of the notaries domiciled in Badung Regency, namely Made Setiasa, on 27 May 2025 at 12.00 Wita located in his office said that in a mortgage there must be land that is used as a guarantee, later it will be used as collateral for debt repayment by the debtor, in accordance with the credit agreement, namely the agreement between the debtor and the one who has the receivable, the condition of the goods used as collateral for the mortgage must be clean, meaning that it is not being blocked or is in trouble in court. Other than that, the object of the mortgage is the holder of the person who has the debt must and must be obliged to pay off the debt, In addition, the thing that becomes the object of the mortgage guarantee is the holder of the person who has the debt must and is obliged to fulfil his promise in order to fulfil the performance to the creditor, to avoid the object that becomes the guarantee of the mortgage being executed and then carried out the auction.

So that if a land is used as collateral, then in an effort to fulfil this achievement, the land will be in the power of the holder of the mortgage right so that the debtor is obliged to pay off his debt, but if the debtor is in default, the creditor has the right to conduct a public auction of the land that is used as collateral for the mortgage right as well as the building that is on the land in accordance with the provisions of Article 4 paragraph (4) UUHT which stipulates as follows: "Mortgage rights can also be imposed on land rights along with buildings, plants, and works that have existed or will exist which are an integral part of the land, and which belong to the holder of the land rights whose encumbrance is expressly stated in the relevant Deed of Granting Mortgage Rights."

So based on this, the rental building becomes an integral part of the land that is used as collateral for the mortgage; this also depends on how the clause in the APHT. If the object that is used as a lease is used as a collateral in the bank, then in this case before implementing the lease contract agreement, the debtor must obtain a written approval letter from the bank in which certain clauses must be included in the lease contract agreement, one of which is that the tenant does not make changes to the object used as collateral or collateral that can cause the value of the object to be used as collateral or collateral to decrease and the tenant is willing to vacate the object used as collateral or collateral if the debtor defaults. In addition, the party who owns the building must also know that the object of rent is used as a guarantee, in the APHT made by the PPAT itself must also include the condition of the building being in the lease period for such a period, so that it is clear that the condition of the building used as collateral is still in the lease period, so in this case the bank also cannot arbitrarily execute the object of the guarantee, namely the function of the bank applying the 5C principle before granting credit.

So that if the debtor is unable to fulfil his performance, the execution of the land used as collateral for the mortgage will be carried out by the first mortgage holder. It is in accordance with the provisions of Article 6 of the UUHT, which stipulates that: "If the debtor is in default, the first holder of the Mortgage Rights has the right to sell the object of the Mortgage Rights on its authority through a public auction and take repayment of its debt from the proceeds of the sale."

So that the right to sell the dependent object is carried out through a public auction, in addition, the land that is pledged as collateral for the mortgage is registered in the land office that the land becomes a guarantee in a banking institution which will then give birth to a certificate of mortgage rights, in the certificate has been listed *irah-irah* with the words "DEMI KEADILAN BASED ON THE KINGDOM OF THE ALMIGHTY GOD", this is what makes the certificate which is the object of the mortgage guarantee has the same executorial power as a court decision that has obtained permanent legal force and applies as a substitute for the *grosse deed*. It is in accordance with the provisions of Article 20 paragraph (2) of the UUHT which stipulates that: "Upon the

agreement of the grantor and the holder of the Mortgage Right, the sale of the object of the Mortgage Right can be carried out under the hand if by doing so the highest price that is favourable to all parties can be obtained."

Furthermore, Article 20 paragraph (3) stipulates that: "The implementation of the sale as referred to in paragraph (2) can only be carried out after 1 (one) month has passed since it was notified in writing by the grantor and/or the holder of the Mortgage Rights to the interested parties and announced in at least 2 (two) newspapers circulating in the area concerned and/or the local mass media, and no party has expressed objections."

2. Legal Protection for Building Tenants whose Land is Pledged as Mortgage Collateral. The development of life today triggers the amount of land needed for a development process, but in such conditions, it cannot go beyond the amount of land available, and the need for land needed by humans is inversely proportional, so efforts to solve this problem through a lease. Leasing is regulated in the provisions of Article 1548 of the Civil Code, which stipulates that: "Lease is an agreement, by which one party binds himself to give the other party the enjoyment of an item, during a certain time and with the payment of a price, which the latter party is prepared to pay."

Leasing is commonly done by the community, in addition to the limitations of land in this country, leasing also occurs because foreigners who want to develop their business in Indonesia do not have control rights over land in Indonesia, therefore in the context of business development carried out by foreigners, leasing is carried out for a building or building or in this case erecting a building on the leased land ((Krisno et al., 2015). It is in accordance with the provisions of Article 9 paragraph (1) of the UUPA, which stipulates that: "Only Indonesian citizens can have a full relationship with the earth, water and space, within the limits of the provisions of articles 1 and 2."

Leasing is carried out with an agreement, then some conditions must be met in conducting the lease agreement, namely related to Article 1320 of the Civil Code, which regulates as follows: In order for a valid agreement to occur, it is necessary to fulfil four conditions; a. agreement of those who bind themselves; b. capacity to make an obligation; c. a certain subject matter; and a cause that is not prohibited." It is in line with the provisions of Article 1338 of the Civil Code, which stipulates that: "All agreements made in accordance with the law shall apply as law to those who make them. The agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Agreements must be executed in good faith." Freedom of contract is not an unlimited freedom, because in the provisions of Article 1337 of the Civil Code, which stipulates that: "A cause is prohibited, if the cause is prohibited by law or if the cause is contrary to decency or public order."

Article 1337 of the Civil Code limits the provisions of Article 1338 of the Civil Code, namely that the agreement must not violate the values, norms and laws and regulations applicable in Indonesia. The parties are free to determine the contents of the agreement agreed by both parties, not with the substance of the agreement prepared or made by one of the parties who has a more dominant position. Based on the results of an interview with one of the notaries domiciled in Badung Regency, namely Made Setiasa, on 27 May 2025 at 12.00 Wita at his office said that in carrying out a lease the things that must be considered are related to the two most important conditions in the lease, namely the subjective conditions relating to the parties to the lease, namely who is leasing the land and who is renting by looking at their capacity, if the object of the lease is included in the gono gini property, in this case the marital partner will participate in the parties involved if the owner has died then a genealogy is made with a statement of inheritance, a legal entity institution then the person authorized to sign the deed is the director or commissioner approval, or the holding of a general meeting of shareholders, and in addition to paying attention to the subjective conditions, what must be considered is the objective conditions in the lease, namely related to the position and condition of the lease object, in addition to paying attention to the rental period that does not exceed the provisions of laws and regulations, as well as the designation of the lease, these things are none other than to fulfil the valid requirements of an agreement which is in accordance with the provisions of Article 1320 of the Civil Code.

The transfer of land rights itself consists of various types in accordance with the provisions of Article 16, paragraph (1) of the UUPA, one of which is the transfer of land rights with a lease right. Building itself is based on Government Regulation of the Republic of Indonesia Number 34 of 2017 concerning Income Tax on Income from Rental of Land and/or Building (hereinafter referred to as PPH on Rental of Land and/or Building) in the provisions of Article 1 number 1 stipulates that: "Building is a technical construction that is permanently planted or attached to land and/or water."

In accordance with the provisions of Article 44 paragraph (1) of the UUPA stipulates that: "A person or a legal entity has a right of lease over land, if he is entitled to use the land owned by another person for building purposes, by paying the owner a sum of money as rent." Furthermore, it is also regulated regarding who is entitled to the right of lease in the provisions of Article 45 of the UUPA stipulates that: Those who can become holders of lease rights are:

- a. Indonesian citizens;
- b. foreigners domiciled in Indonesia;
- c. legal entities established under Indonesian law and domiciled in Indonesia;
- d. foreign legal entities having representation in Indonesia."warga-negara Indonesia;
- e. foreigners domiciled in Indonesia;

Problems arise when a person who is using the right to rent the building, then the landowner or the leasing party, makes the land as a credit guarantee, namely a mortgage guarantee at a banking institution. Law in a society must run without contradicting the rules that surround it; because of this, legal protection must be able to apply certainty, justice, and usefulness. The word protection in English is protection, which means: (1) protecting or being protected; (2) a system that protects; (3) a person or thing that protects. In the Big Indonesian Dictionary, protection is defined as: (1) a place of refuge; (2) the act or thing and so on, of protecting. From these two definitions, protection is the act of protecting, for example, giving protection to the weak. Legal protection provides protection to the rights of someone who is considered weak.

Philipus M Hadjon argues that legal protection is the protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another (Hadjon, 1987). It means that the law protects the rights of a person against something that results in the non-fulfilment of these rights. Legal protection is closely related to a person's right to be under legal protection and the right to a sense of security, where this is regulated in the provisions of Article 28 letter G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which stipulates that: "Every person has the right to protection of self, family, honour, dignity, and property under his/her control, as well as the right to security and protection from threats of fear to do or not do something that is a human right."

Legal protection can be used in an effort to protect the interests of the community from arbitrary actions, which is the purpose of the law, which can be realised in the form of legal certainty. It is in accordance with the purpose of law according to Gustav Radburch where the purpose of law must be able to reflect the basics of law, namely justice (*gerechtigheit*), expediency (*zweckmaerten*), and certainty (*rechtssicherheit*) so that the purpose of legal protection is to provide certainty over the fulfilment of the rights of a legal subject in carrying out a legal action (Ilmar, 2014).

According to Satjito Rahardjo, an effort to protect the interests of an individual based on the implementation of human rights to act in a legal action. Based on the KBBI that protection is to protect, prevent, and defend, as well as Black's Law Dictionary, by interpreting it as protection or the act of protection. At the same time, the law, according to Dr. O. Notohamidjojo, SH, is a regulation both in written form and in unwritten form, which is compelling. There is a sanction if it is not implemented. So it can be concluded that what is meant by legal protection is something related to maintaining and protecting various individual interests both by the government and the community with the fulfilment of their rights based on the provisions of human rights based on the provisions of applicable laws and regulations. Then the elements of legal protection are as follows:

- a. The government protects its people.
- b. There is a guarantee of legal certainty
- c. Related to the rights possessed by citizens
- d. If violated, there is a strict sanction that regulates it. The government protects its people.

The implementation of legal protection requires a means of legal protection, according to Philipus M. Hadjon. The means of legal protection are as follows:

- a. Preventive Legal Protection. Legal protection whose purpose is none other than to prevent a dispute from occurring, so in this case, the government must be careful in formulating a policy in making a decision.
- b. Repressive Legal Protection. A legal protection, which is to avoid the occurrence of the same dispute in the future, as well as a form of settlement of a dispute, both in the nature of litigation and non-litigation.

Based on this, legal protection is the implementation of the recognition of human dignity, which is the implementation of the principle of a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution. Every individual has the right to obtain legal protection in their lives.

Based on an example of a case of problems that occurred based on Decision Number 11/Pdt.Bth/2017/PN Pbm, namely in a case between PT. Bank Pembangunan Daerah Sumatera Selatan and Bangka Belitung Bank Sumatera Selatan Bangka Belitung, hereinafter referred to as the challenger in this case against Muginem Bt M. Soroh, hereinafter referred to as the challenged. That there is a legal relationship, namely the lease of two units of shop houses that stand on a plot of land measuring 162 m², based on Certificate of Property Rights No. 21 dated 12 November 2001 in the name of Muginem BT. M. Siroh is located in Prabumulih City, South Sumatra Province. The lease took place initially from March 2014 to March 2017 made by Notarial Deed Number: 67 dated 28 March 2014 concerning Lease Agreement, and extended again from March 2017 to March 2020 by Notarial Deed Number: 01 dated 01 March 2017 concerning Lease Agreement, both of which were made before Notary Desi Susilawati Rachman, SH, M.Kn and the payment has been made in full since the signing of the deed.

In December 2019 it turned out that the asset in the form of 1 (one) plot of land with an area of 162 m² was used as one of the collateral at PT Bank Mandiri which would then be auctioned for execution because the debtor was in default or unable to meet his performance, this was also in accordance with the Deed of Granting Mortgage Rights (APHT) No. 293/2015 dated 10 July 2017 jo Certificate of Mortgage Rights (SHT) No. 543/2015 dated 14 September 2017 and as written notification in the Sriwijaya Post Daily Newspaper dated 27 September 2019 regarding the Second Announcement of Mortgage Rights Execution Auction. Therefore, the result of the auction certainly has a real impact on the tenant where which will also harm the legal interests of the Complainant as the tenant of the shop building which based on the lease agreement is carried out until March 2020. In the lease agreement, it is also stated that the leased object does not become collateral for a debt, and the tenant will not get demands and/or interference from other parties who claim to have prior rights or participate in having rights to what is leased.

So that by making the object used as a lease agreement as collateral for mortgage rights, it will cause real harm to the Counterparty, namely by not guaranteeing the enjoyment of using and utilising the lease object. Based on the case that in this case, the land encumbered by the mortgage right became the property of Muginem Bt M. Soroh, where the transfer of rights to PT. Bank Pembangunan Daerah Sumatera Selatan dan Bangka Belitung Bank Sumatera Selatan Bangka Belitung to use the building on it as an office with the transfer of rights in the form of Building Rights Title, but in this case the landowner makes the land an object of collateral, but in this case what is negligent is that it is not written down that the land that is the object of collateral for the mortgage is in a legal relationship of lease, so that the tenant also does not know that the building he is renting is an object of collateral for the mortgage.

Protection is given to tenants if the leased object is used as a collateral for mortgage rights, with the existence of an obscurity of this norm causing the non-realisation of legal certainty, so that in this case a theory of legal

certainty is used according to Ronald Dworkin born through a basic value of legal certainty, namely "Scherkeit des Rechts selbst", legal certainty itself is how the law itself where the lack of clarity of the law itself causes the law to be unable to regulate individuals as it should (Sari et al., 2018). . If a law does not have or loses its certainty, it can no longer be used as a guide in everyday life, so the purpose of a law is certainty. This legal certainty is also closely related to order in society, so that the essence of this certainty is the order, because if there is no certainty, it will be difficult to find an order.

In the opinion of Sudikno Mertokusumo, legal certainty is a guarantee in the implementation of the law, a person can receive their rights if he has complied with the law, and the implementation of a decision (N. Dewi & Resen, 2021). This legal certainty has a close relationship with justice, so that the law is general, binds every individual, and equalises the position of each individual, this is different from justice which is not general, namely subjective and individualist, legal certainty is a form of how the implementation of the law is in accordance with its contents, so that there is a certainty that the law has been implemented. So that in order to realise a legal certainty towards the fulfilment of the rights of the tenant whose rental object is used as a guarantee, a legal protection is needed to protect the rights of the tenant. Leasing is regulated in various provisions, namely based on the Civil Code, namely in the provisions of Articles 1548 to 1600 of the Civil Code and the UUPA. Regulated in the provisions of Article 1548 of the Civil Code stipulates that: "Lease is an agreement, by which one party binds himself to give the enjoyment of an article to the other party during a certain time, on payment of a price agreed by the latter party. People can lease various types of goods, both fixed and movable."

In addition to this, it is also regulated in the provisions of Article 1576 of the Civil Code which stipulates that: "With the sale of the leased goods, a lease made before is not terminated unless this has been agreed upon at the time of leasing the goods" This means that even in the process of sale and purchase, namely in the form of transfer of rights, it does not delete a lease, this also means in the case based on the Supreme Court Decision Number 804 / K / PDT / 2019 between PT Bank Pembangunan Daerah of South Sumatra and Bangka Belitung against Muginem Bt M Siroh and the Palembang State Wealth and Auction Service Office, where there has been a lease relationship relating to an object of two units of shop houses that stand on a plot of land measuring 162 m2 based on Certificate of Property Rights No. 21 dated 12 November 2001 in the name of Muginem BT. M. Siroh is located in Prabumulih City, South Sumatra Province. The lease took place initially from March 2014 to March 2017 made by Notarial Deed Number: 67 dated 28 March 2014 concerning Lease Agreement and extended again in March 2017 to March 2020 by Notarial Deed Number: 01 dated 01 March 2017 concerning Lease Agreement, both of which were made before Notary Desi Susilawati Rachman, SH., M.Kn and the payment has been made in full by PT Bank Pembangunan Daerah Sumatera Selatan and Bangka Belitung since the signing of the deed.

In 2019, Muginem BT. M. Siroh (one) plot of land with an area of 162 m2 was used as collateral at PT Bank Mandiri which will then be auctioned for execution, this is also in accordance with the Deed of Granting Mortgage (APHT) No. 293/2015 dated 10 July 2017 jo Certificate of Mortgage (SHT) No. 543/2015 dated 14 September 2017 and as written notification in the Sriwijaya Post Daily Newspaper dated 27 September 2019 regarding the Second Announcement of Mortgage Execution Auction. As a result, PT Bank Pembangunan Daerah Sumatera Selatan and Bangka Belitung cannot fulfil their right to enjoy the leased building until March 2020 because an auction will be conducted.

So in this case a legal protection is needed that can accommodate the rights of the tenant in the lease period for the lease object whose land is used as collateral in an effort to fulfil the rights of the tenant for the lease period, the aim is to create a legal certainty that can protect the rights of the tenant for the implementation of a legal goal. So that if it is related to the case above, in this case, the role of a notary is needed to be able to provide a preventive legal protection to the tenant of the building through a deed of lease made by a notary rather than being able to provide a preventive legal protection. So that later in the leasing process, the rights of the tenant and the lessee

can be fully fulfilled, this is in accordance with the provisions of Article 1550 of the Civil Code, which stipulates that:

"The lessee, by the nature of the agreement and without the need for a promise, is obliged to; deliver the leased property to the lessee; maintain the property in such a way that it can be used for the intended purpose; and give the lessee the right to enjoy the leased property in peace during the lease."

So that based on this case Mugine B Soroh should give PT Bank Pembangunan Daerah Sumatera Selatan and Bangka Belitung Bank Sumatera Selatan Bangka Belitung the right to control the lease with peace of mind during the lease, which is a form of implementation of good faith in conducting an agreement, and in this case the bank should apply the 5C principle in providing credit assessment before granting credit to the debtor by paying attention to the condition of the object that is collateral for the mortgage.

Based on the theory put forward by Philipus M Hadjon, namely a legal protection that protects the dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another.

Preventive legal protection is a protection provided by the government with the aim of preventing violations before they occur. It is contained in legislation with the aim of preventing an offence and providing signs or limits in performing an obligation. So that in this case, the preventive protection that can be provided in relation to the legal protection given to the tenant when the rental object becomes a mortgage guarantee is a protection carried out during the process of commencing a legal action, namely at the time of making a lease agreement.

Based on the results of an interview with one of the notaries domiciled in Denpasar City, namely Made Setiasa, on 27 May 2025 at 12.00 Wita in granting credit is always accompanied by collateral, in the case of immovable property collateral will be carried out with the encumbrance of mortgage rights, a credit agreement will be made between the debtor and the bank, in this situation the bank will conduct a credit assessment by paying attention to the object of the guarantee, it is not uncommon to find that the object used as collateral is in the lease period, so in this case the bank will require a statement made by the tenant that it is true that the tenant has known that the object of the lease will be used as a guarantee, in this case the bank will also include the consequences of if a default occurs, So the landlord will not arbitrarily make the object of rent as collateral, it must be accompanied by a statement from the tenant to know this condition, because the bank will also check the condition of the collateral object by memorizing the 5C principles of credit granting, in addition to the statement letter, there is also a letter of agreement that it is true that the tenant has agreed to all the impacts or legal consequences that will result from making the object of rent as an object of collateral, so that the implementation of the principle of freedom of contract is still running but still in good faith and does not exceed the provisions of the legislation.

Based on the interview, it is very clear that the preventive efforts made by paying attention to the tenant are not limited to the wishes of the owner. The guarantee of the mortgage rights to be executed does not decide the rights of the tenant who is renting the building to be terminated, so the tenant can still enjoy his rental rights for a certain period, in this case, except that the guarantee of an object of mortgage rights is carried out first compared to the lease.

Lease agreements that are carried out without honesty and good faith on the part of the renter by not providing information about the encumbrance of mortgage rights on land or buildings that are the object of the lease agreement are agreements that are contrary to the principles or principles of the law of agreements regulated in the Civil Code which have legal consequences for the cancellation of the lease agreement. Then this can also be done with a lawsuit, a tort lawsuit is a lawsuit for compensation because of an unlawful act that causes harm to others, in accordance with the provisions of Article 1365 of the Civil Code that: "Every act that violates the law and brings harm to others, obliges the person who causes the loss because of his fault to replace the loss."

If the act is unlawful and causes a loss, then the person who caused the loss must bear the compensation. It is also based on the jurisprudence of the Supreme Court Decision Number 2439 K/pdt/2002, it resistance case was filed by Erwan Djaya Darmadi and Foe Tji Lan against Sherly Indriati et al on the execution of decision

Number 18 Pdt/Eks/2000/PN.Bgr. juncto Number 12/Pdt.G/1992/PN Bogor, which states that the tenant of the land can still file a resistance through a tort claim for the losses he received and obtain legal protection.

B. Good Faith in the Lease of Buildings Above Land Ownership Rights that are Pledged as Collateral.

1. Legal Effects of Land Pledged as Mortgage Collateral Under Indonesian Positive Law. Legal consequences are all the consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events that the law itself has determined or considered as legal consequences. These legal consequences give birth to rights and obligations for legal subjects, or in other words, legal consequences are the consequences caused by legal events. According to Achamad Ali, legal consequences are the consequences caused by the law to the actions taken by the subject of law (Pomantow, 2018).

Increasing economic needs cause human needs also to increase. In order to fulfil their needs, it is not uncommon for humans to take out a loan to obtain funds in order to meet their needs. The implementation of credit, of course, requires a guarantee in an effort to prevent the debtor from defaulting on his obligations. One of the guarantees that is often used is material security; in this case, it is an immovable object or commonly referred to as a mortgage. Mortgage rights are one of the objects used as a guarantee, mortgage rights themselves are regulated in the provisions of Article 1 number 1 of the UUHT which stipulates that: "Mortgage on land and objects related to land, hereinafter referred to as Mortgage Rights, is a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or excluding other objects that are an integral part of the land, for the repayment of certain debts, which gives priority to certain creditors against other creditors."

Based on the results of an interview with one of the notaries domiciled in Denpasar City, namely Made Setiasa, on 27 May 2025 at 12.00 Wita at his office said that in a mortgage right there must be goods that are used as a guarantee, which will later be used as collateral for debt repayment by the debtor, in accordance with the credit agreement, namely the agreement between the debtor and the one who has the receivable, The condition of the goods used as collateral for the mortgage must be clean, meaning that it is not being blocked or is in trouble in court, besides that the thing that becomes the object of the mortgage guarantee is the holder of the person who has the debt must and is obliged to fulfil his promise in order to fulfil the performance to the creditor, to avoid the object that is the guarantee of the mortgage being executed and then carried out the auction.

Mortgage encumbrance is carried out by granting mortgage rights, which contain agreements for repayment of the debt concerned. It is done by making a Deed of Granting Mortgage Rights by PPAT in accordance with statutory regulations. The Deed of Granting Mortgage includes: the name and identity of the grantor of the mortgage right, the domicile of the parties, a clear designation of the debt, the value of the mortgage, and a description of the condition of the object of the mortgage right.

Furthermore, the granting of a mortgage right must be registered at the relevant land office; this is in accordance with Article 13 UUHT paragraph (1) UUHT. From this registration, it will produce a certificate of mortgage rights, which explains that the object has been encumbered as a mortgage right.

The legal consequences arising when the land is encumbered by a mortgage will lead to the debtor's obligation to pay off the debt in order to fulfill his performance. It is in accordance with if the debtor cannot fulfil the obligation to fulfil his performance, the debtor is considered to have committed a breach of promise or default, this is regulated in the provisions of Article 1239 of the Civil Code which stipulates that: "Every obligation to do something, or not to do something, must be completed by providing compensation for costs, losses and interest, if the debtor does not fulfil his obligations." It is in accordance with the provisions of Article 6 UUHT, which stipulates that: "If the debtor is in default, the holder of the first Mortgage Right has the right to sell the object of the Mortgage Right under its authority through a public auction and to collect its debts from the proceeds of the sale."

In addition, based on the provisions of Article 20 paragraph (1), UUHT stipulates that: if the debtor is in default, then based on:

- a. The right of the holder of the first Mortgage Right to sell the object of the Mortgage Right as referred to in Article 6, or
- b. The executorial title contained in the Mortgage Rights certificate, as referred to in Article 14 paragraph (2), the object of the Mortgage Rights shall be sold through a public auction in accordance with the procedures specified in laws and regulations for the settlement of the receivables of the holder of the Mortgage Rights with prior rights to other creditors.

So that the legal consequences if the debtor defaults, the holder of the mortgage right has the right to sell the object, with its executorial title through an auction process at the bank by looking for the highest price than the sale of the object that is the dependency. So that it is obligatory in this case, the debtor is obliged to be able to fulfil his performance by paying off the debt, so that the land used as collateral for the mortgage is not executed through auction. Auction according to the Regulation of the Minister of Finance of the Republic of Indonesia Number 213 / PMK.06 / 2020 concerning Guidelines for the Implementation of Auctions Article 1 number 1 regulates that: "Auction is the sale of goods open to the public with written and/or oral price offers that are increasing or decreasing to reach the highest price, which an Auction Announcement precedes." According to the provisions of Article 1 point 6 of Minister of Finance Regulation Number 213/PMK.06/2020, stipulates that "Execution Auction is an auction to execute a court decision or ruling, other documents equivalent thereto, and/or to implement the provisions of laws and regulations." So that the legal consequences if a land is pledged as collateral for mortgage rights will lead to the debtor's obligation to be able to fulfil these obligations, so that the pledged land is not executed.

It is because the hak tanggungan can be erased in accordance with the provisions of Article 18 paragraph (1), which stipulates that:

- a. the extinguishment of the debt secured by the Mortgage Right;
- b. release of the Mortgage Rights by the holder of the Mortgage Rights;
- c. clearance of the Mortgage Rights based on a ranking determination by the Chairman of the District Court;
- d. the extinguishment of the land rights encumbered by the Mortgage." cancellation of debt secured by a mortgage;

In accordance with the accessory nature of the Mortgage Right, the existence of the Mortgage Right depends on the existence of the receivables secured by the repayment. If the receivables are extinguished due to repayment or other causes, the relevant Hak Tanggungan is automatically extinguished as well.

2. Legal Consequences of Building Tenants whose Land is Pledged as Mortgage Collateral Based on SEMA Number 4 of 2014. Meanwhile, according to Subekti, leasing is an agreement involving several or more people in which one party undertakes to deliver an object within a certain time, and then the other party will undertake to pay according to the price set for a certain time so that the lease is between two parties where one party as the tenant and one party as the renting party. The legal effect of a lease is the occurrence of a transfer of rights to the tenant to utilise or enjoy his rights relating to a rental within a certain period, besides that another legal effect is the obligation for the tenant to pay a certain amount of rent to the renting party and give birth to the right of the renter to receive the rent.

The problem occurs when the Tenant Party, namely someone who owns the rights to the land, then leases the building to the Second Party as the tenant of the building, and then during the lease period, the First Party pledges the land as collateral for mortgage rights at a banking institution. In this case, the right of a tenant to enjoy the rental period becomes unsettled because, in accordance with the provisions of Article 6 of the UUHT, if the debtor is in default, execution must be carried out on the object of the guarantee, so that the tenant's right to enjoy the rent during the rental period is not fulfilled. For example, a case based on the Supreme Court Decision Number 804/K/PDT/2019 between PT Bank Pembangunan Daerah Sumatera Selatan and Bangka Belitung against

Muginem Bt M Siroh and the Palembang State Wealth and Auction Service Office. Where there has been a lease relationship relating to an object of two units of shop houses that stand on a plot of land measuring 162 m², based on Certificate of Property Rights No. 21 dated 12 November 2001 in the name of Muginem BT, M. Siroh is located in Prabumulih City, South Sumatra Province. The lease took place initially from March 2014 to March 2017 made by Notarial Deed Number: 67 dated 28 March 2014 concerning Lease Agreement and extended again in March 2017 to March 2020 by Notarial Deed Number: 01 dated 01 March 2017 concerning Lease Agreement, both of which were made before Notary Desi Susilawati Rachman, SH., M.Kn and the payment has been made in full by PT Bank Pembangunan Daerah Sumatera Selatan and Bangka Belitung since the signing of the deed.

In 2019, Muginem BT. M. Siroh (one) land plot of 162 m² was used as collateral at PT Bank Mandiri which will then be auctioned for execution, this is also in accordance with the Deed of Granting Mortgage (APHT) No. 293/2015 dated 10 July 2017 jo Certificate of Mortgage (SHT) No. 543/2015 dated 14 September 2017 and as written notification in the Sriwijaya Post Daily Newspaper dated 27 September 2019 regarding the Second Announcement of Mortgage Execution Auction. So as a result, PT Bank Pembangunan Daerah of South Sumatra and Bangka Belitung cannot fulfil its right to enjoy the rental building until March 2020 because an auction will be held. So in this case, the tenant cannot fulfil his rental rights until March 2020. So that in this case, a protection is needed for the tenant to enjoy the building he rented during the lease period. The Civil Code, through the provisions of Article 1576 of the Civil Code, has regulated that: "With the sale of the leased goods, the lease made previously is not terminated unless it has been agreed at the time of leasing the goods. If there is such an agreement, the lessee is not entitled to claim compensation in the absence of an express agreement, but if there is such an agreement, then he is not obliged to vacate the leased goods as long as the compensation owed has not been paid."

Based on the provisions of Article 1576 of the Civil Code that the lease agreement is not terminated in this case if it has been promised at the time of leasing the goods. So that if there is such an agreement, the tenant is not obliged to vacate the goods as long as the compensation has not been paid, this is different from the provisions of Supreme Court Circular Letter Number 4 of 2014, which relates to the vacating of the execution of the object of mortgage rights that:

"Against the auction of mortgage rights by the creditor himself through the auction office, if the auctioned does not want to vacate the object of the auction, the execution of vacating can be directly submitted to the Chairman of the District Court without going through a lawsuit."

So based on this provision, the creditor can directly submit the execution of vacating to the Chairman of the District Court without going through a lawsuit, this is what creates a conflict of norms between the provisions of Article 1576 of the Civil Code and SEMA Number 4 of 2014 which cannot provide legal protection to the tenant for sure because of the conflicting rules.

In the book *Perihal Undang-Undang* by Prof. Jimmly Asshidiqie, Circular Letters are classified as policy rules or quasi legislation, so that it can be assumed that the Supreme Court Circular Letter is a policy regulation. Therefore, SEMA can be classified as a statutory regulation and has binding legal force as specified in Article 8, paragraph 2 of the Law on the Establishment of Legislation. In terms of authority, the Supreme Court Circular is formed based on the regulatory authority possessed by the Supreme Court. The regulation is related to other functions, namely administration, advice, supervision, and judiciary.

Therefore, with the existence of a norm conflict between Article 1576 of the Civil Code and SEMA Number 4 of 2014, it is necessary to provide legal protection to the tenant in an effort to fulfil its rental rights, through a preventive effort that a Notary can carry out in the process of making a deed of lease.

It relates to a theory of legal certainty according to Ronald Dworkin, born through a basic value of legal certainty, namely "Scherkeit des Rechts selbst", legal certainty itself is how the law itself, where the lack of clarity of the law itself causes the law to be unable to regulate individuals as it should. If a law does not have or lose its certainty, it can no longer be used as a guide in everyday life, so the purpose of a law is certainty. This legal certainty

is also, of course, closely related to order in society, so that the core of this certainty is the order, because if there is no certainty, it will be difficult to find an order.

So that in order to realise a legal certainty, it is necessary to formulate a building lease deed in order to provide preventive legal protection to the party who is renting the building, for the legal actions of the First Party who makes the land as a mortgage guarantee through a deed product made by a Notary, and if an encumbrance will be carried out on the land whose building is in the lease period, it is necessary to obtain an agreement from the Tenant of the building.

3. The Function of Good Faith in the Lease of Buildings on Freehold Land Used as Collateral. The regulation of good faith in Indonesia is found in Article 1338 paragraph (3) of the Civil Code. This article stipulates that agreements are executed in good faith. The principles of good faith, fair dealing, justice, and order are fundamental in the business world. Good faith does not only refer to the good faith of the parties, but must also refer to the values that develop in society, because good faith is part of society. This good faith ultimately reflects the standards of fairness and propriety of society. Objective good faith is a general concept of good faith that refers to a norm of behaviour of the parties to the contract, acting in accordance with or contrary to good faith.

Parties who have agreed will carry out legal actions that must be based on honesty. In the concept of a building lease agreement, good faith is realised as follows:

1. The landlord provides the building to the expected specifications: The exact specifications of the leased premises are crucial to tenant satisfaction. A responsible landlord will ensure that the building offered is exactly as per the agreed details, from the space to the condition of the facilities to the accessibility. It not only demonstrates the professionalism of the landlord but also builds trust and a positive long-term relationship with the tenant. By providing the building according to specifications, the landlord not only fulfils its obligations but also minimises potential conflicts and ensures a smooth lease process. Transparent and collaborative communication between landlord and tenant from the beginning of the process is crucial to reaching an agreement that satisfies both parties.
2. Tenants must pay according to the set fees. The timeliness and amount of rent payments are the foundation of the relationship between tenants and landlords. The tenant's commitment to pay the rent in accordance with the agreed terms in writing is a form of responsibility and respect for the mutual agreement. Timely payment not only ensures smooth operations for the landlord but also reflects the integrity and credibility of the tenant. Failure to fulfil payment obligations can negatively impact the relationship between both parties and potentially lead to legal issues. Therefore, discipline and awareness of the importance of paying rent on time are crucial to maintaining a harmonious and sustainable relationship in the lease process. Clarity in agreements, both verbal and written, is key to avoiding misunderstandings and ensuring payments are made in accordance with the terms that have been mutually agreed upon.
3. The landlord and tenant are obliged to maintain the condition of the building until the end of the engagement. Maintenance of the condition of the premises during the tenancy is the joint responsibility of the landlord and tenant. The landlord is obliged to ensure that the building is in a habitable state and free from significant structural damage. Meanwhile, the tenant is responsible for keeping the building clean, tidy and maintaining the facilities to keep it functioning properly. Good co-operation and communication between the landlord and tenant is essential to prevent damage and ensure the condition of the building is maintained until the end of the agreement period. Mutual respect for each party's rights and obligations will create a conducive environment and prevent disputes from arising. A clear and comprehensive lease agreement, including details regarding maintenance responsibilities, will go a long way in maintaining harmonious relationships and ensuring the building remains well-maintained until the end of the lease term. Thus, both landlord and tenant contribute to maintaining the value of the asset and creating a comfortable environment for all parties.

Based on the results of interviews with Notary / PPAT BF. Harry Prastawa on 13 June 2025 at 11.00 WITA, that the lease agreement made before a notary is an authentic deed that has perfect evidentiary power as stipulated

in Article 1868 of the Civil Code. Suppose the agreement is purely a lease agreement requested by the parties and set forth in the form of a notarial deed. In that case, the agreement obtains a legal position that takes precedence (privilege) as long as the renter provides a valid legal guarantee in accordance with the provisions of the legislation.

This legal position cannot be separated from the principle of good faith, as stipulated in Article 1338 paragraph (3) of the Civil Code, which emphasises that every agreement must be carried out in good faith. In this context, good faith serves as a fundamental principle that ensures that the hirer truly acts honestly, transparently, and responsibly in guaranteeing the legality and legal status of the offered rental object. Therefore, the legal force of the deed of lease made before a notary acquires full legitimacy if it is based on the good faith of the parties, especially the landlord.

The form of privilege can be described as follows: When a landlord offers a rental object, it must be legally proven that it has the right to the object in question. It is indicated by the ownership of a land title certificate, the existence of a legal building on it, and the completion of a valid Building Permit (IMB) or Building Approval (PBG). With the fulfilment of these elements, the lease agreement made before a notary has full legal force and protects the parties.

Furthermore, if the object of the lease is transferred, either through sale or pledged as collateral, the tenant's rights remain attached to the lease object as long as the lease period has not ended. It is in line with the provisions of Article 1576 of the Civil Code, which states that the transfer of rights to the leased goods does not abolish the pre-existing lease agreement, unless otherwise agreed.

If the lease agreement is made sequentially and continuously, both before and during the validity period of the main agreement, and is arranged in an orderly manner in the form of an authentic deed, then all legal requirements to obtain the main protection (privilege) for tenants are considered to have been fulfilled. Thus, the tenant obtains legal certainty and protection based on the deed of lease made before a notary, whose implementation is based on the principle of good faith as a fundamental principle in treaty law.

CONCLUSION

- a. Legal protection of building tenants whose land is used as collateral for mortgage rights has not been further regulated by statutory provisions. Whereas based on the provisions of Article 1576 of the Civil Code that the lease relationship is not broken because the object becomes collateral for mortgage rights, whereas with SEMA Number 4 of 2014 if the auctioned does not vacate the object of the auction, the execution of the vacating can be directly submitted to the Chairman of the District Court without going through a lawsuit. There is a contradiction between SEMA Number 4 of 2014 and Article 1576 of the Civil Code. Thus, using the theory of legal certainty in the form of hierarchy, SEMA Number 4 of 2014 cannot override Article 1576 of the Civil Code and is coherent with the principle of *lex superior derogat legi inferiori* (higher law overrides lower law). So, there needs to be legal protection for the tenants of the building because the execution cannot be carried out. It is contrary to Article 1576 of the Civil Code, and if the building is executed, then the tenant must compensate the cost of losses proportionally.
- b. The function of good faith is absolute in order to protect building tenants. Because the Land Rights holder is not honest in providing information on the conditions of the object at the time of the lease agreement is relevant to Article 1338 paragraph (3) of the Civil Code, which formulates: "An agreement must be carried out in good faith". So, it is necessary to strengthen the role of the notary through the making of the deed of lease by adding clauses in the body of the deed, namely precisely between Article 38 paragraph (3) letter b and Article 38 paragraph (3) letter c of the UUJNP by protecting the tenant of the building he rented, besides that it was added by attaching a letter of consent attached to the deed minutes, and it can be done by the tenant of the building participating in the signing of the deed as a form that the tenant of the building has known that the land is used as collateral for mortgage rights.

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