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REFUSAL OF THE INHERITED TO THE TRANSFER OF INHERITANCE RIGHTS TO LAND CHARGED WITH GUARANTEE RIGHTS

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ABSTRACT

The study aims to understand the juridical review of the transfer of inheritance rights to a land burdened with mortgage rights and the legal consequences of the heir's refusal to transfer inheritance rights to a land burdened with mortgage rights. This study is normative legal research (juridical) or literature law research. The results of the study show that : (1) the procedure for the transfer of rights over inherited Land which is being burdened with mortgage rights is carried out by recording them in the land book and certificate of mortgage rights in question and the land book and certificate of rights burdened based on a letter of evidence of the transfer of receivables guaranteed due to Inheritance, and (2) The legal consequences if the heirs reject the Inheritance of land rights that are being burdened with mortgage rights, namely that the heirs who expressly declare their rejection of their inheritance rights result in the heir being deemed to have never existed. The heirs' rejection of the Inheritance of land rights under the imposition of Mortgage does not result in the encumbrance of the Mortgage being annulled and rejecting Inheritance just because they don't want to pay off the Inheritance that is being burdened with mortgage rights.

KEYWORDS

Inheritance, Mortgage, Transfer of Rights.



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INTRODUCTION

Land rights are rights that give authority to those who have the right to use or take advantage of the land that is their right [1]. In the Basic Agrarian Law (UUPA) Number 5 of 1960 and it is stated that land rights can be transferred and transferred from the holder to other parties. One form of transfer of land rights by way of transfer, namely the transfer of land rights to another party because the holder of the right has passed away, is through Inheritance. The transfer of land rights occurs due to law, meaning that when the right holder dies, the heirs obtain the rights to the Land [2].

Inheritance Law occupies a vital place. This is understandable because everyone must experience inheritance problems. Every time someone dies, the question immediately arises of how the Inheritance should be treated. To who was the property transferred, and how was it transferred? All this must be regulated in the law of Inheritance. Inheritance law regulates what should happen to the assets of someone who dies, governs the transfer of assets left by someone who dies, and the consequences for the heirs [3].

The Law of Inheritance contains provisions governing how to forward and transfer assets from the heir to the heirs. The death of a person automatically brings legal consequences. The heir is obliged to pay off all debts left by the heir. The heirs must immediately register their inherited Land at the land office so that the transfer of land rights obtained from the Inheritance is guaranteed legal certainty.

In 1996 a Law was enacted which specifically regulates Mortgage Rights. After this Mortgage Law was issued, the term Mortgage was no longer used. The term Mortgage is taken from the term customary law. The term Mortgage becomes known in Article 51 of the Law on Basic Agrarian Regulations (UUPA) Number 5 of 1960, which among other things, states that Mortgage can be imposed on Property Rights, Building Utilization Rights, and Rights Use of Business in Articles 25, 33, and 39 of the UUPA which are then regulated in Law Number 4 of 1996 concerning Mortgage Rights. Article 1, paragraph (1) of the Law on Mortgage, states that "Mortgage over Land, along with objects related to Land, from now on referred to as Mortgage Rights, is a security right that is charged to land rights as referred to in UUPA Number 5 of 1960, along with or without other objects that are an integral part of the Land, for the settlement of certain debts, which gives priority to certain creditors over other creditors.

With Law Number 7 of 1989 concerning Religious Courts, Islamic inheritance law becomes a positive law in Indonesia, especially for Muslims. During its development, Islamic inheritance law as positive law was manifested in written form as a Compilation of Islamic Law, promulgated through Presidential Instruction No. 1 of 1991.

Although some parties do not recognize the Compilation of Islamic Law as Statutory Law, the implementers at the Religious Courts have agreed to make it a guideline in settling cases in court. In the Compilation of Islamic Law, which contains three books, Islamic Inheritance Law is included in the Second Book on Inheritance Law. Inheritance Laws regulated in Articles 171 to 193 are generally by or in line with Islamic Faraidh Law.

Based on the description above, a study was carried out to understand the juridical review of the transfer of inheritance rights to Land burdened with mortgage rights and the legal consequences of the heir's refusal to transfer inheritance rights to Land burdened with mortgage rights.

RESEARCH METHODS

The type of study used is normative legal research or library law research because the materials used are secondary data such as legislation and legal or non-legal literature books relevant to the research topic.

RESULTS AND DISCUSSION

A. Juridical Review of the Transfer of Inheritance Rights to Land Encumbered with Mortgage Rights

Inheritance law, according to the conception of Western Civil Law, which originates from BW or *BurgelijkWetboek*, known in Indonesia as the Civil Code, is part of property law. Therefore, only rights and obligations in the form of assets are inherited and will be inherited. Rights and responsibilities in public law, rights and obligations arising from decency and decency, will not be inherited, and rights and obligations arising from family law relationships cannot be inherited.

According to Article 830 of the Code of Civil Law (KUHPerdata), "Inheritance only occurs or takes place with death. In this case, the person who died leaving behind assets is a fundamental element for Inheritance because with the death of a person, at that time, the Inheritance can be opened or distributed. At that time, the heirs were able to determine their rights to distribute the Inheritance so that all assets or all of their assets and assets were also distributed.

All liabilities or all debts will automatically fall/switch to the existing heirs. One of the causes for the end of someone's ownership of Land is death with this legal event resulting in the transfer of the assets of the person who died, both material and immaterial assets, to the heirs of the person who died. There will be heirs, heirs, and assets with this person's death.

The subject of this Mortgage is regulated in Article 8 and Article 9 of the Law concerning Mortgage Rights on Land and Objects related to Land; from the provisions of the two Articles, it can be concluded that the legal subject in imposing Mortgage is the giver of Mortgage Dependents and holders. The Mortgage giver can be an individual or legal entity with the authority to take legal action against the Mortgage object. The Mortgage holder can be an individual, or a Legal Entity domiciled as the debtor. Transfer of land rights can occur due to: (1) inheritance without a will, (2) transfer of rights, (3) buying and selling, (4) grants, (5) income in the company or "inbreeding." and (6) testamentary grants or "legaat".

According to *BurgelijkWetboek* (BW), inheritance law applies a principle that "if a person dies, immediately all his rights and obligations are transferred to all his heirs." property law or rights and obligations that can be valued in money. According to *BurgelijkWetboek* (BW), the characteristics of inheritance law include "the absolute right of the respective heirs to demand the distribution of the inheritance at any time." This means if an heir demands the distribution of Inheritance in front of the court, this claim cannot be rejected by other heirs. This provision is stated in Article 1066 *BurgelijkWetboek* (BW), namely:

1. A person who has the right to part of the Inheritance cannot be forced to give the inherited property in a state that is not divided among the existing heirs;
2. The distribution of inherited property can always be demanded even if there is an agreement that prohibits it;
3. An agreement on the suspension of the distribution of Inheritance may only be made for a certain period;

The agreement on the suspension of distribution is only binding for five years but can be renewed if the parties still desire it. From the provisions of Article 1066 BurgelijkWetboek (BW) regarding the separation of Inheritance and its consequences, it can be understood that the inheritance law system, according to BurgelijkWetboek (BW), has characteristics that are different from other inheritance laws. According to BurgelijkWetboek (BW), these characteristics include inheritance law, which requires that an heir's Inheritance be divided as soon as possible among those who are entitled to the property. Even if you want to leave it undivided, it must first go through the approval of all heirs.

Based on the provisions in Article 830 of the Civil Law Code, the Inheritance Law contains the principle that when a person dies, immediately all his rights and obligations are transferred to all his heirs. The rights and responsibilities transferred to the heirs are included in the field of property law. The transfer of rights and obligations from someone who has died to all of his heirs occurs automatically or automatically, without the need for specific actions from the heirs. (Article 833 paragraph (1) of the Civil Law Code).

By the provisions in Article 10 paragraph (2) of the Mortgage Law, the granting of a Mortgage is carried out using a written agreement, which is set forth in the Deed of Granting Mortgage Rights (APHT). This APHT is a deed made by the Land Deed Making Officer (PPAT), which contains granting Mortgage Rights to certain creditors as collateral for the settlement of their receivables. The provisions in Article 10 paragraph (2) of the Mortgage Law (UUHT) state: "Granting of Mortgage Rights is carried out by doing a Deed of Mortgage Granting by PPAT by applicable laws and regulations."

B. The Legal Consequences of the Heir's Rejection of the Transfer of Inheritance Rights on the Land, Encumbered with Mortgage Rights.

There are no sanctions for the parties to transfer land rights that are not carried out before the Land Deed Making Officer (PPAT). Therefore, the way that can be taken is to repeat the procedure for transferring the rights before the Land Deed Official, but this method depends on the parties' willingness.

The notary is not authorized to make a deed of inheritance refusal because, according to Article 1057 of the Civil Law Code, refusing an inheritance must occur decisively and be carried out with a statement made at the district court clerk's office, in whose jurisdiction the Inheritance has been opened. Islamic Inheritance Law does not recognize inheritance refusal. However, heirs who wish to distribute Inheritance according to Islamic Law still have the right not to receive the portion of Inheritance that has become their right, done through tashaluh and takharuj. The notary can do a deed that contains tashaluh and takharuj in the Deed of Inheritance Rights. This inheritance refusal has no expiration date (Article 1062 of the Civil Law Code). However, with the expiration date of receiving an inheritance that has passed by 30 (thirty) years, then automatically, after 30 (thirty) years have passed, that person has the same status as the person who refused the Inheritance. In other words, after 30 (thirty) years, people no longer need to refuse Inheritance if they don't want to become heirs.

As stated in Article 1058 of the Civil Law Code, the result of a rejection by the heir in question is deemed to have never become an heir (of the heir in question). A refusal applies retroactively until the Inheritance is open because the person who refuses is not an heir, so he does not accept the heir's

rights or obligations/debts. In this case, there is no mixing of inherited assets with the personal assets of the person who refuses the Inheritance.

Refusal of Inheritance must be voluntary of one's own volition; if the denial occurs under coercion or fraud, then according to Article 1065 of the Civil Law Code, the refusal can be canceled (abolished). However, this voluntary refusal may not be made because they do not want to pay the debt. If this happens, according to Article 1061 of the Civil Law Code, the judge can authorize the creditors of the heirs who refuse to act as a substitute for receiving the Inheritance on their behalf.

The Inheritance is in the name and to replace the heir who refuses the Inheritance. If the heirs refuse the Inheritance, the time when it comes into effect is considered to have occurred from the day of Inheritance. Rejection of a new inheritance occurs decisively and must be carried out with a statement made at the Registrar's Office of the District Court in the jurisdiction where the Inheritance was opened (Article 1057 of the Civil Law Code). In this case, the Registrar of the District Court makes a deed of refusal.

If the heir cannot come by himself, he can authorize another person with a power of attorney. Refusal becomes legally enforceable if the heir loses or hides items from the Inheritance. According to [4] that the refusal of inheritance results, namely: (1) heirs who refuse are considered to have never become heirs, (2) because of the refusal of the Inheritance, there is no replacement for the heirs by their children, (3) the portion of the Inheritance the person who refuses, falls to those who were initially entitled to that part, if the person who refuses the Inheritance is not alive at the death of the heir, and (4) if the heir refuses, then the refusal cannot be canceled unless there is fraud or coercion that can cause someone to reject the Inheritance.

Heirs, according to civil inheritance law, are not differentiated according to gender; heirs in civil inheritance law are due to marriage and blood relations, both legally and not; those who have the closest blood relationship are entitled to inherit.

A refusal applies retroactively until the Inheritance is open because the person who refuses is not an heir, so he does not accept the heir's rights or obligations/debts. In this case, there is no mixing of inherited assets with the personal assets of the person who refuses the Inheritance.

The consequence of a rejection by the heir, as stated in Article 1058 of the Civil Law Code, is that the heir in question is deemed to have never been an heir (of the heir in question).

If all heirs refuse the Inheritance because the amount of liabilities is greater than the number of assets, then for land rights that are still burdened with mortgage rights, the creditor is given preferential rights to auction off the object that is guaranteed to him. The auction referred to here is the auction of land rights or land auctions [5].

CONCLUSION

1. Legal Review of the Transfer of Inherited Land Rights Encumbered with Mortgage Rights The recipient of the transfer of ownership rights to Land or the holder of new ownership rights to Land must be Indonesian citizens by the provisions of Article 9 of the Basic Agrarian Law and Article 21 paragraph (1) of the Basic Agrarian Law that Only a single Indonesian citizen can own property rights, without differentiating opportunities between men and women. Therefore, even though they are still under the imposition of mortgage rights, land rights can still be transferred. The transfer of land rights due to Inheritance is not one of the reasons for the abolition of mortgage rights; therefore, mortgage rights will not be erased by the transfer of encumbered land rights.
2. The legal consequences of the heirs' rejection of the Inheritance of land rights that are under the imposition of mortgage rights by the heirs, as mentioned in Article 1058 of the Civil Law Code, are that the heirs in question are deemed to have never become heirs (of the heirs concerned). Refusal of heirs on the Inheritance of land rights, which are under the imposition of mortgage rights, does not result in the imposition of mortgage rights being burdened on them to be erased. Thus the creditor can still exercise his rights to land rights that are loaded with mortgage rights if the debtor

REFERENCE

Books

- [1] MertokusumoSudikno. 2008. Agrarian Law and Politics, Karunika, Universitas Terbuka, Jakarta.
- [2]Urip Santoso. 2010. Registration and Transfer of Land Rights. Kencana, Jakarta.
- [3] SuriniAhlanSjarif and Nurul Elmiyah. 2010. Western Civil Inheritance Law Inheritance According to the Act, Cet. Third, KencanaPrenadamedia Group, Jakarta.
- [4]Pitlo. 1995. First Book of Inheritance Law, (Translated by F. Tengker). Cipta Aditya Bakti, Jakarta.
- [5] Zainuddin Ali, 2002. Implementation of Inheritance Law in Indonesia. Sinar Graphics, Jakarta.

Regulation

- Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts
- Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations.
- Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights
- Code of Civil Law of the Republik of Indonesia (Burgerlijk WetboekvoorIndonesie)

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