

# Legal Force Certificate of The Right of Depedency in Destruction of The Object Guarantee Due to Natural Disasters: A Juridical Study

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Article	Abstract
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pustaka. Pendekatan ilmu hukum digunakan untuk menyelesaikan persoalan pertanahan terkait status hukum pemusnahan objek hak tanggungan akibat bencana alam. Peraturan perundang-undangan yang dipelajari pertama kali adalah Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Pokok Agraria dan Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan atas Tanah dan Benda-benda yang Terkait dengan Tanah.

**Kata Kunci:** *Jaminan, Hak Tanggungan, Eksekusi.*

## Introduction

Residence is the need for everyone to live to shelter, and shelter in a place. However, human needs for housing today are increasingly difficult to meet because land prices are expensive and the housing construction process is also relatively not cheap. On the other hand, if the community already owns land/land, it is necessary to provide protection and legal certainty for the land they own as legal proof of ownership of the land/land. In Law Number 5 of 1960 concerning Agrarian Principles, which we hereby call 66 with the UUPA, it is mandated in Article 33 paragraph (3) to carry out land registration with the aim of providing legal protection for land rights holders.

The Certificate of Property Rights as proof of legal ownership provides authority for the holder to carry out legal acts related to the land. One of the rights owned by the holder of the ownership certificate is to pledge the land certificate, for example by pledging the land certificate to the bank for the purpose of taking funds by being burdened with dependent rights.<sup>1</sup> In this case, the problem is that if the object of the guarantee of the right of dependency disappears as a result of a natural disaster such as an earthquake or landslide that causes the collateralized land to be destroyed, this problem will certainly have legal consequences.<sup>2</sup>

The destruction of land objects subject to dependent rights is not regulated in the UUPA or in Law Number 4 of 1996 concerning Land Dependent Rights and Objects Related to Land, hereinafter referred to as the UUHT. This is a problem in itself, where the position of the right of dependency is not clear legally, even though the Certificate of Dependency Rights has executive legal force and is strong evidence of the holder of the right of dependency. In addition, with the destruction of the object of guarantee of the right of guarantee, legal protection for the parties becomes uncertain because it is not regulated precisely in the UUPA or the Law on the Rights of Dependents. Therefore, it is necessary to guarantee certainty and legal protection of land rights for landowners and debtors affected by a natural disaster event.

Based on the description above, the author is interested in writing this problem with the title "The Legal Strength of the Certificate of Dependent Rights in the Event of the Destruction of the Object of Dependent Rights Due to Natural Disasters". With the aim of knowing how the legal force of the certificate of dependency rights in the event of the destruction of objects due to natural disasters.

## Research Method

This research uses a normative type of research, where the type of research only focuses on library *research* based on secondary data such as laws and regulations, court

<sup>1</sup> Ariel Doni Dharmawan and Maryanto Maryanto, "The Legal Force of the Certificate of Dependent Rights in the Event of the Destruction of the Object of the Right of Dependents Due to Natural Disasters in Grobogan Regency," *Journal of Deeds* 5, no. 1 (March 6, 2018): 167–78, <https://doi.org/10.30659/akta.v5i1.2545>.

<sup>2</sup> Dikha Anugrah, et al, "Regulation of physical data on land destroyed by natural disasters," *UNIFIKASI : Jurnal Ilmu Hukum*, 10(2), 124-135. <https://doi.org/10.25134/unifikasi.v10i2.6144>

decisions, legal theories, legal principles, legal principles and can be in the form of scientific works by legal scholars (doctrines).<sup>3</sup> The researcher conducted an assessment of laws and regulations, legal theories, and jurisprudence related to pretrial issues.<sup>4</sup>

The approach used is the legislative approach which is a type of approach that examines all laws and regulations that have a direct relationship with the legal issues to be studied.<sup>5</sup> In addition, a conceptual approach is also used in this research, where the type of conceptual approach proceeds from views and doctrines that give birth to legal understandings, legal concepts and legal principles that are relevant to the legal issues at hand.

The materials researched in normative law research are library materials or secondary data. Secondary data uses 3 (three) legal materials as sources of legal materials in normative research that is closely related to library *research*, such as primary legal materials in the form of legal materials that have binding force, including: Law Number 5 of 1960 Basic Regulations on Agrarian Principles and Law Number 4 of 1960 concerning Dependent Rights on Land and Land-related Objects. Furthermore, the secondary legal materials used in the form of materials include textbooks, research results, journals of legal articles, the internet and comments on court decisions.

The data collection technique is a search to find legal materials that are relevant to the issue at hand. The collection of legal materials used is a literature study sourced from books, journal articles, legal dictionaries and others and field studies by taking data on court decisions. Data analysis uses qualitative analysis, where the legal issues formulated in the research objectives, after the collection of legal materials carried out have been relevant, then enter the stage of processing data with an inventory of legal materials and then synchronized systematically by connecting variables that are in accordance with the hierarchy of laws and regulations which can ultimately draw conclusions in answering problems for research purposes.

## **Results and Discussion**

### **Legal Validity of a Mortgage Certificate When the Collateral is Destroyed by a Natural Disaster**

From the regulations in the Civil Code, it can be concluded that there are two types of guarantees, namely general guarantees and special guarantees. The general guarantee is born from the law, without the agreement held by the parties first, the creditors jointly obtain the general guarantee provided by the law. In this general guarantee, all the debtor's belongings are automatically collateral for creditors regardless of who first made the principal agreement. All creditors have the same rights to the object of the guarantee, but the payment of the debt is not divided equally from the proceeds of the sale of the goods. Meanwhile, special guarantees are only for certain creditors and the collateral is specifically designated, namely in the form of Pawns, Fiduciries, Dependent Rights, and Bank Guarantees.<sup>6</sup> Special guarantees are born

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<sup>3</sup> Irwansyah, *Legal Research: Choice of Article Writing Methods & Practices*, (Yogyakarta: Mirra Buana Media, 2020), 8.

<sup>4</sup> Peter Mahmud Marzuki, *Metode Penelitian*, (Jakarta: Prenada Media Group, 2014), 9.

<sup>5</sup> Irwansyah, *Op.Cit*, 8.

<sup>6</sup> Triamita Rahmawati, "Dependent Rights as a Guarantee of Legal Protection for Parties in Financing in Sharia Banking," *Notarium Officium Journal* 1, no. 2 (August 1, 2021): 380–92, <https://doi.org/10.20885/JON.vol1.iss2.art18>.

because of the existence of special agreements made by creditors and debtors which can be in the form of material guarantees or individual guarantees.

As a material right, it is proven that the Right of Dependency contains the principle of *droit de preference*, the principle of *droit de suite*, the principle of priority. The Right of Dependency by its nature can also be used as an *accessoir* agreement, which is intended to be an additional agreement as stipulated in Article 10 paragraph (1) of the UUHT, and cannot be divided (*Ondeelbaarheid*) or cannot be separated (*Onsplitsbaarheid*) which means that the Right of Dependency burdens the object of the Right of Dependency and every part of it. So that if part of the debt guaranteed by the Right of Dependency has been repaid, it does not mean that part of the object of the Right of Dependency has been freed from the burden of the Right of Dependency, but the Right of Dependency still burdens the entire object of the Right of Dependency for the remaining debt that has not been repaid, therefore the repayment of part of the debt in question does not cause the release of part of the object of the Right of Dependency.

This indivisible nature has been regulated in Article 2 paragraph (1) of the UUHT, but it can be deviated as long as the matter concerned is expressly agreed upon by the parties as stated in the APHT. The divergence of this nature has also been regulated in the Explanation of Article 2 paragraph (2) of the UUHT.<sup>7</sup>

The object of the guarantee of the Right of Dependency is charged to the right to land and objects related to land as stipulated in Article 4 paragraph (1) and paragraph (4) of the UUHT. The subject of the Right of Dependency is an individual or legal entity that has the authority to carry out legal acts against the object of the Right of Dependency as stipulated in Article 8 of the Law.

Article 1178 of the Civil Code regulates the provisions on execution parate has been adopted in Article 6 of the Law which states that, if the debtor injures the promise, the object of the right of dependency can be sold by the creditor on its own power through a public auction according to the procedures specified in the laws and regulations for the repayment of its receivables from the proceeds of the sale.<sup>8</sup> Expecting to get the highest price, this method of public auction is used. From the proceeds of the sale of the object of the right of dependency, the creditor may only take as much as possible of the receivable's repayment value, the rest becomes the right of the grantor of the right of dependency.

Based on the provisions of Article 20 paragraph (1) of the UUHT has been determined that: The implementation of the execution parate can be carried out by: a. Based on the provisions of Article 6 of the UUHT which gives the creditor the right to always be the first holder of the Right of Dependency to sell the object of the Right of Dependency over his own power through a public auction. b. Based on the provisions of Article 20 paragraph (2) which regulates the sale of the object of the right of dependency through the sale of the hand based on the agreement of the giver and the holder of the right of dependency c. Based on the provisions of Article 14 paragraph (2) which regulates the sale of the object of the right of dependency by using the executive title of the certificate of the right of dependency.

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<sup>7</sup> Angela Melani Widjaja, "Imposition Of Dependent Rights On Land And Objects That Will Exist In The Form Of Buildings," *Jurist-Diction* 2, no. 1 (March 4, 2019): 47, <https://doi.org/10.20473/jd.v2i1.12097>.

<sup>8</sup> Lydia Kurnia Putri Rosari, Imam Nur Koeswahyono, and Diah Aju Wisnuwardhani, "Juridical implications of parate execution of the object of dependent rights," *Journal of Legal Horizon* 13, no. 1 (April 22, 2022): 68–77, <https://doi.org/10.26905/idjch.v13i1.5189>.

The destruction of the object of the right of dependency has a great impact on the legal force of the right of dependency certificate, this is because the object (land) bound by the right of dependency has been destroyed.<sup>9</sup> The legal force of the certificate of right of dependency can be seen from the validity of the certificate of right of dependency itself, where the validity or not of a certificate of right of dependency is seen due to the fulfillment of the conditions and procedures for granting the right of dependency contained in Chapter IV of the UUHT.<sup>10</sup> If the provisions according to Chapter IV of the Law have been fulfilled, then the certificate of dependent rights will have permanent and executive legal force and is valid. In this case, the Law has not regulated the position of the certificate of dependent rights whose objects were destroyed due to natural disasters.

Based on the provisions of Article 18 paragraph (1) letter d of the Law,<sup>11</sup> it can be interpreted in depth that the Law formulates one of the factors that can abolish the right of dependency is the abolition of the right to land that is burdened with the right of dependency, so the destruction of all land that is the object of the right of dependency due to an event beyond the wishes of the debtor and creditor, namely a natural disaster that results in the deletion/invalidity of the certificate of right of dependency on the object or null and void. This is because the Deed of Grant of Dependent Rights (APHT) as the basis for the issuance of a certificate of dependent rights is null and void because the objective conditions for the validity of the agreement are not met, namely a certain matter in accordance with the provisions of Article 1320 of the Civil Code.<sup>12</sup> Therefore, the abolition of land rights results in the right of dependency being deleted and/or lost.<sup>13</sup>

According to Article 22 of the UUHT after the right of dependency is abolished, the Land Office crosses out the record of the right of dependency on the land evidence and its certificate. The certificate of the right of dependency concerned was withdrawn and together with the book of the right of dependency was declared invalid by the land office. The crossing out because there is a roya is carried out by recording the deletion of the dependent rights concerned, namely on the land book and the certificate of the dependent rights concerned.<sup>14</sup>

In the destruction of the object of the right of dependency has consequences for both parties, for the recipient of the right of dependency/debtor must continue to pay off his obligations to the creditor until it is completed even though the pledged land has been destroyed due to natural disasters.<sup>15</sup> The abolition of the right of dependency does not result in the loss of the debtor's obligation to pay off his obligations to creditors. These obligations

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<sup>9</sup> James Olabode Bamidele Rotimi and Suzanne Wilkinson, "Improving environmental management legislation to facilitate post-disaster reconstruction," *International Journal of Disaster Resilience in the Built Environment*, Vol. 5 No. 1 (2014), 23-37. <https://doi.org/10.1108/ijdrbe-09-2011-0034>

<sup>10</sup> Dharmawan and Maryanto, "The Legal Force of the Certificate of Dependent Rights in the Event of the Destruction of the Object of the Right of Dependents Due to Natural Disasters in Grobogan Regency."

<sup>11</sup> "Law No. 4 of 1996," Regulatory Database | JDIH BPK, accessed October 11, 2023, <http://peraturan.bpk.go.id/Details/46093/uu-no-4-tahun-1996>.

<sup>12</sup> Reza Nur Amrin et al., "Legal Status of Land Rights Affected by Natural Disasters," *Agrarian Shoots* 5, no. 1 (February 16, 2022): 65-76, <https://doi.org/10.31292/jta.v5i1.168>.

<sup>13</sup> Dian Dewi Khasanah & Alfons Alfons, "Juridical Analysis of the Consequences of the Destruction of Guarantee Objects Attached to Dependent Rights Due to Natural Disasters" (2021) 1:2 *Widya Bhumi* 149-159.

<sup>14</sup> Dharmawan and Maryanto, "The Legal Force of the Certificate of Dependent Rights in the Event of the Destruction of the Object of the Right of Dependents Due to Natural Disasters in Grobogan Regency."

<sup>15</sup> Hirwansyah and Jesse Heber Ambuwaru, "Legal protection for creditors regarding default and unilateral transfer of fiduciary guarantee vehicles based on the principle of justice," *Journal of World Science* Vol. 2 No. 1 (2023), 32-45. <https://doi.org/10.58344/jws.v2i1.197e>



must still be carried out in accordance with the credit agreement which is the basis for the birth of the dependent right and a re-agreement is required considering that the object of the guarantee in the agreement has been destroyed and resulting in nullity by law. For creditors, this condition is also equally unfavorable, where the creditor has fulfilled his obligations to the debtor but instead loses the object that is used as collateral to be charged with dependent rights.

If it is related to the legal force of the certificate of dependent rights whose object was destroyed due to a natural disaster, then based on the provisions of the terms of the agreement, namely the object of the dependent right in the form of land that has been completely destroyed due to a natural disaster, then the certificate of dependent rights does not meet one of the conditions of the validity of the agreement so that the certificate of dependent rights is null and void (*neitigbaarheid*). The executory power of the certificate of dependent rights whose entire object is destroyed due to a natural disaster is deleted, as formulated in Article 18 paragraph (1) of the UUHT. Because the UUHT has not regulated in detail the legal force of the certificate of dependent rights whose object was destroyed due to natural disasters, it can refer to the provisions of the UUPA and/or the Civil Code.

### **Legal Protection for Mortgage Holders When Collateral is Destroyed by Natural Disasters**

Every legal relationship gives rise to rights and obligations. In legal relationships, there are rights and obligations of one party facing the rights and obligations of the other. One form of legal relationship made by the parties is outlined in the agreement. An agreement is an agreement made by the parties who make the agreement. The parties agreed to bind themselves to each other, either to give something, do something/not do something.

Of course, in the series of promises, the rights and obligations of each party are summarized and these promises must be kept. While some of them have broken their promises, of course causing losses for other parties who have entered into agreements.<sup>16</sup> To ensure the fulfillment of obligations arising from a legal agreement, it is necessary to have a guarantee that can be valued with money.

Dependent Rights which is an attachment in terms of crediting which is included in the regulatory guarantee, namely a guarantee institution that has been regulated and has received recognition in laws and regulations. The institution of guarantee of the right of dependency must be subject to the provisions in Law Number 4 of 1996 concerning the Right of Dependency on Land and Objects related to Land (hereinafter referred to as the Law of Origin).<sup>17</sup> According to Article 1 paragraph 1 of the UUHT, the right of dependency is a security right charged to the right to land as referred to in Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (hereinafter referred to as the UUPA), following or not following other objects that are one unit with the land, for the repayment of certain debts, which gives priority to certain creditors over other creditors.

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<sup>16</sup> Hirsanuddin Hirsanuddin and Sudiarto Sudiarto, "Legal Protection for Parties (Creditors and Debtors) through Parate Executie Object of Dependent Rights," *IUS Journal of Law and Justice Studies* 9, no. 1 (April 26, 2021): 253–67, <https://doi.org/10.29303/ius.v9i1.890>.

<sup>17</sup> Nur Asmidah Nasution and Dikko Ammar, "Juridical Review of the Effect of the Implementation of Dependent Rights on Land Rights Guarantee Institutions," *Journal of Smart Law (JSH)* 1, no. 2 (January 30, 2023): 244–352, <https://doi.org/10.55299/jsh.v1i2.288>.

The UUHT aims to provide a foundation for the enactment of a strong Dependent Rights institution, which among other things affirms or straightens out perceptions that were not appropriate in the past. The affirmation/straightening regarding some of these issues requires a change in the perception and attitude of all parties related to the implementation of this Dependent Right. The UUHT is an effort to unify the guarantee legal institution. This law gives the creditor of the First Right of Dependency the right to sell the object of the Right of Dependency on its own power if the debtor is injured in the promise (default) to be executed through a short and simple process, which can basically be done by auction and not through fiat execution from the court considering that the sale based on article 6 of the Law on the Right of Dependency is an act of implementing the agreement.

In the case of the destruction of the object of the right of dependency, of course, it has an impact on the creditor as the holder of the right of dependency and the debtor as the recipient of the right of dependency. For this reason, legal protection from existing provisions is needed. Preventive legal protection for creditors and debtors can be carried out in various ways.<sup>18</sup> First, legal protection that can be done is by making a Deed of Dependent Rights by PPAT to minimize risks and provide protection to creditors. According to Article 10 paragraph (1) of the UUHT, the beginning of the stage of granting the right of dependency is preceded by a promise to provide the right of dependency as a guarantee for the repayment of certain debts, which is outlined in the debt agreement is an inseparable part.<sup>19</sup>

Second, by providing insurance protection for the object of dependent rights. To insure the object of the dependent right, a loss coverage agreement contained in a deed is bolted, namely the policy. The policy legally creates an obligation for the guarantor to the creditor in the event of an event that results in the destruction of the object of the right of dependency as a repayment of the debtor's debt.<sup>20</sup> Repressive legal protection for creditors is by initiating insurance claims to creditors for the destruction of the object of dependent rights that are collateral for the debtor. And for debtors, repressive protection is by paying the remaining claim money after deducting the debtor's credit to creditors.<sup>21</sup>

Finally, with the addition of clauses or promises. There needs to be an additional clause on the destruction of the object of the right of dependency due to natural disasters and its procedures. So that if in practice there is a case such as the destruction of an object that is burdened with dependent rights, there is more protection. So that there is a strong enough legal force in the signatories on the material in the SU (General Conditions) formula that has been sworn by the Notary or PPAT.<sup>22</sup> With some of these legal provisions, it can reduce the risk of debtors defaulting on promises in carrying out their obligations. By implementing the principle of prudence, creditors and debtors can minimize existing losses.

## **Conclusion**

Based on the results of the discussion above, the following conclusions can be drawn:

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<sup>18</sup> Amrin et al., "Legal Status of Land Rights Affected by Natural Disasters."

<sup>19</sup> Dharmawan and Maryanto, "The Legal Force of the Certificate of Dependent Rights in the Event of the Destruction of the Object of the Right of Dependents Due to Natural Disasters in Grobogan Regency."

<sup>20</sup> *Dharmawan and Maryanto.*

<sup>21</sup> Amrin et al., "Legal Status of Land Rights Affected by Natural Disasters."

<sup>22</sup> Dharmawan and Maryanto, "The Legal Force of the Certificate of Dependent Rights in the Event of the Destruction of the Object of the Right of Dependents Due to Natural Disasters in Grobogan Regency."

First, the destruction of the object of the guarantee of the right of dependency because natural disasters are a condition of force majeure or overmacht resulting in the legal force of the certificate of the right of dependency to be deleted or lost.

Second, the destruction of the guarantee of dependent rights does not eliminate the debtor's obligations to creditors. However, it is necessary to make a new agreement considering that the object of the guarantee has been destroyed and the agreement on the encumbrance of the dependent rights becomes null and void because it does not meet the conditions for the validity of the agreement.

Suggestions that can be taken from this research include the addition of clauses to the principal agreement. So that the parties do not feel disadvantaged if the object of the guarantee is destroyed in the event of a natural disaster in the future.

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### **Legislation**

Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land  
Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA)