



Legal Analysis of Guarantee of Ownership Certificates by Third Parties Without the Owner's Permission Between Legal Certainty and Protection of Ownership Rights

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Abstract: The misuse of land title certificates by third parties through fraudulent schemes poses a serious threat to legal certainty in Indonesian land law. The primary issue addressed in this research is the increasing practice of pledging land certificates to cooperatives by unauthorized parties under the guise of sale mediation. This study aims to analyze the legal standing of unauthorized pledging and the synchronization of criminal sanctions regarding the validity of authentic mortgage deeds. The research employs a normative legal method with a statutory approach and a case approach. The findings indicate that pledging a certificate without the owner's consent is an unlawful act characterized by a defect of will and lack of subjective authority, rendering the Deed of Granting Mortgage Rights (APHT) voidable. Criminally, such actions fulfill the elements of fraud and forgery, which, based on the principle of *fraus omnia corrumpit*, can invalidate the security's executorial power. Cooperatives cannot be categorized as good-faith creditors if they are proven negligent in applying the prudent principle. This research recommends the integration of biometric verification systems in the mortgage registration process to protect the rights of original owners.

Key Words: Cooperative; Fraud; Good Faith; Land Certificate; Mortgage Rights

Abstrak: Penyalahgunaan sertifikat hak milik tanah oleh pihak ketiga melalui skema penipuan menimbulkan ancaman serius terhadap kepastian hukum dalam hukum tanah Indonesia. Isu utama yang dibahas dalam penelitian ini adalah meningkatnya praktik menggadaikan sertifikat tanah kepada koperasi oleh pihak yang tidak berwenang dengan kedok mediasi jual beli. Studi ini bertujuan untuk menganalisis kedudukan hukum dari penggadaian tanpa izin dan sinkronisasi sanksi pidana terkait dengan keabsahan akta gadai yang sah. Penelitian ini menggunakan metode hukum normatif dengan pendekatan hukum perundang-undangan dan pendekatan kasus. Temuan menunjukkan bahwa menggadaikan sertifikat tanpa persetujuan pemilik merupakan tindakan melawan hukum yang ditandai dengan cacat kehendak dan kurangnya kewenangan subyektif, sehingga Akta Pemberian Hak Gadai (APHT) dapat dibatalkan. Secara pidana, tindakan tersebut memenuhi unsur-unsur penipuan dan pemalsuan, yang berdasarkan prinsip *fraus omnia corrumpit*, dapat membatalkan kekuatan eksekusi jaminan. Koperasi tidak dapat dikategorikan sebagai kreditur beritikad baik jika terbukti lalai dalam menerapkan prinsip kehati-hatian. Penelitian ini merekomendasikan integrasi sistem verifikasi biometrik dalam proses pendaftaran hipotek untuk melindungi hak pemilik asli.

Kata kunci: Koperasi; Penipuan; Itikad Baik; Sertifikat Tanah; Hak Hipotek

Introduction

Land is a basic need for all individuals, including in Indonesia. Land is often referred to as the earth's surface or the earth's crust. Allah SWT created land as part of His blessings, as an environment where humans live, work, and reproduce. Therefore, land management requires wise and careful planning and organization(Hayati et al., 2024).

People can pawn their land assets to address problems when financial needs cannot be met without losing their property. After repaying the loan, the collateral can be reclaimed at a later date; this practice is commonly referred to as pawning(Anyufa et al., 2024). Pawning is defined as lending an asset to obtain a certain amount of money that can be reclaimed after a specified period. Article 1150 of the Indonesian Civil Code (KUHP) states that(Arpangi, 2022):

A pledge is a right acquired by a creditor over a movable object, which is transferred to him by the debtor or by another person on his behalf, and which authorizes the creditor to collect payment from the object with priority over other creditors, except for the costs of auctioning the object and costs incurred to secure it after the object is pawned, which costs must be prioritized.

Transactions involving land are common in society, particularly among farmers. Over time, demand for land ownership has increased due to its high value and benefits, leading to increased problems in the land sector and fraudulent practices in land transactions (Rashid et al., 2025).

Many still engage in fraudulent buying and selling practices, often without knowledge of whether they are permitted(Levi, 2017). Therefore, it is not surprising that buying and selling practices often violate the rules established by law, namely those that can harm one of the parties. One example is the practice of buying and selling land without the knowledge and consent of the landowner(Petrescu et al., 2021).

From a legal perspective, land holds a unique position in Indonesian law, as stipulated in Article 33 paragraph (3) of the 1945 Constitution and technically outlined in Law No. 5 of 1960 (UUPA)(Isra, 2021). Land is not simply an economic commodity, but an asset with a social function. However, in modern

economic practices, land is often the subject of disputes due to the misuse of ownership documents. The phenomenon of "borrowing a name" or "borrowing a certificate" under the guise of sales mediation is a legal loophole often exploited by white-collar criminals to gain financial gain through banking institutions or cooperatives.

The main issue in this research is the conflict between protection for legitimate land owners (original owners) and protection for good faith creditors. Previous research by Salma et al. (2024) emphasized the administrative aspects of land registration, while Arianto, (2025) focused on the responsibilities of notaries. However, this research offers a new perspective by analyzing the intersection between the Prudential Principle doctrine in cooperatives and the criminal liability of third parties who abuse trust. The novelty of this article lies in its analysis of the tolerance limits of "good faith" for cooperatives in verifying the presence of original owners, as per the latest regulations in the Minister of ATR/BPN Regulation.

Referring to Gustav Radbruch's theory, the law must fulfill three basic values: justice, utility, and certainty. In cases of unauthorized guarantees, legal certainty is often sacrificed for ease of access to credit (Kristhy et al, 2023). This creates instability in Indonesia's land law system, which adheres to a system of negative publicity with positive elements (Yunaitis and Sri, 2024).

Several previous studies have examined similar themes from various perspectives. Salma research emphasizes the administrative aspects of land registration and the role of the Land Office in preventing overlapping certificates. The strength of this research is its success in mapping bureaucratic gaps in the digital land registration system. However, its weakness lies in its overly administrative focus, which under-analyzes civil and criminal liability when certificates are already used as collateral by non-bank institutions such as cooperatives (Yasa et al. 2025).

Next, Arianto, (2025) focused his study on the notary's responsibility in making a deed of granting mortgage rights (APHT) based on false documents. Its strength is its in-depth analysis of the code of ethics and sanctions for land deed

officials. However, this study has a weakness in that it does not offer concrete solutions for landowners whose certificates are pawned privately (conventional/sharia pawning) without involving a notary, as is often the case in savings and loan cooperatives.

Finally, Rahman et al., (2025) discussed legal protection for land rights holders in shadow sale and purchase disputes. This study has the advantage of analyzing the typology of good faith from the buyer's perspective. However, its weakness is that it does not specifically analyze the intersection between the obligation for physical verification by creditors under the latest regulations of the Minister of ATR/BPN and the risk of loss suffered by the original owner due to abuse of trust.

The difference and advantage of this research compared to previous studies lies in its interdisciplinary analysis, which connects civil law doctrine regarding defects of will (consensualism) with modern cooperative standard operating procedures (SOPs). This research addresses the gap in previous research by not only focusing on administrative responsibility but also analyzing the limits of tolerance for "good faith" for cooperatives in verifying the existence of the original owner, as stipulated in the latest Regulation of the Minister of ATR/BPN. This is crucial because cooperatives are often deemed to be in good faith simply because they hold a physical certificate, when in fact there is a legal defect in its transfer.

The purpose of this research is to analyze the validity of land certificate guarantee agreements made without the consent of the legal owner and to determine legal protection schemes and solutions for landowners to regain their rights without having to bear the burden of debt incurred by third parties.

This case involves a land certificate being borrowed by another party under the pretext of being offered for sale. However, the certificate is actually pawned to a cooperative without the knowledge of the original owner. The cooperative then collects the debt from the original owner, even though the original owner was unaware that the certificate was pawned to the cooperative. What is the law that applies to cooperatives? And what is the solution to this case?

Method

This research is a normative (doctrinal) legal research. Normative legal research views law as a closed system of norms, consisting of principles, norms, rules, and court decisions. This method aims to determine the truth of coherence, namely whether the regulations regarding unauthorized land guarantees are in practice aligned with the principles of agrarian law and guarantee law applicable in Indonesia.

In comprehensively analyzing this legal issue, this study utilizes several key approaches integrated within a normative legal framework. The initial step is a statutory approach, examining all relevant regulations on the issue of unlawful guarantees, including the Civil Code (KUHP), the Basic Agrarian Law (UUPA), the Mortgage Law (UUHT), and provisions in the Criminal Code (KUHP). In addition to relying on formal regulations, this study is also strengthened by a conceptual approach that refers to legal doctrines and expert opinions regarding property rights protection, the doctrine of good faith, and the application of the prudential principle in financial institutions to test the validity of a guarantee agreement. As a complement to observing the application of norms in judicial reality, a case approach is also used through analysis of the Supreme Court's jurisprudence which has a similar case pattern, especially mortgage disputes arising from unlawful acts, in order to observe the consistency of judges' considerations in canceling legally flawed Mortgage Granting Deeds (APHT).

Sources of Legal Materials

This research employs a normative or doctrinal legal research method, focusing on the analysis of written legal rules and norms without involving primary data from field observations or interviews. The primary data sources in this study rely on authoritative primary legal materials, including Law Number 5 of 1960 concerning Basic Agrarian Regulations, Law Number 4 of 1996 concerning Mortgage Rights, as well as the Presidential Instruction and Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) governing electronic mortgage registration procedures.

To strengthen the analysis, secondary legal materials are also used to provide in-depth explanations of the primary materials, such as draft laws, legal research results in national and international scientific journals, textbooks by agrarian and civil law experts, and legal opinions from credible media outlets. Additionally, tertiary legal materials, such as legal dictionaries such as Black's Law Dictionary and encyclopedias, are used as supporting materials to provide guidance and clarify terminology. All legal materials are processed using a statute approach and a conceptual approach to address the legal issues raised.

Legal Material Collection and Processing Techniques

The legal material collection technique was conducted through library research. The author systematically inventoried laws and regulations and classified the literature based on its relevance to the problem formulation. The collected legal materials were then processed using a deductive system, drawing conclusions from general statements (statutory norms) to specific statements (cases of unauthorized guarantees).

Results and Discussion

Legal Status of Subjects in Security Agreements: Analysis of Defective Will and Lack of Authority

In the Indonesian security law system, the validity of a Mortgage is highly dependent on the validity of the principal agreement (credit agreement). Based on Article 1320 of the Civil Code, the requirements for a valid agreement include agreement, capacity, a specific matter, and a lawful cause (Eunico, 2025). In cases where a land certificate is pledged by a third party without the consent of the original owner, there is a serious violation of the subjective requirement, namely agreement (Saputra et al., 2024).

Doctrinally, handing over a certificate with the intent to "sell" and then misappropriating it as "pledged" constitutes a form of Fraudulent Misrepresentation (fraudulent misrepresentation). From a civil perspective, this constitutes a defective will (wilsgebrek). Article 8 paragraph (1) of Law No. 4 of 1996 concerning Mortgage Rights (UUHT) expressly states that the grantor of the Mortgage Right is the person or party authorized to take legal action against the

object(Renee, 2021). If the third party borrowing the certificate signs the APHT, they are acting as an unauthorized representative. Based on Nemo's theory of "Dat Quod Non Habet" (one cannot give what one does not possess), any transfer of rights or encumbrance of rights by an unauthorized party is invalid and voidable.

Regarding the legal standing of the subject in an unauthorized mortgage, the mortgage must begin with the premise that the mortgage is an accessory security right. This means that the existence of the mortgage is entirely dependent on the validity of the principal agreement (debt). In civil law discourse, the validity of an agreement rests solely on Article 1320 of the Civil Code. However, in cases of misuse of a mortgage, there is a fundamental distortion of the "agreement" and "authority" aspects, which are often overlooked by creditors for the sake of administrative formalities (Pohan, 2022).

Theoretically, the actions of a third party who pledges another's mortgage without authorization constitutes an abuse of rights (Misbruik van Recht) and a defect in will (Wilsgebrek). The original owner of the certificate provides the document on the basis of trust for a specific purpose (e.g., sales mediation), which in civil law is referred to as a legal act based on good faith(Adriansah, 2018). When this purpose is diverted to guarantee a debt, what is known as Fraudulent Misrepresentation occurs. This argument is supported by Subekti's opinion, which states that agreements born of misdirection or deception result in the agreement losing its moral and legal basis, and therefore should be voidable.

Furthermore, an analysis of Article 8 paragraph (1) of Law No. 4 of 1996 (UUHT) provides rigid limitations regarding who has the right to grant a Mortgage Right, namely the legal owner or an authorized party. Argumentatively, if a creditor (cooperative) accepts collateral from a party who is not the owner without a Power of Attorney to Encumber Mortgage Rights (SKMHT) authentically drawn up before a notary, then the subject's legal authority is automatically ineligible.

From the perspective of the principle of Nemo Dat Quod Non Habet, it is emphasized that no one can transfer rights greater than those they hold. If the perpetrator (certificate borrower) does not have ownership rights (ownership) and

does not have the right to alienate (*jus disponendi*), then their signing of the Deed of Granting Mortgage Rights (APHT) is legally flawed(Nurkholis, 2024). This argument challenges banking/cooperative practices that often rely solely on "physical control" of the certificate as an indicator of authority. Physical control of the certificate should not be equated with ownership of rights. A certificate is merely evidence, while the rights are vested in the person registered in the land register.

This lack of authority has implications for the APHT's status as an authentic deed. Even if the APHT is drawn up before a Land Deed Official (PPAT), its evidentiary force will be undermined if it can be proven that the owner's signature was forged or their identity manipulated(Rianto, and Amad, 2022). Argumentatively, a PPAT who fails to physically verify the presence of the original owner violates the principle of due diligence in public office(Ajie, 2025). Therefore, the resulting losses are not only the responsibility of the criminal but also undermine the creditor's right of execution.

In the context of property rights protection, the original owner must be viewed as the holder of Absolute Rights (*Droit Reel*) who must be protected from arbitrary actions by third parties. Protection of honest landowners should not be overridden by the argument of "economic protection of creditors" if the creditor fails to conduct due diligence(Kholifah et al., 2022). Therefore, pledging a certificate without the owner's permission is a legal anomaly that systematically invalidates the entire mortgage encumbrance process, from the credit agreement to the issuance of the Mortgage Certificate.

In an effort to deepen this analysis, analogies can be drawn from various legal precedents in Indonesia, such as Supreme Court Decision No. 1512 K/Pdt/2017 and similar decisions at the District Court level dealing with land rights disputes. A common case pattern involves a landowner (A) lending a certificate to a third party (B) for tax administration purposes or sales mediation. However, unbeknownst to the owner, the third party falsifies the identity or forges a Power of Attorney to Encumber the Mortgage (SKMHT) to pledge the land to a cooperative (C). In this situation, the court is often faced with a dichotomy of

legal protection: protecting the injured original owner or protecting the cooperative as a creditor claiming to have acted in good faith.

The analysis in this study confirms that if the element of falsification of authentic documents is legally proven under Articles 263 and 264 of the Criminal Code, then this criminal aspect becomes key evidence in a civil case. Based on the principle of *Fraus Omnia Corruptit*, which means that fraud destroys everything, any legal action based on trickery and deception should not receive legal protection, even if it involves a third party(Permadi, 2022). Through the case approach established in the research methodology, it is clear how deception in the control of land certificates transformed into a complex guarantee dispute(Tarigan, 2025). The legal construction developed in this case shows that the issue is not merely a matter of ordinary debt, but a form of legal misrepresentation that damages the integrity of the land registration system in Indonesia(Dewanto, 2020).

Deception as a Formal and Material Defect. Argumentatively, the deception carried out by a third party (the certificate borrower) under the pretext of "sales mediation" constitutes pre-contractual fraud. From the perspective of the normative research method used by the author, this action violates the principle of good faith, which should exist even before the guarantee contract is concluded. When a certificate changes hands due to deception, legally, there has never been a legitimate transfer of rights (leverage) for the purpose of guarantee. If we examine it through the Statute Approach, Article 1328 of the Civil Code explicitly states that fraud is grounds for revoking an agreement. The sharp argument is: If the initial agreement to hand over the certificate between the original owner and the perpetrator is based on fraud, then all subsequent legal actions including the issuance of a SKMHT (Power of Attorney to Encumber Mortgage Rights) and APHT (Authorization of Mortgage Rights) become a "congenital defect" that cannot be cured (legal defect).

Analysis of Criminal Liability as a Basis for Cancellation of Civil Law. Using a qualitative-prescriptive analysis method, this study argues that the presence of a criminal element in the possession of the certificate (Articles 378

and 372 of the Criminal Code) automatically undermines the validity of the legal cause in the security agreement. In many disputes, creditors often argue that the criminal matter between the owner and perpetrator is a separate matter that does not invalidate the mortgage right.

However, from an argumentative perspective, this view is a legal fallacy. Based on the principle of *Ex Turpi Causa Non Oritur Actio* (no right can arise from a dirty/illegal basis), a mortgage cannot be established on a criminal basis. If the process of acquiring a mortgage begins with a forged signature or identity fraud, then, as a matter of law, the mortgage is legally ineffective. This aligns with the author's case study approach to Supreme Court jurisprudence, which consistently rules in favor of the original owner when proven to have forged authentic documents.

Maladministration and Failure of the Principle of Prudence. Furthermore, this legal construction reveals administrative malpractice by individuals or negligence on the part of Land Deed Officials (PPAT). Argumentatively, PPATs should function as "gatekeepers" who verify the material truth of legal subjects (Darwin, 2020). In this case study, a compelling argument emerges that if a third party is able to pledge another person's certificate, there has been negligence in the face-to-face verification procedure required by the Notary/PPAT law.

The absence of the original owner from signing the APHT is not merely a procedural violation, but rather a violation of the owner's sovereignty over their assets. Using a Conceptual Approach, the author argues that ownership sovereignty should not be defeated by the "bureaucratic efficiency" of financial institutions. Cooperatives that accept guarantees without factual verification of the owner named on the certificate implicitly accept the legal risk of the guarantee's inadequacy (Umar, 2021).

Ratio Decidendi: Justice Over Administrative Certainty. To conclude this case study, the author's prescriptive argument states that in the conflict between administrative certainty (a certificate already registered in the cooperative's name) and justice for the original owner, the judge must prioritize justice. Land certificates are not mere paper, but rather a manifestation of the state's protection

of its citizens. If the state, through the land office, maintains the registration of mortgage rights that arose from deception, then the state indirectly legitimizes the practice of land mafia.

Based on the Principle of *Fraus Omnia Corruptit*, criminally proven fraud must invalidate all civil rights arising from it (Widjaja, 2021). Therefore, the cancellation of APHT and the deletion of mortgage records (*roya*) in the land register is the only legal way out to restore the rights of the original owner in accordance with substantive justice values.

Conclusion

This study concludes that a land certificate guarantee agreement made by a third party without the permission of the legal owner is invalid and can be canceled because it contains a flawed will and lacks the authority of the legal subject as required by Article 1320 of the Civil Code and Article 8 of the UUHT. The novelty of this study confirms that the status of "good faith" of a cooperative is legally void if it is proven to have neglected the principle of prudence, especially regarding the obligation to verify the physical and identity of the original owner according to the latest regulation of the Minister of ATR/BPN. Based on the principle of *fraus omnia corruptit*, any form of document falsification in the credit process destroys the executorial power of the guarantee. As a legal solution, the original owner can file a lawsuit for Unlawful Acts to cancel the APHT and report criminal acts of embezzlement or falsification to strengthen evidence in civil court. The main recommendations of this study are the need to integrate a biometric verification system in electronic mortgage registration and strengthen the SOP for factual verification in cooperative institutions to minimize land mafia practices. The author would like to thank all parties who have provided data and literature support so that this study can contribute to the stability of land law in Indonesia.

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