

Legality of Execution of Collateral Based on Electronic Mortgage Certificate in Bank Credit Agreement

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Abstract

This study aims to analyze the legality of the electronic certificate of mortgage in the context of executing the guarantee if the debtor defaults or defaults if there is a data error in the bank credit agreement. The method used in this research is the literature method with reference to the normative juridical method, namely using data sourced from secondary legal materials, namely from the prevailing laws and regulations in Indonesia. The regulations used as material are the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 3 of 2019 concerning Electronically Integrated Mortgage Services. The research results show that the certificate generated from the electronic mortgage registration system has executorial power because the mortgage certificate contains the sentence for Justice Based on the One Godhead. The sentence shows that the mortgage certificate can be used as a tool for executing collateral if the debtor defaults or defaults to pay without a court order. Sentences for Justice based on the One Godhead are equated as a judge's decision in a court. If there is a data error in the certificate and no changes are made, the execution cannot be carried out and the certificate can be canceled and the agreement in guarantee can also be canceled.

Keywords

legality, mortgage rights, electronics, execution, collateral items



I. Introduction

Legality in an act of law is the most important because if there is no legality then the act committed is an illegal act. Based on this, of course the registration of mortgage rights carried out required the existence of legality. Legality must be in the form of laws and regulations issued by authorized institutions (Chen, 2015). With the existence of legality, it will provide legal certainty and protection for the consequences of acts committed in registering mortgage rights. Legality in the case of mortgage rights is regulated by Law Number 4 of 1996 concerning Mortgage Rights and Land Related Items.

Mortgage is a guarantee provided by a debtor to a creditor in a debt agreement made by the Bank. In providing credit, banks provide an assessment that can be in the form of analysis. A good analysis will produce the right decision (Purba & Sipahutar, 2020). Debts due between creditors and debtors are accompanied by collateral in the form of objects or assets from the debtor such as a house (Abduh & Razak, 2011). The guarantee given by the debtor to the creditor in the form of immovable property in this case Land or Building is a gift from the debtor / consumer (Amen, 2019). Land or building according to the Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights states that land and buildings are included in the object of Underwriting Guarantee. Mortgage is an interaction between a financier (creditor) and a borrower (debtor) with an agreement between them, between the framework of the agreement determined by the laws and

regulations relating to debt and receivables. The debt receivable agreement is the principal agreement that will be followed by a follow-up agreement in this case the agreement to charge mortgages (Scanlon et al., 2012). The follow-up agreement if agreed by both parties with the surrender of the surrender of collateral as a form of debt repayment guarantee from the debtor (M.Bahsan, 2017).

In practice, objects that can be used as collateral for credit agreements are objects in the form of land. Land has a very high economic value, making it very easy to sell, has legal and legal ownership rights, and cannot be misused against non-owners. So that land is an object that is used as mortgage rights will give a very special position to creditors (Perangin, 1991). Mortgage is a collateral right for objects in the form of land to be able to pay off debts that give a priority position. The position takes precedence, that is, especially with respect to certain creditors who first bind their dependents to other creditors (Sjahdeni, 1999).

Law Number 4 of 1996 concerning Mortgage Rights and Land Related Items (UUHT) promulgated on April 9, 1996 of 1996, With the enactment of these laws, since then all matters relating to mortgage rights over land is carried out according to UUHT provisions. Registration of mortgage is done through the land office or BPN.

Good land data and information management has an important role in realizing the goal of sustainable national development. This activity is an important part of realizing good governance (good governance). Good governance is one of the pillars supporting sustainable development, in addition to economic, environmental and social (Williamson, I., Enemark, S., Wallace, J. & A., 2010), so that in the management of data and information in the good land sector will support the realization of the goal of sustainable national development. The Government in carrying out its duties in the field of land, which includes the formulation and implementation of policies in the field of land registration, surveying, measurement and mapping as described in Presidential Regulation No. 20/2015, is the responsibility of the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (Ministry of ATR / BPN).

With current technological developments and simplifying the process and guaranteeing transparency in administrative activities, changes are needed. Changes in the process of registration of mortgage rights with the issuance of Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 3 of 2019 concerning Electronic Integrated Mortgage Rights Services. Changes in the registration process of mortgage rights is that the registration of mortgage rights can be done through an electronic system.

The policy on the registration system for mortgage rights based on the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 3 of 2019 concerning Electronic Integrated Mortgage Services states that electronic registration is a series of mortgage service service processes in the context of maintaining registration data held through an electronic system integrated. The effective electronic registration of mortgage rights system starts in 2020.

According to Article 14 paragraph (1) the Underwriting Rights Law states that as proof of the existence of mortgage of rights the land office issues a mortgage right certificate. The mortgage rights registration system prior to the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 3 of 2019 is done manually whereas after the issuance of the regulation of the Minister of Agrarian Affairs and Spatial Planning / Heads of the National Land Agency in 2019 the registration system of mortgage rights is carried out electronically. With the change in the registration system will certainly affect the legality of certificates issued by the Land Office because

the data about the state of the object is considered to be true as long as there is no request for improvement from the registrant so that the land office in this case is passive.

Certificate of mortgage rights as regulated in Article 14 paragraph (3) of the Mortgage Law, that the certificate of mortgage rights has the same executorial power as a court decision which has obtained permanent legal force and acts as a substitute for the *grosse acte Hypotheek* insofar as it is related to land rights. Mortgage certificate functions as a tool to execute if the debtor defaults or fails to pay, default is a risk that must be faced by banks as creditors (Rachman et al., 2019). This is as regulated in Article 1 number (1) of the Mortgage Law that the security rights are collateral rights which are charged to the following land rights or not together with other objects that form an integral part of the land, to pay off certain debts, which give preferential position to certain creditors to other creditors.

Execution of Mortgage Rights on land and objects related to land is one way for creditors to obtain legal protection. Execution of Mortgage Rights on land and objects related to the land can really provide a guarantee to the creditor to recover his receivables if the Debtor fails to promise / default (Ngadenan, 2010). Based on this it is certainly interesting to do in-depth research related to mortgage rights certificates that are registered electronically. The legality of the mortgage certificate to execute the guarantee is very important if there is a data error and does not make changes. This will result in legal consequences for both creditors and debtors.

II. Research Methods

This research is in the form of library research, namely research conducted using library materials to be studied and interpreted which are theoretical concerning principles, conceptions, doctrines and norms that live in society. The data used in this study are secondary data. Secondary data is research with the study of literature through a review of the legislation, literature, writings of legal experts, lecture material related to this research (Ridwan, 2004).

The secondary data used in this study are as follows:

- a) Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights and Land Related Objects;
- b) Republic of Indonesia Law Number 10 Year 1998 Concerning Banking
- c) Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 3 of 2019 concerning the application of Electronic Signatures;
- d) Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 3 of 2019 concerning Electronically Integrated Mortgage Services;
- e) Library books relating to Mortgage Rights and legality;
- f) Dictionaries (Legal, Banking and Language Dictionary);

Processing and analysis of data in this study was carried out with qualitative analysis methods, namely the process of analyzing data consisting of words that can be interpreted, namely data from research results in literature in written form and as soon as possible an analysis of research results (Nasution, 2013).

III. Result and Discussion

3.1 Land Information System in the context of registration of mortgage rights electronically

The development of information technology and its supporting infrastructure creates opportunities for the development of a more reliable, efficient and timely Land Information System (SIP) within the National Land Agency (BPN). The growth of information needs on land that is more accessible that is demanded by the public (policy recipients) and the government (policy makers) is increasing higher than before (Mustofa et al., 2018).

Based on the readiness of the electronic system developed by BPN and to keep abreast of the development and enactment of industry 4.0, through the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 3 of 2019 concerning Electronic Integrated Mortgage Rights Services which was ratified on May 27 2019, the Mortgage Rights service system uses an electronic system. The regulations include HT-el service types as follows:

- a. Registration of Mortgage Rights;
- b. Transfer of Mortgage Rights;
- c. Change in creditor names; and
- d. Abolition of Mortgage.

3.2 Basic Mortgage and Its Legality

In the case of a debt-receivable relationship arising from a debt-credit agreement or credit agreement, the agreement can be made domestically or internationally and the parties concerned may be individuals or foreign legal entities as long as the credit concerned is used for development purposes in the territory of the country Republic of Indonesia (Elucidation of Article 10 paragraph (1) of the LoGA). Credit agreements made involve many other elements such as Notaries / Land Deed Making Officials, assessment teams, insurance companies, as well as those who have the authority to record collateral as collateral in a credit agreement (Hartono, 2019).

Credit agreement in the form of credit will be followed by an agreement to hand over collateral. Collateral objects submitted in credit agreements with banks are generally in the form of fixed objects or land and buildings. Land / building based on the Basic Agrarian Law is charged with Mortgage Rights. Mortgage rights to reach the stage of fulfillment of the principle of publicity as mentioned above as one of the absolute elements of land rights that can be used as objects of Mortgage Rights, the first stage is the stage of granting mortgage (Rohendi, 2015). Mortgage rights granted are usually in the form of houses and land, exceptions to flats cannot be used as collateral for mortgage. So that an understanding of the security guarantee system to the community is needed (Joseph Andy Hartanto, 2019).

Regulations regarding mortgage rights in Indonesia as a basis for the enforcement and legality of a mortgage security guarantee institution are Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights and Land Related Objects. In Article 1 number (1), Underwriting Right, is a guarantee right which is imposed on the right to the following land or not other objects that are one unity with the land, to pay off certain debts, which gives a position preferably certain creditors over other creditors. Based on the contents of the Article it shows that the Underwriting Right is a special type of guarantee. The object of land rights that can be charged to the mortgage right are 1) Ownership Rights; 2) Cultivation Rights; and 3) Building Use Rights.

The purpose of granting or encumbering mortgage rights is in order to provide protection and legal certainty to all parties (especially creditors), and to fulfill the principle of publicity (Habib Adjie, 2018). Registration of mortgage rights is regulated in Article 13 to Article 14 of the Mortgage Law which reads the granting of mortgage rights must be registered at the land office. Registration of mortgage rights as regulated in Article 13 is based on Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of National Land Agency Number 3 of 2019 concerning Electronic Integrated Mortgage Rights Services. So at this time registration of mortgage is carried out electronically. In electronic registration, of course, it must fulfill its legality. The legality is needed in order to provide legal protection and certainty. Regarding electronic registration, there are certainly a number of things that need to be considered such as the data entered by the proposer / applicant. Such data will certainly affect the legality of the products issued by the land office on registration of mortgage rights.

In order to maintain the legality of certificates issued by BPN, the applicant is required to make a statement of the validity of the proposed data.

In the statement letter made by the applicant, it must be signed and stamped. As well as the validity and correctness of the documents submitted are in the applicant, and if there are document errors, based on Article 19 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 3 of 2019, that for errors in filling data, it is permissible to make corrections to mortgage certificate. And certificate of mortgage rights repair issued then the mortgage certificate that has been previously issued is no longer valid. The mortgage certificate issued is signed electronically by the authorized official and provides a Qrcode. Regulation or legality of electronic signatures is regulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of National Land Agency Number 3 of 2019 concerning the application of Electronic Signatures. Electronic Signature is a signature consisting of Electronic Information that is attached, associated or related to other Electronic Information that is used as a verification and authentication tool (Article 1 number (1)). The form of electronic mortgage rights certificates can be seen in Figure 1.

The form is a mortgage certificate issued by the Ministry of Agrarian and Spatial Planning / National Land Agency of the Republic of Indonesia. It is titled "FOR JUSTICE BASED ON ALGOMHTY QOD CERTIFICATE OF RIGHTS". The form includes fields for "Number", "Rating", "Mortgage Holder", and "Mortgage Holder (Credit Name)". A table at the bottom lists "No. BPN", "Rights Type", "Rights", "The value", and "Partial Value". A QR code is present on the right side. A legend on the right side explains the fields and QR code.

No. BPN	Rights Type	Rights	The value	Partial Value

Legend:

- 1) Random code
- 2) Edition according to service
- 3) Fill in the number 22.000
- 4) Proofing Number Certificate Entries, Expenses, Expenses
- 6) Proofing Number Deal
- 7) Proofing Date of Deal
- 8) Proofing PPAT name
- 9) Fill in Total MT Value with number
- 10) Fill in the Total Value MT with letters
- 11) Proofing Name Creditor
- 12) Proofing Position Creditor
- 13) Description of Other Objects
- 14) Include QRCode and Signature Electronic
- 15) Proofing Official The guarantee Answer
- 16) Other information is required

Figure 1. Example of mortgage

In addition to the mortgage right certificate issued by the National Land Agency of the Republic of Indonesia, records are also taken for the encumbrance of the mortgage. Record of loading of mortgage is attached to the mortgage certificate. The form of recording of mortgage can be seen in Figure 2.

MORTGAGE RIGHT		IN. ...	Creditor Name	QRCode
Number	Number		
Ranking	Date		
DEED		IN. ...		
PPAT name	Number		
Number	Date		
Date			

Figure 2. The form of recording the burden of mortgage

3.3 Execution of Mortgage Guarantee Objects

Debt receivables in a credit agreement requires an understanding of the prospective debtor about the provisions in the guarantee system. Understanding of the guarantee system of the public or prospective debtor must be good (Lee et al., 2019; Atkinson, Anthony B., 2011; Cardaci, 2018). This will affect the payment system for the credit they have. Failure to pay or default from the debtor will result in the auction of collateral (Nugroho, 2018; Jayanti et al., 2018). Because credit defaults can originate from within the bank or outside parties. According to Article 6 of the Mortgage Rights Act, if the debtor fails to promise, the first mortgage right holder has the right to sell the object of the mortgage right on his own authority through a public auction and to repay his debt from the proceeds of the sale (Suharno, 2003). Default is a risk of the Bank in providing credit, it can affect the performance of banks in Indonesia (Nur M Ridha Tarigan, 2020). To avoid default, it is necessary to have a strong organizational culture management system from the Bank as the goal of the company (Nur M Ridha Tarigan, 2020).

Pursuant to Article 13 of the Underwriting Right Act, the granting of the mortgage right must be registered at the land office. registration of mortgage rights at the land office so far is still a manual that is coming directly to the land office. The purpose of registering mortgage rights on land certificates is to make it easier for creditors to execute mortgage rights if the debtor defaults. This is because in the mortgage right certificate contains the command "FOR JUSTICE BASED ON ALMIGHTY GOD" that makes the mortgage right certificate has the same executorial power as a court decision that has obtained permanent legal force (Article 14 paragraph 2 of Law Number 4 Year 1996 concerning Mortgage Rights and Objects Related to Land) (Dianawati, Catur Budi, 2017).

With reference to Article 20 of the Mortgage Law, there are two possibilities that can be done by creditors if the debtor fails to promise, namely: 1) carrying out a parate of execution and 2) based on the executorial title contained in the mortgage certificate sold at a public auction. Auction of execution of mortgage rights can be done through an auction institution, namely the Office of State Assets and Auction Services (KPKNL) which is requested by the Mortgage Holder (Kelvin, 2018). The execution of the object of mortgage rights through the auction for reasons of breach of contract is not dependent on the maturity of the credit agreement. Article 6 of Law Number 4 of 1996 does not explain the factor of breach of contract, it only confirms that the breach of contract is the basis for holders of mortgage rights to carry out their rights to sell objects of mortgage rights. This was repeated again in the explanation of the article which said that if the debtor fails to promise, the mortgage right holder has the right to sell the object of the mortgage right on

his own authority, if in the Deed of Granting Mortgage Rights, such a clause is stated (Zaki, 2017). Debtors are said to do and do default or there is a bad credit if the credit is due. Against the debtor's debt has not been paid to the bank / creditor resulting in installment arrears. Installment arrears have exceeded 270 days or 9 months can be regarded as a bad credit. Debtors who carry out these acts are no longer able to pay off or repay their debts, both the principal debt and the interest debt, which is found from the results of operations that are capitalized by a credit facility, one of which is taken in a bank institution (S. Mantayborbir, 2002).

Execution of mortgage rights as collateral for a credit carried out with parate executions, executions with executorial titles, and sales below hand (Widjaja et al., 2018). Execution of the mortgage guarantee is the last step taken by the creditor as the recipient of the mortgage rights to the giver of the Mortgage / debtor if the breach of promise or default (Marnita, 2017). In connection with the mortgage right execution system can be seen in the following chart picture:

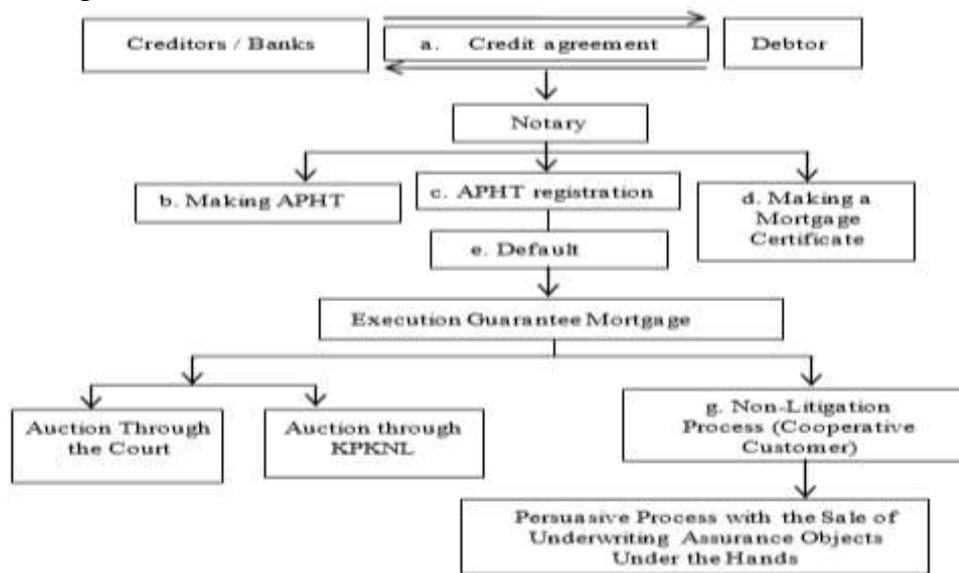


Figure 3. Dependent Flow Chart of Mortgage Guarantee

3.4 The Legality of the Mortgage Certificate Electronically as an Execution Tool

Legality in the form of principles formulated in every statutory regulation or constitution of a country, is fundamental and must be maintained for legal certainty. The meaning of negligence must be well understood in terms of law enforcement and justice (Sri Rahayu, 2014). Legality in a letter is very important. This will affect the actions that will be done. The registration of electronic mortgage rights in Indonesia begins in 2020. The basis for implementing electronic mortgage rights registration is based on the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 3 of 2019 concerning Electronic Integrated Mortgage Rights Services. Provisions regarding the registration of mortgage rights in order to guarantee the legality of the mortgage certificate can be seen in the following table:

Table 1. Provisions regarding the legality of the Underwriting Right

Types of Legislation	Provisions in Article	Description
Law of the Republic of Indonesia Number 5 of 1960 concerning agrarian matters	Article 25, Article 33, Article 39	Types of land rights that can be charged as collateral with mortgages are Property Rights, Business Rights, and Building Rights
Republic of Indonesia Law No. 7 of 1992 concerning banking	Article 8	The precautionary principle of banks in providing credit, with justification to receive material guarantees from debtors
Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights and Land Related Items	Article 4	Strengthening Article 25, Article 33 and Article 39 of Law No. 5 of 1960, regarding the types of land rights that can be charged with mortgage rights
	Article 6	If the debtor fails the promise or fails to pay the mortgage rights holder has the right to sell the Underwriting Right object through a public auction to take repayment of the agreed credit
	Article 13	Granting Mortgage Rights must be registered at the land office
	Article 14	Paragraph (1) The land office issues a certificate as proof of mortgage rights; Paragraph (2) The mortgage rights certificate contains the words "FOR JUSTICE BASED ON ALMIGHTY GOD " ; Paragraph (3) The Certificate of Resilience has the same executive power as a court ruling that has obtained legal force and is valid as a substitute for the grosse acte Hypotheek.
	Article 20	Strengthening the provisions in article 6 If there is a breach of contract or default from the debtor, the creditor is given the authority to

		execute based on the executorial title on the mortgage right certificate for auction.
Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 9 Year 2019 concerning Electronic Integrated Mortgage Rights Services	Article 3	Paragraph (2) The service for encumbering Mortgage Rights is carried out electronically.
	Article 5	Paragraph (2) that the electronic mortgage registration system has been certified by an authorized institution
	Article 9	The registration request mechanism is accompanied by the requirements for submitting a Mortgage Right in the form of: Certificate of land rights; Statement letter; Deed of Underwriting Right (APHT); Identity of creditors and debtors; Pay the registration fee.
	Article 14	The results of the mortgage service through an electronic system in the form of certificates and Note the mortgage rights on the land book and the Certificate of Land Rights or Ownership Rights in Flats. Published in the form of electronic documents and signed electronically.
	Article 15	Before the electronic mortgage rights certificate document is issued, an examination is first conducted by the head of the land office or an official who is authorized to carry out an examination of the proposed documents for the registration of mortgage rights. And is responsible administratively for the results of the mortgage

		service.
	Article 19	If there is an error filling out the data in the application for the Underwriting Right service through the Electronic Mortgage System that is known after the certificate is issued, the certificate holder can submit an amendment to the Underwriting Certificate. Application for improvement of a mortgage certificate a maximum of 30 days after the mortgage certificate is issued. Underwriting rights certificate as a result of repairs issued, the old certificate is declared no longer valid
	Article 20	The land office is responsible for the accuracy of material documents resulting from services. If there are fake documents as the basis for issuing the mortgage right, the responsibility of the applicant, both criminal and civil.
Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 3 of 2019 concerning the application of Electronic Signatures;	article 1	Electronic Signature is a signature consisting of Electronic Information that is attached, associated or related to other Electronic Information that is used as a verification and authentication tool.

IV. Conclusion

The certainty and legal protection of an act committed by a person or legal entity is very important. The electronic registration system for mortgage rights is based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 3 of 2019 concerning Electronic Integrated Mortgage Services that came into force in 2020 as a form of development of the enactment of Industry 4.0. The impact of electronic registration of mortgage rights is the

certificate issued. The certificate issued in electronic form has legality in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the Land Agency and is strengthened by the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 3 of 2019 concerning the application of Electronic Signatures. The legality of the electronic certificate of mortgage affects the execution of the guarantee of the mortgage. Execution of mortgage rights is based on the existence of a mortgage right certificate. The mortgage certificate can be implemented electronically if the data contained in the certificate is in accordance with the guarantee agreement between the creditor and the debtor. If there are errors in entering data in the electronic system changes can be made. Changes to the data will affect the legality of the mortgage right certificate. If the data is not changed and there is a default or default from the debtor, then the mortgage right certificate in electronic form cannot be implemented. The mortgage certificate can have legal consequences for the cancellation of the mortgage certificate. Responsibility and risk for the cancellation lies with the creditor.

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