

ABSTRACT

MATERIAL RIGHT PRINCIPLES ON A MORTGAGE

This study is entitled the implication of material right characteristic on Mortgage. Article number 1 point 1 in Law No 4/1996 on Mortgage of Land along with Properties Related to the Land states that Mortgage is a security right over right of land, along with or without other properties that constitutes a unity with such land, for the settlement of certain debts, which gives the preferred position to certain creditors against other creditors. Referring to this enactment of Law No 4/1996, Mortgage has reserved one of the material right's characteristics, that is *droit de preference*, so that the Mortgage holder obtains the preferred position against other creditors.

Mortgage is projected as a strong security establishment which is capable to grant the permanent legal power for interested parties as stated in a considerant Law No 4/ 1996. Therefore, Article 7 of Law No 4/ 1996 also encumbers other characteristics of that of prime material right, *droit de suite* characteristic. It is implied that Mortgage becomes an absolute security establishment (two ways), is always defendable and shall follow the object, whoever holds it. It is expected that *droit de suite* characteristic is capable of protecting the Mortgage holder creditor from other creditor's disturbances who has interest on the guaranteed object, either land or non-land, i.e. the building.

However, concurrent creditor is still able to find opportunities to put foreclosure on the object. Cases revealed in this study showed that banks can fail to be the Mortgage holder, or lost their position as separated Mortgage creditor holder hindered by foreclosure. It was caused by the inconsistency in norming *droit de suite* principal. Article 13 No 4 and Article 18 point 1 d in Law No 4/1996 on Mortgage open the opportunity in the vacuum Mortgage occurrence which makes putting foreclosure on the guaranteed object possible. Article 13 point 4 of Law Number 4 of 1996 created a vacuum Mortgage conducted by the land conveyancing officer within a period not later than 7 business days after the signing date with the date of the Mortgage land book. In addition, Article 18 No 1d of Law Number 4 of 1996 created longer vacuum phase of due date of right to land to new Mortgage encumbered date.

This study aimed to find unite concept of the Deed of Granting Mortgage date with the date of book land. It was also intended to find encumbered security right of building. not subject to charge mortgaging on land object. Moreover, it was also to find a concept of avoiding foreclosure by concurrent creditor of guaranteed object. Therefore, some Articles in Law Number 4 of 1996 on Mortgage of Land along with Properties Related to the Land are needed to revise.

Keywords: vacuum Mortgage, foreclosure in, paralyzed Law Number 4 of 1996.