



LEGAL ANALYSIS OF THE HOLDERS OF RESPONSIBILITY RIGHTS WHOSE RIGHTS WERE TRANSFERRED BECAUSE THEIR GRANT WAS CANCELLED BY THE BANDA ACEH SYAR'IAH COURT

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Abstract

Article 6 of Law No. 4 of 1996 gives creditors the right to execute parate against the object of the mortgage. However, in decision No. 0112/Pdt.G/2017/MS-BNA, the Sharia Court annulled the deed of gift. This study aims to analyze the judge's considerations, the legal force of certificates and deeds in bank mortgages, and legal protection for mortgage holders. This study is a normative legal study. Data were collected and then analyzed qualitatively. The results of the study indicate that the judge annulled the gift because it did not meet the legal requirements according to Islamic law and the Compilation of Islamic Law. The decision has implications for the cancellation of all related documents, including the certificate of ownership, the deed of granting mortgage rights, and the credit agreement, so that they no longer have legal force as debt collateral. Legal protection of creditors due to cancellation of grants according to Article 11131 of the Civil Code, even though the collateral guarantee is cancelled, the creditor still has legal protection through general guarantees, namely that all of the debtor's assets can be used as objects of debt fulfillment and the creditor can request seizure of collateral and the application of the principle of good faith of the bank that has acted according to the procedure for granting credit. It is expected that judges will prioritize the principles of justice, proportionality, the principle of good faith, and substantive justice in banking and financing practices in Indonesia.

Keywords: Mortgage Rights, Cancellation of Grants, Sharia Court.

1. INTRODUCTION

Land has a very strategic position as a basic need, almost most of human life activities are in contact with land, land is used as a place for humans to live so that humans and land have a very close relationship and can be felt to have a connection that is rooted in the human mind. With the importance of land because it can produce natural resources that are very useful



for many people, it needs to be regulated by the government. Realizing the importance of the benefits of land for humans, as well as being a natural resource that cannot be renewed (unrenewable), the government in various policies has attempted to regulate the utilization, designation and use for the safety of humanity in Indonesia. This policy has been stipulated in Article 33 paragraph (3) of the 1945 Constitution, which is reinforced in Article 2 of Law No. 5 of 1960 concerning the Basic Law on Agrarian Affairs (UUPA) (Boedi Harsono, 1999).

Ownership of land gives a person the right to transfer his rights to another person through a grant. In Islamic law, a grant is a gift from one person to another person in the form of his property voluntarily without expecting anything in return. In this case, the grantor is willing to relinquish his rights to the object being granted, a grant is a form of transfer of ownership if associated with a legal act (Suwahyuwono, 2018). The provisions for grants are regulated in Article 210 of the Compilation of Islamic Law in paragraph (1) which states that a person who is at least 21 years old, of sound mind and without any coercion can grant a maximum of 1/3 of the property he owns. Furthermore, it is regulated in Article 212 of the Compilation of Islamic Law (KHI) and Article 1666-1693 of the Civil Code. In Article 212 of the KHI, a gift cannot be withdrawn, except for a gift from a parent to his child. It can be understood that several things are the reasons why parents cancel their gift, including parents revoking their gift in order to protect the welfare of their child, then parents feel that there is an element of injustice between their children who receive the gift. Cancellation or withdrawal of a gift (Gift) is a forbidden act. Even though the gift occurs between two people who are siblings or husband and wife (Faizah Bafadhal, 2013).

The only gifts that can be withdrawn are gifts made or given by parents to their children. In the Civil Code, a gift that has been given by someone to another person cannot be withdrawn, returned or cancelled, except in cases as regulated in Article 1688 of the Civil Code, namely that the gift can be canceled if the conditions of the gift are not fulfilled by the recipient of the gift. The gift can be canceled if the person given the gift is guilty of committing or participating in an attempted murder or other crime against the donor. A gift can also be canceled if the grantor falls into poverty and the person given the gift refuses to provide for him (Suisno, 2024).

Grants that do not comply with the requirements of Islamic Law and the Compilation of Islamic Law can result in the cancellation of the Deed of Grant made by the PPAT, Certificate of Ownership, Deed of Grant, and Certificate of Mortgage. In the case of land as for land control, especially the existence of land rights to a land, it can also be pledged and used as collateral for a land right or often referred to as a mortgage.

Mortgage is a guarantee of debt repayment imposed on a land right, including or not including objects on it that are an integral part of the land, for the repayment of certain debts that give a priority position to certain creditors over other creditors. Mortgage rights are regulated in Law Number 4 of 1996 concerning Mortgage Rights. Basically, it is imposed on land rights. However, there are often objects in the form of buildings, plants, and works of art, which are permanently an integral part of the land used as collateral. Mortgage rights are a new



form of collateral that is directed at immovable objects, especially land. Immovable objects consist of 2 (two) types, namely land and non-land (M. Khoidin, 2017).

Regarding the imposition of mortgage rights, this is the authority of the Land Deed Making Officer who has the authority to make deeds granting mortgage rights, making Deeds of Mortgage Encumbrance (APHT) and Power of Attorney to Grant Mortgage Rights (SKMHT), which actually has multiple interpretations regarding the authority for this matter because it can also be done through a notary. As an accession right, the birth of a mortgage right is based on the principal agreement, namely a debt-credit agreement. The granting of a mortgage right is preceded by the debtor's promise to grant a mortgage right to the creditor as a guarantee for debt repayment. The promise is stated and is an inseparable part of the debt-credit agreement, then the Deed of Granting of Mortgage Rights (APHT) is given and by the Land Deed Making Officer (PPAT) (M. Khoidin, 2017).

This binding of credit collateral with a mortgage right is carried out if the customer or debtor who receives credit from the bank, makes immovable goods in the form of land (land rights) with or without objects that are not related to the land (for example buildings, plants, statues, and so on) as collateral without the debtor physically handing over the collateral to the creditor, meaning that the collateral is physically still controlled by the person concerned and its ownership remains with the original owner, but because it is used as collateral for debt with the holding of a mortgage agreement, so that the authority of the mortgage grantor to carry out legal acts with third parties or other acts that result in a decrease in the value of the collateral is limited by the mortgage rights held by the bank as the holder of the mortgage rights.

Mortgage rights are declared born on the date of the mortgage land book complete with the documents required for its registration. In the legal context, according to the KHI and the Civil Code, a grant can be canceled with certain provisions, but it is not stated in detail if the parent's grant used by the child as collateral for debt or has been used as an object of mortgage rights with the bank, the grant can also be canceled while the child of the grantor has entered into a debt agreement with the bank from the land donated by his parents, while the child's debt with the bank has not been paid off.

There is one real case of this problem that can be seen in Decision No. 0112/Pdt.G/2017/MS-BNA. Filed by Plaintiff I (Defendant I's biological mother) who sued E (as Defendant I/Plaintiff I's biological child) who received a grant from her mother in the form of a plot of land measuring 153 M2 along with 1 house unit on it as a residence for Plaintiff I located in Gampong Cot Mesjid, Leung Bata District, Banda Aceh City. In early 2005, Plaintiff I was often sick, so Defendant I asked Plaintiff I to grant Plaintiff I's property to Defendant I, and Defendant I would meet the living needs/all costs for Plaintiff I as the biological mother, at the request of Defendant I/her biological child, Plaintiff I agreed and informed the other children. Next, Plaintiff I asked Defendant I to make a Deed of Gift, then Defendant I made a Deed of Gift at the PPAT of Leung Bata District with No. 593/52/LB/BA/2005.

After the Grant of Plaintiff I was given to Defendant I which had been controlled for a long time, Defendant I never paid attention to the life of Plaintiff I and Defendant I never



wanted to pay attention to the life of Plaintiff I, so that Defendant I had broken his own promise. On that basis, Plaintiff I withdrew the approval of the Deed of Grant through his lawsuit to the Banda Aceh Sharia Court. Before the revocation of the Deed of Grant approval, it turned out that Defendant I had made a SHM Certificate at the Banda Aceh City Land Office with No. 2035 dated December 28, 2005. The Defendant had also made a credit agreement with SHM No. 2035 as collateral to Bank Rakyat Indonesia (Persero) Tbk Lambaro Branch Office with a credit loan of Rp. 345,000,000 (three hundred and fortyfive million rupiah) without the knowledge of Plaintiff I/Defendant I's biological mother.

In Decision Number 0112/Pdt.G/2017/MS-Bna. The judge granted the plaintiffs' lawsuit in part, the judge declared the Grant of Plaintiff I to Defendant I was null and void, the judge also stated that the deed of grant made with Number 593/52/LB/BA/2005 was revoked, and the object of the case became the property of Plaintiff I. Furthermore, the judge also decided that the SHM certificate with No. 2035 in the name of Defendant I had no legal force, the Deed of Granting Mortgage Rights No. 90/2015 was declared worthless and had no legal force, the Mortgage Rights certificate No. 741 was also declared worthless and had no legal force. While the certificate is already bound by debt with Bank BRI.

Cancellation of Certificate of Ownership (SHM) is regulated in the Regulation of the Minister of ATR/BPN 2020 Article 29 paragraph 1 explains that cancellation of SHM can be done if there is an administrative legal defect or a legal defect in the legal product or to implement a court decision that has permanent force. However, it is not explained in detail whether SHM that was born due to a gift and has been bound as collateral for a mortgage can also be canceled. Cancellation of land ownership certificates can be submitted even for land rights that have been burdened with HT. The bank as a creditor in good faith does not know that in the future the collateral it holds will be disputed so that its ownership is canceled. This also has an impact on the status of the mortgage guarantee it holds, especially if the debtor cannot fulfill his credit obligations so that the credit can be categorized as a bad credit (Ryan Dwitama Hutadjulu, 2023).

PT Bank Rakyat Indonesia then took legal action by filing an appeal against the cancellation of the grant decided by the Banda Aceh Sharia Court to the Aceh Sharia Court, in the decision of the Aceh Sharia Court judge Number 10 / Pdt.G / 2018 / MS. Aceh rejected the appeal (Niet Ontvankelijke Verklaard) filed by Bank Rakyat Indonesia (Persero) Tbk. Then Bank BRI again filed an appeal to the Supreme Court with Number 430 K / Ag / 2018 with the Judge's decision Rejecting the cassation application from the cassation applicant (PT Bank Rakyat Indonesia (Persero) Tbk Banda Aceh Branch Office. From the case above, there is a legal vacuum because there is no legal protection for the mortgage holder in this case Bank BRI which makes good efforts towards its customers in the form of providing credit loans.

2. RESEARCH METHOD

In this writing, the research used is a normative legal research method or referred to as research that focuses on legal norms, applicable rules, and principles contained in laws and regulation (Peter Mahmud Marzuki, 2011). And using the method of legislative approach,



conceptual approach, case approach. The sources of legal materials consist of primary and secondary, and collection techniques are obtained from literature studies and interviews. Data analysis uses qualitative methods, namely focusing on an in-depth understanding of a phenomenon (Abdulkadir Muhammad, 2017).

3. RESULTS AND DISCUSSION

3.1 The Judge's Consideration In Canceling The Grant Deed Which Has Become The Object Of Collateral For Mortgage Rights

In the Sharia Court Decision No. 0112/Pdt.G/2017/MS-BNA, the Court revoked the mortgage rights on a gift object that had previously been transferred to a child by his mother, the transfer caused losses to the creditor. This case began when Plaintiff I, who owned a plot of land measuring 153 m² along with a house on it located in Gampong Cot Mesjid, Lueng Bata District, Banda Aceh City, in 2005 experienced declining health.

His biological child, Defendant I, asked that the property be donated to him with a promise to cover all of his mother's living expenses. The request for a gift by his biological child or Defendant I was approved by Plaintiff I and notified the other children, namely Plaintiff II to Plaintiff V, who also agreed, even though at that time they were still minors. The Deed of Grant was still made before PPAT Leung Bata on August 22, 2005. However, even though it had been granted, the land and house were still controlled by Plaintiff I. Over time, Defendant I did not fulfill his promise to support Plaintiff I, and instead relied on assistance from his mother who was forced to sell small goods to survive. Because he felt disadvantaged and ignored, Plaintiff I then revoked the grant so that he could rent out the house to meet his daily needs.

In addition, Plaintiffs II to V also revoked their agreement because they felt they did not understand the legal actions taken when they were still children, without Plaintiff I's knowledge, Defendant I had issued a Certificate of Ownership in his name and used the land and house as collateral for credit to Bank Rakyat Indonesia with a loan value of Rp345,000,000, which was then issued a Certificate of Mortgage No. 741 dated July 15, 2015.

Based on the chronology or case situation above, there are considerations of the judge in the case of cancellation of the grant between Plaintiff I and Defendant I, the Panel of Judges formulated a number of fundamental things as the basis for making a decision. First, the Chairperson of the Panel has given the Defendants the opportunity to ask questions to the witnesses, but this opportunity was not utilized. Furthermore, the Defendants also did not submit evidence, either written or witnesses, even though the trial had been postponed twice. Their absence without reason made the Panel consider the examination sufficient. In the conclusion stage, the Plaintiffs stuck to their lawsuit, while the Defendants did not provide a conclusion because they were absent since the evidence stage. For reasons of efficiency, the Panel considers all trial minutes to have become part of the decision. The Panel has also attempted peace through a mediation process in accordance with the provisions of Article 154 R. Bg and Perma No. 1 of 2016, but was unsuccessful.

The main issue that is the core of the lawsuit is the cancellation of the grant made by Plaintiff I to Defendant I. The Panel considered it important to know whether the grant agreement was in accordance with Islamic law. In practice, a grant has certain pillars, especially the existence of the grantor who must be an adult, of sound mind, legally competent, have full authority over the assets that are granted, and act of his own free will. Based on the facts, the



grant occurred at the request of Defendant I and was accompanied by a promise that Defendant I would support Plaintiff I's life, but this promise was never fulfilled. The grant was also made without a legitimate handover process, because Plaintiff I continues to live and control the land and house until now. In addition, the assets granted are all of Plaintiff I's assets, which is considered contrary to social and legal justice, especially Article 210 paragraph (1) of the KHI which limits grants to a maximum of one third of the assets owned.

On that basis, the Panel of Judges is of the opinion that the grant can be cancelled, and therefore, the Plaintiff's lawsuit to withdraw the grant should be granted. With the cancellation of the grant, all letters or documents related to the grant object in the name of Defendant I are declared to have no legal force. Regarding the Plaintiffs' demand for Defendant II to change the name of SHM No. 2035 to the name of Plaintiff I, the Panel considered it, but stated that this was the authority of another agency and must go through applicable legal procedures. Therefore, the request for a change of name was rejected. The creation of the certificate of ownership of the grant object was considered to have been in accordance with valid procedures at the time the grant had not been cancelled, so that Defendants I to IV were not considered to have violated the law and had no material relationship to this case.

Regarding the Plaintiffs' request to place a security encumbrance on the disputed object due to concerns over the bad faith of Defendants I and II, the Panel considered that there was no strong reason and the request could not be accepted. Finally, because this case is a lawsuit for cancellation of a grant, all court costs are borne by the losing party in accordance with Article 192 paragraph (1) R.Bg.

Taking into account all applicable laws and regulations and sharia law related to this case, the Panel of Judges decided to grant the Plaintiffs' lawsuit in part. The Judge stated that Defendant I is the biological child of Plaintiff I, and therefore the grant given by Plaintiff I to Defendant I is declared null and void. Furthermore, the grant referred to as stated in the Deed of Grant No. 593/52/LB/BA/2005 dated August 22, 2005 can be revoked. The Panel determined that the grant for the object in the form of a plot of land measuring 153 m² along with one house unit on it located in Gampong Cot Mesjid, Lueng Bata District, Banda Aceh City is null and void, and the object reverts to Plaintiff I.

In this regard, Certificate of Ownership No. 2035 dated December 28, 2005 in the name of Erlina Nurdin is declared to have no legal force. Likewise, Deed of Grant of Mortgage Rights (APHT) No. 90/2015 dated July 8, 2015, Mortgage Certificate No. 741 dated July 15, 2015, and Credit Agreement No. 01 dated June 19, 2015 were each declared worthless and had no legal force. The Plaintiffs' lawsuits other than and the rest were declared unacceptable. Finally, the Panel sentenced Defendant I and Defendant II to pay all court costs incurred, which amounted to Rp3,241,000.00 (Three Million Two Hundred Forty One Thousand Rupiah).

a. Implications of the Sharia Court Decision No. 0112/Pdt.G/2017/MS-BNA on Mortgage Holders as Preferred Creditors

The execution of Mortgage Rights is carried out by the creditor against the collateral object of the defaulting debtor, either directly or through a public auction, as regulated in the Mortgage Rights Law No. 4 of 1996. This execution is possible without having to go through the courts because of the existence of a parate execution guaranteed by Article 6 of the Mortgage Rights Law. However, in order for the execution to be valid, the Mortgage Rights must be registered with the National Land Agency to obtain a Mortgage Rights Certificate. In the case of the Sharia Court Decision No. 0112/Pdt.G/2017/MS-BNA, the grant from parents



to children who were used as collateral objects was canceled. As a result, the bank's parate execution rights as a creditor were terminated because the Mortgage Rights Certificate was declared invalid, and the bank's position changed from a preferred creditor to a concurrent creditor without privileges over collateral.

The bank can no longer execute the collateral because the object has been declared invalid. Rights such as selling the object without the debtor's consent, receiving payment in advance, and carrying out execution separatistly are also lost. The cancellation of this grant caused the bank to lose legal protection for its receivables. According to the Deputy Chief Justice of the Banda Aceh Sharia Court, the judge's decision was in accordance with procedure because it was based on sufficient evidence and witnesses. He considered the bank's negligence in assessing the collateral to be the main cause of the loss. Before the judge's decision, the bank should have submitted a replacement for the collateral object through legal counsel (Ryan Dwitama Hutadjulu, 2023).

This decision has raised criticism because it is considered to only protect the debtor, without considering the creditor's losses. Legal protection should be balanced for both parties. In the perspective of substantive justice and the principle of balance, the judge should consider the solution of compensation or replacement of collateral so that there is no inequality in legal protection.

3.2 The Legal Force Of The Certificate In The Bank Mortgage Rights Which Was Cancelled By The Banda Aceh Sharia Court Because The Deed Of Gift Was Cancelled

Every credit agreement in banking has a very high risk (degree of risk), in general the bank which is the creditor will require the debtor to include the debtor's property, both movable and immovable property, to be used as collateral for debt in the implementation of credit provision which is the bank's effort to ensure credit distribution in order to reduce the risk of debt repayment default or the debtor's inability to pay off his debt. However, in practice, there are times when the debtor as the grantor of the Mortgage Rights submits the object of the Mortgage Right guarantee that is not his or that he obtained unlawfully so that in the future the object of the Mortgage Right Guarantee cannot be executed, because the Mortgage Right Guarantee binding agreement made by the bank with the debtor is canceled by the court.

The consideration of the Panel of Judges of the Banda Aceh Sharia Court in No. 0112 / Pdt.G / 2017 / MS-BNA is that the debtor granting the Mortgage Right obtains SHM No. 2035 which is used as a Mortgage Right in a Credit Agreement with a bank from a Grant from his biological parents, where at any time the grant from the parents to their child can be cancelled or returned to the parents, then the Grant given by his parents is contrary to Article 210 paragraph (1) of the KHI which states that a grant is permitted up to a maximum of one third of his assets so that the Grant is cancelled, because it is considered unjust and contrary to applicable laws and regulations. The judge also decided that after the grant was cancelled to the debtor as the biological child of the grant owner, all letters related to the object of the case in the name of Defendant I (the debtor who gave the Mortgage Right) were declared legally void. with the cancellation of the deed of grant, the SHM, APHT, SHT and Credit Agreement certificates were declared null and void by law.

The legal consequences of the cancellation of the Grant deed by the Banda Aceh Sharia Court are that the bank as the creditor no longer has special rights (preferences) over the object of the Mortgage Guarantee and suffers losses due to the cancellation of the guarantee in the provision of credit made to the debtor. In addition, the bank as the creditor also no longer has



a legal bond with the debtor for the agreed credit agreement because the Mortgage Certificate that has been made is canceled by the Banda Aceh Sharia Court. The cancellation of the transfer of land rights/Grant of land that the author raised in this study, resulted in the bank debtor no longer being able to hold the position of the holder of land rights over the object that had been pledged to the bank.

On the other hand, the mortgage agreement as an accessory agreement has an obligation to comply with the valid conditions of the agreement based on Article 1320 of the Civil Code. The decision to cancel the grant issued by the Sharia Court makes the creditor not the party with the authority to take legal action over the land, the land that is the object of the agreement is also void as decided by the Banda Aceh Sharia Court. The lawsuit from the plaintiff that was approved and obtained permanent legal force and accompanied by a certificate of mortgage rights that were canceled, should have legal consequences that require it to be returned to its original state.

This refers to Article 1265 if the Mortgage Right is an accessory agreement, that "a condition for cancellation is a condition that if fulfilled will eliminate the obligation and bring everything back to its original state, as if there had never been an obligation", then the land which is used as the object of collateral must be returned to its original state and freed from the burden of the Mortgage Right and the bank holding the Mortgage Right is also required to return the asset to the grantor of the Mortgage Right. And the Debtor should also return the money that has been received from the credit agreement due to the cancellation of the Mortgage Right because the grant was canceled, the Cancellation of the Mortgage Right in the case discussed in this article is related to the cancellation of the Grant which resulted in the cancellation of the Mortgage Right object on the land, so that the requirements for the validity of the Mortgage Right agreement are not met.

Mortgage Rights are required in Article 8 paragraph (1) of the UUHT to be someone who has the authority. When the person loses legal authority, the agreement granting Mortgage Rights becomes void. Furthermore, cancellation of the contract (agreement) can be interpreted that the previous agreement has also ended or been deleted. This also happened in the case discussed in this study. The cancellation of the Mortgage Rights agreement, then the contractual relationship between the debtor and the bank as the creditor in the agreement of the rights as if there was no condition must be returned as before, before the Mortgage Rights agreement.

From the case in this study, the creditor who has good intentions in helping the community does not yet have regulations that provide protection and legal certainty. From the cancellation of the grant which resulted in the credit agreement and the mortgage rights that were the guarantee for debt repayment being null and void. Jan Michiel Otto is of the opinion that Legal Certainty is the availability of clear, consistent and recognized rules by state power. From the decision, it does not provide legal certainty to the creditor, Jan Michiel also said that independent judges (courts) do not think about applying the legal rules consistently when they resolve legal disputes.

The judge can independently consider the decision to be decided, the judge should not only be subject to the KHI which states that Grants can be canceled, the judge is also able to independently consider the losses experienced by the bank to be returned to its original state, in Article 1265 if the Mortgage Right is an accessory agreement, that "a void condition is a condition that if fulfilled will eliminate the obligation and bring everything back to its original state. The judge can also refer to this article to include in the decision so that the credit financing



that was initially agreed upon is returned to its original state, meaning that the debtor returns all the money received from the financing back to the creditor or bank. Because the obligation to return the money by the debtor due to the cancellation of the credit agreement due to the collateral object being considered invalid, a legal obligation should be imposed on the debtor to return the loan funds that have been received, in order to create balance and justice in the legal relationship between the creditor and the debtor.

3. 3 Legal Protection for Mortgage Holders for Grants that have been cancelled by the Banda Aceh Sharia Court

Legal protection for banks is written in Article 1131 of the Civil Code for the cancellation of the mortgage right, namely by transferring the mortgage guarantee to a general guarantee. Article 1131 explicitly states that "all movable and immovable goods belonging to the debtor, both existing and future, become collateral for the debtor's individual obligations". In practice, credit payments through general guarantees have quite complicated stages, because the bank must launch an additional lawsuit accompanied by a statement of confiscation (Article 226 and Article 227 HIR (Herziene Indlandsch Reglement) to the District Court, preceded by a case of default by the debtor on the payment of the creditor's receivables. This legal effort is to obtain clarity on the payment of its receivables. A default lawsuit must be accompanied by the confiscation of assets, both movable and immovable, where this is owned by the debtor so that the hope is that the seized goods cannot be transferred to another party (Ryan Dwitama Hutadjulu, 2023).

In terms of protection for the parties involved, namely creditors and debtors, the law must protect and provide certainty to both parties, so that in the court process, the losses of both parties must be taken into account, the judge must not decide on unilateral losses that harm the other party (Angelica Natalie, 2018). which loss is caused by the cancellation of the debt guarantee due to the cancellation of the grant of land used as collateral for the credit, this makes the debtor no longer have an obligation to pay off the debt because the credit agreement deed was also canceled by the Sharia Court, so that it seems as if the debtor no longer has an obligation to pay off the debt. If the guarantee and credit agreement are canceled, the money in the debtor's possession must also be returned to the creditor so that the loss for the creditor is not so great. To obtain certainty that the debtor will fulfill his obligations as stipulated, the plaintiff (creditor) in his lawsuit must request a provisional decision, namely asking for a security attachment (conservator beslag) to be placed on certain assets of the debtor.

Thus, if in the future the debtor is defeated but does not want to implement the decision voluntarily, the creditor can ask for assistance from the Head of the District Court to enforce the decision by force based on Article 207 RBg. The implementation of a court decision according to RBg (Rechtreglement Buitengewesten) is through a warning (aanmaning). This forced implementation of the decision is called execution. If after the time period set by the court the defeated party does not fulfill the decision or does not appear, in accordance with the provisions of Article 208 RBg the debtor's assets up to the amount deemed sufficient are confiscated by the court, and sold through the KPKNL (Jamilah, 2017).

4. CONCLUSION

The panel of judges decided that the grant from Plaintiff I to Defendant I was null and void because it did not meet the requirements for a valid grant according to Islamic law and KHI, such as an unfulfilled promise and the consent of minor children. The cancellation of this



grant resulted in the related documents, such as the Certificate of Ownership, Deed of Grant of Mortgage Rights, and Credit Agreement, being legally invalid, so that the Bank lost its position as a preferred creditor and became a concurrent creditor without clear collateral.

The cancellation of the grant resulted in the cancellation of the mortgage agreement, because the mortgage right depends on the validity of the grant. This cancellation canceled the related legal documents, such as the Certificate of Ownership, Deed of Grant of Mortgage Rights, Certificate of Mortgage Rights, and Credit Agreement. As a result, the collateral object was no longer valid and the bank lost its preferential right to the collateral, which caused losses and legal uncertainty for the bank even though it acted in good faith.

Legal protection for the bank as the holder of the mortgage after the cancellation of the grant by the Banda Aceh Syar'iyah Court is regulated in Article 1131 of the Civil Code, which changes the mortgage guarantee to a general guarantee. In practice, credit payments through general collateral require additional lawsuits and seizures to the District Court. Cancellation of mortgage rights must guarantee certainty and justice for creditors, in accordance with applicable legal provisions.

It is recommended that in cases involving third party rights, such as banks as creditors, judges should consider not only Islamic or family law, but also the principle of legal certainty and protection for parties with good intentions. The principle of balance (equity) must be considered so that legal certainty for creditors is guaranteed, even though parental gifts to children can be revoked according to Islamic law.

If the gift is canceled and results in the cancellation of the credit agreement and mortgage rights, there needs to be a regulation that requires the debtor to return the loan funds to ensure justice and prevent moral hazard. Judges should also consider the economic impact on creditors and refer to the principle of *accessoir* agreements to restore the legal situation. In addition, clear regulations are needed to protect creditors, especially regarding the cancellation of gifts that are used as collateral for mortgage rights, in order to maintain legal certainty and avoid unilateral losses.

Financial institutions, especially banks, are advised to strengthen due diligence by tracing the history of the land used as collateral, not only relying on certificates and deeds of gift, but also considering potential disputes or legal vulnerabilities. Banks need to prepare anticipatory clauses in credit agreements, including the right of regression if the collateral object loses its legal status. The Sharia Court is expected to consider the impact of the decision to cancel a grant on third parties who act in good faith, by providing restitution or protection for the creditor's rights.

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