

LAW 4 (1996) OF THE REPUBLIC OF INDONESIA
CONCERNING
MORTGAGES OF LAND
AND PROPERTY ASSOCIATED WITH LAND

WITH THE GRACE OF GOD ALMIGHTY
THE PRESIDENT OF INDONESIA,

Considering:

1. that with the continuing rise in national development centred on the economy an adequate source of funds is needed, and so a strong institution of guaranty able to ensure legal certainty for the parties concerned which will encourage a rise in the participation of the public in development is necessary in order to create a prosperous, just and thriving society on the basis of *Pancasila* and the 1945 Constitution;
- b. that complete provisions on Mortgage as an institution of guaranty which may encumber land, with or without the property associated with the land, have not been formed from the passing of Act 5 (1960) Concerning Basic Agrarian Principles to the present day;
- c. that the provisions on Hypothecation as regulated in Book II of the Indonesian Civil Law Code as regards land and the stipulations of Credietverband in Staatsblad 1908-542 as amended in Staatsblad 1937-190, which on the basis of Act 5 (1960) Concerning Basic Agrarian Principles are still treated as temporary until the drafting of an Act concerning Mortgage, are deemed to no longer accord with the need for credit in view of the development of the Indonesian economy;
- d. that in view of past and future developments in the field of the regulation and administration of land rights and in order to meet the many needs of society, in addition to the Right of Possession, the Right of Use for Agricultural Exploitation, and the Right of Use for Building which were authorised as objects of Mortgage by Act 5 (1960) Concerning Basic Agrarian Principles, the Right of Use over particular land which must be registered and is transferable in nature needs to be capable of being encumbered by Mortgage;
- e. that in connection with these matters a law regulating Mortgages on land and property associated with land as specified in Act 5 (1960) Concerning Basic Agrarian Principles needs to be drafted during the unification of the National Land Law;

In view of:

1. Article 5 paragraph (1), Article 20 paragraph (1) and Article 33 of the 1945 Constitution;
2. Act 5 (1960) Concerning Basic Agrarian Principles (Official Gazette Number 104 (1960), Supplement to the Official Gazette Number 2043);

With the Approval of

THE PEOPLE'S HOUSE OF REPRESENTATIVES
OF THE REPUBLIC OF INDONESIA

DECIDES:

To promulgate:

A LAW CONCERNING MORTGAGE AND PROPERTY ASSOCIATED WITH LAND.

General Elucidation:

1. *Economic development, as part of national development is an attempt to create a prosperous, fair and thriving people on the basis of Pancasila and the 1945 Constitution. In order to protect the continuance of such development, the agents of which are the government and the people in the form of individuals and legal entities, large amounts of funding are urgently required. Increases in development activity means increases in the need for the availability of funds, most of which come from credit.*

Bearing in mind the importance of the position of credit funding in the development process, it is already necessary for the giver and receiver of credit and other parties involved to obtain protection through rights to firm guarantees which can also give them legal certainty.

2. *The institution of a firm guarantee which could encumber rights over land, i.e. a Mortgage, was made available as a replacement for the institutions of hypothecation and Credietverband in article 51 of Act 5 (1960) Concerning Basic Agrarian Principles, also known as the Agrarian Act. In the 30 years since the coming into effect of the Agrarian Act the institute of Mortgage has not functioned as it should because of the lack of an Act regulating it in full, as required by the provisions of its Article 51. In that period of time, on the basis of the transitional provisions set forth in Article 57 of the Agrarian Act the provisions on hypothecation specified in Book II of the Indonesian Civil Law Code and the Credietverband provisions in Staatsblad 1908-542 as amended in Staatsblad 1937-190 have remained in effect in so far as they concern matters not yet provided for in or on the basis of the Agrarian Act.*

The provisions in the legislation above as set forth in the in the Agrarian Act date from the Dutch Colonial period and are based on the land laws in effect before the passage of the National Land Law and were intended to be purely temporary in nature until the formation of the Act specified by the Article 51 mentioned above.

For these reasons these provisions clearly do not accord with the principles of the National Land Law and in fact they do not reflect the developments which have occurred in the field of credit and guarantees as a result of the progress of economic development. As a result there have arisen differences of viewpoint and interpretation concerning several problems in the implementation of the law on land as a guarantee, for example in recording executory title, and in implementing execution, with the result that the above legislation is felt to be deficient in giving guarantees of legal certainty in the field of credit.

3. *On the basis of the above facts it is necessary to promulgate immediately an act concerning a strong institution of land as a guarantee which:*
- a. gives a position of priority or precedence to the holder;*
 - b. follows the object of the guarantee into the hands of whoever it falls;*
 - c. obeys the principles of specificity and publicity and thus binds third parties and gives legal certainty to the parties involved;*
 - d. is easy and certain in its execution.*
4. *Paying due regard to these characteristics, there are promulgated in this Act provisions concerning the institution of guarantees given the name Mortgages by the Agrarian Act. With the passage of this law we shall take a step forward in fulfilling the purpose of the Agrarian Act in developing a National Land Law through the creation of unity and simplicity of the law for all the people concerning rights over land.*

A Mortgage is the use of land as a guarantee for the payment of debt which gives a particular creditor precedence over other creditors. This means that if a debtor defaults, a creditor holding a Mortgage has a right, which has priority over the rights of other creditors, to sell the land used as a guarantee at public auction in accordance with the stipulations of the regulations concerned. Nevertheless, this position of precedence is without prejudice to the priority of State Loans in accordance with prevailing provisions of the law.

5. *The Agrarian Act designates as rights over land which can become guarantees for debts by being encumbered with Mortgages the Right of Possession, the Right of Use for Exploitation and the Right of Use for Building, these being rights over land which must be registered and which by their nature are transferable. For this reason what must be regulated through legislation according to Article 51 of the Agrarian Act is Mortgages of the Right to Possession, the Right of Use for Exploitation and the Right of Use for Building.*

The Right of Use is not designated in the Agrarian Act as an object of Mortgage because at that time it was not included in the rights over land which must be registered and so did not meet the requirement of publicity in becoming a guarantee for a debt. A later development was a Right of Use which must be registered, that is the Right of Use granted over State Land. Part of this registrable Right of Use is that, by its nature, and in fact, it is transferable, and it may be granted to an individual person or to a legal entity. It is specified in Act 16 (1985) Concerning Condominiums that the Right of Use may become a guarantee for a debt by means of a fiduciary encumbrance.

In this Act the Right of Use is appointed as an object of Mortgage. In this connection, and henceforth, Mortgages form the only institution of guarantees using land and thus complete the unification of the National Land Law which was the primary aim of the Agrarian Act. It is a fact that the Right of Use has become an object of Mortgage through an adaptation of the provisions of the Agrarian Act to the developments in the Right of Use itself and the needs of society.

No less important than the realisation of the unification of the National Land Law is that with the appointment of the Right of Use as the object of a Mortgage possibilities open for the holders of that right, most of whom come from the economically weaker classes who cannot afford land with Right of Possession or Right of Use for Exploitation, to obtain the credit they need by using the land they own as a guarantee.

However, Right of Use over State Land which, although registrable, is not transferable in nature and is valid not for a fixed term but for while the land is used for a particular purpose, such as Right of Use for Government Purposes, Right of Use for Religious and Social Bodies, and Right of Use for Representatives of Foreign States, can not be the object of a Mortgage.

Thus Right of Use over Land Subject to Right of Possession may not be encumbered with a Mortgage because it does not meet both the criteria above. However, bearing in mind the growing needs of society and future developments the possibility is left open in this Act for it also to be appointed as an object of Mortgage, should it meet the above criteria. This matter will be further prescribed by Government Regulation.

In summary, then, the rights over land which in this Act are appointed as objects of Mortgage are: Right of Possession, Right of Use for Exploitation, Right of Use for Building and Right of Use of State Land which is transferable in nature. The possibility is left open that Right of Use of Land Subject to Right of Possession may in future become a guarantee for a debt by encumbrance with a Mortgage, should this meet the criteria.

Land Subject to Right of Possession which has been donated for religious purposes and lands used for religious observance and other holy purposes, although registered cannot be encumbered with a Mortgage because they are non-transferable in nature and purpose.

6. *Mortgages regulated in this Act are in principle Mortgages encumbering rights over land. Nevertheless it is a fact that such property as buildings, plants, and handiwork which form a permanent unit with the land often become guarantees. It is well-known that the National Land Law is based on adat law, which makes use of the principle of horizontal separability. The National Land Law, with regard to buildings, plants, and handiwork, also makes use of the principle of horizontal separability. Under this principle property which forms a single unit with the land does not in law form part of the land concerned. For this reason legal actions concerning rights over land do not in themselves cover such property.*

Nevertheless application of the above principles of adat law is not absolute, but rather should always take note of and be adapted to the growing needs and developing realities in society. On the basis of this fact concerning the nature of adat law, in the matter of the horizontal separability mentioned above, it is stated in this Act, that it is possible for an encumbrance of Mortgage on land to cover property as specified above. This has been done and confirmed by the law in practice provided that the property forms a single unit with the land involved and participates in the guarantee and that this is specifically stated by the parties in the Deed of Grant of Mortgage. The buildings, plants, and handiwork which become part of the guarantee are not limited to those owned by the holder of the right over the land concerned, but rather may include those owned by another party. However, underground spaces which have no physical connection with buildings on

the surface of the earth are not included in the regulations concerning Mortgage in this Act.

For this reason this Act has been given the title "Act concerning Mortgages and Property Linked to the Land," and may be cited as the Mortgage Act.

7. *The process of encumbering with a Mortgage shall be implemented in two stages:*
- a. the stage of the granting of the Mortgage by making a Deed of Grant of Mortgage by a PPAT which is preceded by the contract for the loan/debt guaranteed;*
 - b. the stage of registration by the Land Office which is when the encumbrance by the Mortgage comes into being.*

According to prevailing legislation the PPAT is a public official who has the authority to make deeds of transfer of rights over land and other deeds encumbering rights over land, in a standard form, as proof of legal acts concerning land which occur in the district where he or she works; deeds made by a PPAT are authentic deeds.

The definition of legal acts encumbering rights over land, the making of which is the competence of the PPAT, includes the making of deeds encumbering the Right of Use for Building on Land Subject to Right of Possession as specified in Article 37 of the Agrarian Act and the making of deeds for encumbering land with Mortgages which is regulated in this Act.

In granting a Mortgage, the grantor must be present before the PPAT. If, for any reason, the grantor cannot be present in person, he should appoint some other person as his proxy by means of an Authority to Encumber with a Mortgage, abbreviated to SKHMT, through an authentic deed. The making of an SKHMT may be entrusted to a notary or to a PPAT at the kecamatan level, thus making provision of this service to those who need it easier.

At the time of the making of the SKHMT and the Deed of Grant of Mortgage the Notary or PPAT involved must ensure that the grantor of the Mortgage has the right to carry out legal acts on the object to be encumbered with a Mortgage, although certainty about his possession of such authority is only required at the time of registration of the grant of Mortgage.

At the stage of the granting of the Mortgage by the grantor to the creditor the Mortgage concerned has not yet come into being. The Mortgage only comes into being at the time it is noted in the Land-book at the Land Office. For this reason certainty about the time of registration of the Mortgage is very important for the creditors. That time not only establishes a position of priority over other creditors but also establishes the ranking with reference to other creditors who hold Mortgages guaranteed by the same land. To obtain certainty about the time of registration, it is established in this Act that the date of the Land-book concerned is to be the seventh day after receipt by the Land Office of all the documents needed for registration, and if the seventh day falls on a holiday, the Land-book concerned shall be dated from the next working day.

In order to obtain certainty of the position of priority for creditors holding Mortgages it is also established that the Deed of Grant of Mortgage and the other documents needed for its registration must be sent by the PPAT not more than seven (7) days after their arrival. Similarly, it is also established that implementation of the authority to encumber with a mortgage specified above has

a time limit of one (1) month for rights over land which have already been registered and three (3) months for rights over land which have not yet been registered.

8. Since a Mortgage is by its nature contingent or accessory to a particular loan which is based on a loan/debt contract or on some other contract its coming into being and existence is established by the existence of the loan repayment of which it guarantees.

In the event that the loan concerned is assigned to another creditor the Mortgage guaranteeing it is, in law, also assigned to that creditor. Recording the assignment of the Mortgage does not need a PPAT's deed; the deed of assignment of the loan guaranteed is sufficient. A record of the assignment should be made in the Land-book and certificate of the Mortgage concerned as well as in the Land-book and certificate of the land which forms the guarantee.

Similarly a Mortgage will be redeemed in law if through payment or any other cause the loan guaranteed is redeemed. In this case the redemption of the Mortgage concerned is adequately evidenced by a written statement from the creditor that the loan guaranteed has been redeemed.

A record concerning the redemption of the Mortgage should be added to the Land-book of the Mortgage concerned and the certificate should be destroyed. The record should take the form of what is called a deletion or more widely known as roya, and also made on the Land-book and certificate of the right over the land which had become a guarantee. The certificate of the right over the land to which the record had been added should be returned to the holder of the right.

Without neglecting legal certainty for the parties involved, the simplicity of administration of registration of Mortgages appears not only in the transfer and redemption of the loan guaranteed but also in the redemption of the Mortgage for other reasons, that is because of release by the creditor involved, discharge from a particular level of Mortgage by the Chairman of a District Court, and cancellation of the right over land which has become the guarantee.

In connection with the matters set forth above this Act regulates the method of recording transfers and redemptions of Mortgages, including deletion and roya.

9. One strong characteristic of a Mortgage is the ease and certainty of execution should the debtor default. Although generally speaking stipulations about execution have been made in the prevailing Law Code it was deemed necessary to enter special stipulations about the execution of Mortgages into this Act, viz. those regulating the institution of "parate executie" as specified in Article 224 Reformed Indonesian Regulation (Het Herziene Indonesisch Reglement, Staatsblad 1941-44) and Article 258 Legal Procedures in Districts Outside Java and Madura Regulation (Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madura).

In this connection a heading with the words "DEMI KEADILANBERDASARKAN KETUHANAN YANG MAHA ESA" should be added to the certificate of Mortgage, which acts as documentary proof of the existence of the Mortgage, in order to give it the same executory power as a permanent judgement. The certificate of Mortgage should also be stated to be a replacement for a "grosse acte Hypotheek", which is established as a condition for the execution of hypothecation on land in the implementation of the two Reglement Articles above.

To ensure unity of interpretation and certainty concerning the use of these provisions it is further explicitly stated in this Act that until further regulatory legislation, the regulations of the two Reglements concerning execution of hypothecation shall be valid for the execution of Mortgages.

10. *In order to facilitate and simplify the implementation of the provisions of this Act in the interests of the parties concerned the Chairman of the District Court is given the authority to decree the awarding to the creditor of the power to manage the object of the Mortgage, and to pronounce on matters connected with applications for the discharge of objects of Mortgages and deletions of Mortgages.*
11. *In order to guarantee legal certainty and give protection to the parties involved, administrative penalties are ordained in this Act which shall be applied to the perpetrators of any contravention or negligence in fulfilling the provisions concerning implementation of their duties.*

Apart from the administrative penalties mentioned above those involved may, on fulfilment of the necessary conditions, be liable to civil suits or criminal proceedings.

12. *This Act constitutes an implementation of the Agrarian Act which has been adapted to the developing situation and regulates several new situations in the matter of Mortgages as detailed above; its scope covers:*
 - a. Objects of Mortgages*
 - b. Grantors and Holders of Mortgages*
 - c. Methods of Granting, Registering, Assigning and Redeeming Mortgages*
 - d. Execution of Mortgages*
 - e. Deletion of Mortgages*
 - f. Administrative Penalties.*

It also includes a General Elucidation and Article by Article Elucidation.

Provisions for further implementation of matters regulated in this Law concerning Mortgages may be found in existing legislation, while provisions still needed shall be established in the form of Government Regulations and other legislation.

CHAPTER I

GENERAL PROVISIONS

Article 1

In this Act the meaning of:

1. "Mortgage of land and property associated with land" (hereinafter known as Mortgage) is a guaranty which encumbers the rights over land specified in Act 5 (1960) Concerning Basic Agrarian Principles which may or may not include other property which forms a single unit with the land, for the payment of a particular debt which grants priority to a particular creditor over other creditors;

2. A "Creditor" is the party who makes the loan in a particular loan/debt relationship;
3. A "Debtor" is a party who owes in connection with a particular loan/debt relationship;
4. A "Conveyancer of Land Deeds" (hereinafter known as a PPAT), is a public official who has been granted authority to draw up deeds of transferral of rights over land, deeds of encumbrance of rights over land, and deeds granting authority to encumber with a Mortgage in accordance with prevailing legislation;
5. A "Deed of Grant of Mortgage" is a deed of a PPAT which contains a grant of a Mortgage to a particular creditor as guaranty for payment of a loan;
6. A "Land Office" is a work unit of the National Land Registry in a regency, municipality or other administrative territory of the like degree, which registers rights over land and safeguards the public catalogue of land registrations.

*Elucidation of Article 1
Sufficiently Clear.*

Article 2

- (1) Mortgages are indivisible in nature unless otherwise agreed in the "Deed of Grant of Mortgage" as specified in paragraph (2).
- (2) Should a Mortgage encumber several rights over land, it may be stipulated in the Deed of Grant of Mortgage concerned that the debt may be repaid in instalments, each of which is equivalent in value to a right over land which forms part of the object of Mortgage and which is to be freed from the Mortgage, and the Mortgage shall thereafter only encumber the remaining objects of Mortgage, as a guaranty for that portion of the debt which has not yet been repaid.

Elucidation of Article 2

Paragraph (1)

The meaning of the indivisible nature of Mortgage is that a Mortgage encumbers the object of the Mortgage as a whole and each part of it. Payment of part of the debt does not imply the freedom of part of the object of the Mortgage from the encumbrance of the Mortgage; on the contrary, the Mortgage continues to encumber the whole of the object of the Mortgage for the part of the debt which has not yet been paid.

Paragraph (2)

This provision forms an exception to the principle established in article (1) in order to meet the developing needs of the world of credit, including amongst other matters the funding needs of housing complex developers who to begin with make use of credit to build a complete complex and thereafter sell houses one by one, while the purchaser also makes use of credit, with the house concerned as a guaranty.

According to the stipulations of this article, should the Mortgage encumber several rights over land which

consists of several parts, each of which forms a single independent unit and can be valued independently, the principle of indivisibility may be set aside provided that it is explicitly so stipulated in the Deed of Grant of Mortgage concerned.

Article 3

- (1) A debt, payment of which is guaranteed by a Mortgage, may take the form of a debt which already exists, or which has been contracted, for a fixed amount, or for an amount to be fixed at the time of submission of an application for execution of the Mortgage on the basis of the loan contract or other contract which gave rise to the loan/debt relationship concerned.
- (2) A Mortgage may be granted for one debt originating from one legal relationship or for one or more debts originating from several legal relationships.

Elucidation of Article 3

Paragraph (1)

A debt guaranteed by a Mortgage may take the form of a debt which already exists or of a debt which does not yet exist but which is stipulated in a contract, for example a debt which arises from a payment made by a creditor in the interest of a debtor in the implementation of a bank guarantee. The amount may be established by being stated in the contract concerned or it may be established later on the basis of a calculation stipulated in the contract which gives rise to the loan/debt relationship concerned, for example a debt of interest on a principal and other costs, the amount of which can only be established at a later period.

The contract which gives rise to the loan/debt relationship may take the form of a loan contract or of some other contract, for example a contract of trusteeship over the assets of a minor or a ward which is accompanied by a grant of Mortgage to the trustee.

Paragraph (2)

It often happens that a debtor is in debt to more than one creditor on the basis of separate loan/debt contracts, for example the creditors might be a bank and an affiliate of the bank concerned. The creditors' loan would be guaranteed by one Mortgage to all the creditors under one Deed of Grant of Mortgage. The Mortgage encumbers the same plot of land. Whatever the relationship between the creditors, which is to be regulated amongst themselves, in their relationship with the debtor and the grantor of Mortgage, if that is not the debtor, they appoint one of the creditors to act in their name, for example to come before the PPAT in the grant of Mortgage contracted and to receive and keep the certificate of Mortgage concerned.

CHAPTER II

OBJECTS OF MORTGAGE

Article 4

- (1) Rights to land which may be encumbered by a Mortgage are:
 - a. Right of Possession

- b. Right of Use for Exploitation
 - c. Right of Use for Building
- (2) As well as the rights over land described in paragraph (1), the Right of Use over State Land which must be registered in accordance with prevailing requirements and is transferable in nature may also be encumbered with a Mortgage.
- (3) The encumbrance by Mortgages of Right of Use over Land Subject to Right of Possession will be formulated in more detail by Government Regulation.
- (4) A Mortgage may also encumber rights over land and any present or future building, crop, or handiwork forming a single unit with the land which is the property of the holder of rights over the land, the encumbrance of which is explicitly stated in the Deed of Grant of Mortgage.
- (5) Should any building, crop, or handiwork as described in paragraph (4) not be the property of the holder of rights over the land, then a Mortgage may not encumber the articles unless the Deed of Grant of Mortgage concerned be signed by the owner or by some person authorised for that purpose with an authenticated deed.

Elucidation of Article 4

Paragraph (1)

The meaning of Right of Possession, Right of Use for Exploitation, and Right of Use for Building is rights over land as specified in Act 5 (1960), the Agrarian Act.

The Right of Use for Building shall include the Right of Use for Building on State Land, on land subject to Right of Management as well as on Land Subject to Right of Possession.

As found in General Elucidation point 5 the two essential elements of rights over land which may become objects of Mortgage are that:

a. the rights according to the prevailing stipulations must be registered in a public register, in this case the Land Office. This element is linked to the preference given to the creditor holding a mortgage of other creditors. For this reason there must be a note of the Mortgage in the Land-book and the Certificate of Rights to the land thus encumbered, thus enabling any person to discover it (principle of publicity); and

b. the right must be transferable in nature and so, should it be necessary, immediately realisable to pay the debt settlement of which is guaranteed.

In connection with the second requirement above, Right of Possession which has been donated for religious purposes cannot be encumbered with a Mortgage because in accordance with the essence of donation for religious purposes the Right of Possession thus becomes religious property in perpetuity. In the same way rights over land used for the needs of religious observance and other holy purposes also cannot be encumbered with a Mortgage.

Paragraph (2)

The transferable Right to Use over State Land includes the Right to Use granted to an individual person or to a legal entity for a certain period of time established in the Decree of Grant. Although it is stated in Article 43 of Act 5 (1960), the Agrarian Act, that transferral of Right of Use over State Land requires a permit from an authorised official, Right of Use by its very nature includes the right of transferral to another party. The permit needed from an authorised official only refers to the question of whether the recipient of the right fulfils the requirements for a holder of Right of Use.

For the obligation to register Right of Use over State Land, see General Elucidation point 5.

Paragraph (3)

The Right of Use over Land Subject to Right of Possession shall only be encumbered by a Mortgage if such has been established by Government Regulation. The reason for this stipulation is that the development of Right of Use over Land Subject to Right of Possession is dependant on the needs of society. Although at present it has not been deemed necessary to make registration of Right of Use over Land Subject to Right of Possession compulsory, and so the right does not meet the requirements for encumbrance with Mortgage, the possibility of encumbering Right of Use over Land Subject to Right of Possession remains open in order to anticipate future developments.

See General Elucidation point 5.

Paragraph (4)

As explained in General Elucidation point 6, Mortgages may also cover buildings, plants, and handiworks such as temples, statues, gateways, and reliefs which form a single unit with the land involved. Buildings which may be encumbered with a Mortgage together with the land include buildings on or below the surface, such as basements, associated with the right over the land concerned.

Paragraph (5)

As a consequence of the stipulation specified in paragraph (4) encumbrance with a Mortgage of buildings, plants, and handiworks which form a single unit with the land the owner of which is different from the holder of rights over the land should be implemented at the same time as the grant of Mortgage on the land concerned and stated in the Deed of Grant of Mortgage, which is to be signed by the owner and the holder of right over the land or their proxies, both acting as grantors of Mortgage.

The meaning of authentic deed in this paragraph is the Deed of Authority to Encumber with Mortgage objects which form a single unit with the land and are to be encumbered with a Mortgage together with the land concerned.

Article 5

- (1) An object of Mortgage may be encumbered with more than one Mortgage for the purpose of guaranteeing payment of more than one debt.
- (2) Should an object of Mortgage be encumbered with more than one Mortgage, then the rank of each Mortgage shall be according to its date of registration with the Land Office.
- (3) Ranking of Mortgages registered on the same date shall be according to the dates on which the Deeds of Grant of Mortgage concerned were drawn up.

Elucidation of Article 5

Paragraph (1)

An object of Mortgage may be encumbered with more than one Mortgage, and so there may be found holders of first Mortgages, second Mortgages, and so on.

Paragraph (2)

The meaning of date of registration is the date of the Land-book of Mortgage as specified in Article 13.

Paragraph (3)

In the event that more than one Mortgage on one object of Mortgage is drawn up on the same date the rank of the Mortgage shall be established by the serial number of the Deed of Grant. This is made possible by the fact that it is only permitted for the several Deeds of Grant of Mortgage to be drawn up by the same PPAT.

Article 6

Should a debtor default then the holder of the first Mortgage shall have the right to sell the object of the Mortgage on his own authority through a public auction and to deduct the sum owed him from the proceeds of the sale.

Elucidation of Article 6

The right to sell an object of Mortgage on his own authority stems from the position of priority enjoyed by the holder of a Mortgage or the holder of the first Mortgage in the case of there being more than one holder of mortgage. This right is based on the contract entered into by the grantor of Mortgage that should the debtor default the holder of the Mortgage has the right to sell the object of Mortgage by public auction without any need for the further approval by the grantor of Mortgage and furthermore to subtract the repayment of the loan from the proceeds from the sale with priority other creditors. The remainder of the proceeds from the sale remain the right of the grantor of Mortgage.

Article 7

A Mortgage shall follow its object into the hands of any person possessing the object.

Elucidation of Article 7

This characteristic forms a particularly strong guarantee for the holder of a Mortgage. Even if the object of the Mortgage has changed hands and become the property of another party, the creditor still has the right to enforce execution if the debtor defaults.

CHAPTER III

GRANTING AND HOLDING A MORTGAGE

Article 8

- (1) An object may only be encumbered with a Mortgage by an individual who, or a legal entity which, has the authority to perform legal actions on the object of the Mortgage concerned.
- (2) Authority to perform legal actions on the object of a Mortgage as described in paragraph (1) must be vested in the grantor of a Mortgage at the time of registration of the Mortgage.

Elucidation of Article 8

*Paragraph (1)
Sufficiently Clear*

Paragraph (2):

Because the coming into being of a Mortgage is at the time of the registration of the Mortgage, authority to perform a legal action on the object of a Mortgage must be vested in the grantor of the Mortgage at the time the Mortgage Land-book is drawn up. For this reason the legitimacy of the authority must be proved at the time of registration of the Mortgage concerned. See General Elucidation point 7.

Article 9

The holder of a Mortgage is the individual or legal entity acting as the lending party.

*Elucidation of Article 9
Sufficiently clear.*

CHAPTER IV

**METHODS OF GRANTING, REGISTERING, ASSIGNING
AND REDEEMING MORTGAGES**

Article 10

- (1) The grant of a Mortgage shall be preceded by a promise to grant a Mortgage as a guarantee of payment of a certain debt, which is contained in and is an integral part of the loan/debt contract concerned or some other contract which gives rise to the debt.
- (2) The Grant of Mortgage shall be made by drawing up a Deed of Grant of Mortgage by a PPAT in accordance with prevailing legislation.
- (3) Should the object of Mortgage be rights over land which originate from the conversion of ancient rights which meet the requirements for registration but still have not yet been registered, the grant of Mortgage shall be made jointly with an application for registration of rights over the land concerned.

Elucidation of Article 10

Paragraph (1)

In accordance with the accessory nature of Mortgage, a grant thereof forms an adjunct to a primary contract, that is the contract which gave rise to the legal loan/debt relationship payment of which is guaranteed. The contract which gave rise to the loan/debt relationship may be a private deed or it may have to be drawn up as an authentic deed, depending on the legal requirements for the matter of the contract. In the case of a loan/debt relationship stemming from a loan/debt contract or a credit contract, the contract may be drawn up in or out of the country and the parties involved may be individual persons or foreign legal entities provided that the credit involved is used for the purpose of development within the territory of Indonesia.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

The meaning of ancient rights is that the Right of Possession over the land according to adat law exists but the administrative process of conversion has not yet been completed. The conditions which must be fulfilled are the conditions established under prevailing legislation.

Bearing in mind that at present there is still much land under the right described above the encumbrance of a Mortgage on that land is made possible provided the grant thereof is accompanied by an application to register the rights to the land. This possibility is intended to allow holders of rights to uncertificated land to obtain credit. It is also intended to encourage the general certification of rights over land.

The existence of this stipulation means that the use of land, ownership of which is in the form of girik or petuk land titles and other similar titles, as security as regulated in Act 7 (1992) Concerning Banking is made possible. This stipulation shows how to raise a grant of security to one of Mortgage.

Article 11

(1) The following shall be recorded in the Deed of Grant of Mortgage:

- a. the name and identity of the holder and grantor of the Mortgage;
- b. the domicile of the parties as specified in letter a, and for those domiciled outside of Indonesia, a domicile of choice within Indonesia; however, should a domicile of choice not be recorded, the PPAT office where the Deed of Grant of Mortgage is made shall be deemed the domicile of choice;
- c. a clear indication of the debt or debts guaranteed as specified in Article 3 and Article 10 paragraph (1);
- d. the value of the Mortgage;
- e. a clear description of the object of the Mortgage.

(2) Covenants which may be recorded in the Deed of Grant of Mortgage include;

- a. covenants limiting the authority of the grantor of Mortgage to lease the object of Mortgage, and/or stipulate or alter the lease period, and/or accept a rental deposit

except with the prior written consent of the holder of the Mortgage;

- b. covenants limiting the authority of the grantor of Mortgage to alter the form or composition of the object of Mortgage except with the prior written consent of the holder of the Mortgage;
- c. covenants granting the holder of the Mortgage the authority to manage the object of the Mortgage on the basis of an order by the Chairman of the District Court whose jurisdiction covers the location of the object of the Mortgage should the debtor default;
- d. covenants granting the holder of the Mortgage the authority to preserve the object of the Mortgage should it be necessary to implement execution or to avoid abolition or cancellation of the rights which have become the object of the Mortgage through non-fulfilment or infringement of the terms of legislation;
- e. covenants that the holder of the first Mortgage shall have the right to sell the object of the Mortgage on his own authority should the debtor default;
- f. covenants granted by the holder of the first Mortgage that the object of Mortgage shall not be discharged from Mortgage;
- g. covenants that the grantor of Mortgage shall not release his right to the object of Mortgage without the prior written consent of the holder of the Mortgage;
- h. covenants that the holder of Mortgage shall receive all or part of the compensation accepted by the grantor of Mortgage as repayment of the loan should the object of Mortgage be released from his right by the grantor of Mortgage or his right be revoked for the common good;
- i. covenants that the holder of Mortgage shall receive as repayment of the loan all or part of any insurance compensation accepted by the grantor should the object of the Mortgage be insured;
- j. covenants that the grantor of Mortgage shall vacate the object of Mortgage at the time of execution of the Mortgage;
- k. the covenant specified in Article 14 paragraph (4).

Elucidation of Article 11

Paragraph (1)

This stipulation establishes the compulsory contents for a Deed of Grant of Mortgage to be deemed valid. If the matters mentioned in this paragraph are not fully recorded in the Deed of Grant of Mortgage this results in the deed concerned being void in law. This provision is intended to specify the particular bases of a Mortgage, the subject, object and the sum guaranteed.

Letter a:

Should a Mortgage encumber objects which form a single unit with land belonging to an individual person or legal entity other than the holder of the right over the land, the grantor of Mortgage must be the holder of the right over the land as well as the owner of the objects.

Letter b:

Should the PPAT office be deemed the Indonesian domicile of a party domiciled abroad because the domicile of choice is not mentioned in the deed, the stipulation that the domicile of choice should be noted shall be deemed to have been fulfilled.

Letter c:

Indication of the debt or debts guaranteed as specified in this letter also includes the name and identity of the debtor concerned.

Letter d:

Sufficiently clear.

Letter e:

Clear description of the object of Mortgage as specified in this letter includes details of the certificate of the right over the land concerned or for land which has not yet been certificated at least a description of ownership, position, boundaries, and area of the land.

Paragraph (2)

The covenants recorded in this paragraph are merely facultative and do not affect the validity of the deed. The parties are free to decide to mention or not mention these covenants in the Deed of Grant of Mortgage. With entry of these covenants into a Deed of Grant of Mortgage, which is then registered at the Land Office, the covenants also have binding force on third parties.

Letters a and b:

The grantor of Mortgage may still exercise the authority limited in these letters provided he has already obtained the written approval of the holder of the Mortgage.

Letter c:

An covenant to grant the holder of the Mortgage the authority to manage the object of the Mortgage could harm the grantor of the Mortgage. For this reason, the covenant must be accompanied by a condition that exercise of such authority needs an order by the Chairman of the District Court. Before issuing such an order the Chairman of the District Court needs to summon and hear the parties involved, that is the holder and the grantor of the Mortgage and also the debtor should the grantor of the Mortgage not be the debtor.

Letter d:

This covenant includes the grant of authority to the holder of the Mortgage to arrange for the extension of the right over the land at the cost of the grantor of the Mortgage in order to avoid the redemption of the Mortgage because of the abolition of the right over the land, and to undertake anything else needed to ensure that the object of the Mortgage is not reduced in value, which would result in a reduction in the selling price such that the price would not cover the debt guaranteed.

Letter e:

In order to have the authority specified in Article 6 this covenant must be recorded in the Deed of Grant of Mortgage.

Letter f:

This covenant is intended to protect the interests of the holders of the second and further Mortgages. Under this covenant without the consent of the holders of the second and further Mortgages to the discharge the second and further Mortgages still encumber the objects of the Mortgage even though the object has already been executed for repayment of the loan to the holder of the first Mortgage.

Letter g:

What is meant by this letter is voluntary release of rights.

Letter h:

What is meant by this letter is voluntary release of rights and revocation of rights in the public interest on the basis of legislation.

Letter i:

Sufficiently clear.

Letter j:

This covenant is important in obtaining a high price in the sale of the object of the Mortgage.

Letter k:

Should this covenant not be recorded the certificate of right over the land encumbered with a Mortgage should be surrendered to the grantor of the Mortgage.

Article 12

A covenant granting authority to the holder of the Mortgage to take possession of the object of Mortgage should the debtor default shall be void in law.

Elucidation of Article 12

This provision exists to protect the interests of the debtor and other grantors of Mortgage, particularly if the value of the object of Mortgage is greater than the debt guaranteed. The holder of the Mortgage is forbidden to immediately become the possessor of the object of Mortgage on default by the debtor. However, the holder of the Mortgage is not forbidden from becoming the purchaser of the object of Mortgage as long as the procedure regulated in Article 20 is followed.

Article 13

- (1) A grant of Mortgage shall be registered at the Land Office.
- (2) No more than seven (7) days subsequent to the signature of the Deed of Grant of Mortgage as specified in Article 10 paragraph (2) the PPAT shall send the Deed of Grant of Mortgage

concerned and other necessary documents to the Land Office.

- (3) The Mortgage shall be registered by the Land Office as specified in paragraph (1) by making a Mortgage Land-book and noting in the Land-book the right over land which is the object of the Mortgage and copying the note onto the certificate of right over the land concerned.
- (4) The date of the Mortgage Land-book specified in paragraph (3) shall be the seventh day subsequent to the receipt of the complete documents necessary for registration or should the seventh day fall on a holiday, the Land-book concerned shall be dated on the next working day.
- (5) The Mortgage is created on the date of the Mortgage Land-book specified in paragraph (4).

Elucidation of Article 13

Paragraph (1)

One of the principles of Mortgage is the principle of publicity. For this reason registration of the grant of Mortgage forms an essential condition for the creation of the Mortgage and binds the Mortgage on any third party.

Paragraph (2)

Sending by the PPAT means that the deed and other necessary documents should be delivered to the Land Office by one of the PPAT officials or should be sent by registered post. The PPAT must use the best and safest method given the local conditions and facilities, and always be guided by the need to register the Mortgage as quickly as possible.

The other documents meant in this paragraph include the evidence documents connected with the object of Mortgage and the identities of the parties involved, including the certificate of right over the land and/or statements about the object of Mortgage.

The PPAT is obliged ex officio to implement the provisions of this paragraph. Penalties for contravention will be laid down in legislation regulating the office of PPAT.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

So that the making of the Mortgage Land-book is not protracted which could damage the parties involved and lessen the guarantee of legal certainty, this paragraph lays down one definite date as the date of the Land-book, that is the date of the seventh day calculated from the day the conditions in the form of documents for registration are fully met.

Paragraph (5)

With the making of the Mortgage Land-book the principle of publicity is met and the Mortgage becomes binding on third parties.

Article 14

- (1) As evidence of the Mortgage the Land Office shall issue a certificate of Mortgage in

accordance with prevailing legislation.

- (2) The certificate of Mortgage specified in paragraph (1) shall contain a heading with the words ADEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA@ (FOR THE SAKE OF JUSTICE BASED ON BELIEF IN GOD ALMIGHTY).
- (3) The certificate of Mortgage as specified in paragraph (2) shall have the same executory power as a court order which has binding legal force and shall be valid as the replacement for the *grosse acte Hypotheek* (major deed of hypothecation) concerning rights over land.
- (4) Unless otherwise covenanted, the certificate of rights over the land on which the encumbrance of a Mortgage has been noted as specified in Article 13 paragraph (3) shall be returned to the holder of rights over the land concerned.
- (5) The certificate of Mortgage shall be surrendered to the holder of Mortgage.

Elucidation of Article 14

Paragraph (1)
Sufficiently Clear

Paragraph (2) and Paragraph (3)

The heading set forth on the certificate of Mortgage and in the provisions of these paragraphs are intended to confirm that there is executory force to the certificate of Mortgage, and so if the debtor defaults it is ready for execution as if it were a court order with binding legal force through custom and use of the institution of Aparate executie@ in accordance with the provisions of the law of civil procedure.

See General Elucidation point 9 and the Elucidation of Article 26.

Paragraph (4)
Sufficiently Clear

Paragraph (5)
Sufficiently clear

Article 15

- (1) The Authorisation to Encumber with a Mortgage shall be made through a notary's deed or a PPAT's deed and shall fulfil the following requirements:
 - a. It shall not contain authority for any other legal action than encumbering with a Mortgage.
 - b. It shall not contain a right of substitution.
 - c. The object of the Mortgage, the amount of the debt and the name and identity of the creditor and of the debtor, should he not be the grantor of Mortgage, shall be clearly set forth.

- (2) The Authorisation to Encumber with a Mortgage shall not be rescinded or terminated for any reason except that the authorisation has been executed or because its period of validity has expired as specified in paragraphs (3) and (4).
- (3) An Authorisation to Encumber with a Mortgage concerning a right to land which has been registered shall be followed by the making of a Deed of Grant of Mortgage not more than one (1) month after the grant.
- (4) An Authorisation to Encumber with a Mortgage concerning a right to land which has not yet been registered shall be followed by the making of a Deed of Grant of Mortgage not more than (3) months after the grant.
- (5) The stipulations made in paragraphs (3) and (4) shall not apply in the event that the Authorisation to Encumber with a Mortgage is granted to guarantee particular loans specified in prevailing legislation.
- (6) An Authorisation to Encumber with a Mortgage which is not followed by the making of a Deed of Grant of Mortgage within the periods specified in paragraphs (3) and (4) or the period established according to the provisions specified in paragraph (5) shall fail in law.

Elucidation of Article 15

Paragraph (1)

As appears in the General Elucidation point 7 on the principles of encumbering with a Mortgage, it must be carried out in person by the grantor of Mortgage. Only in cases of genuine necessity when the grantor of Mortgage can not be present before the PPAT shall an Authorisation to Encumber with a Mortgage be permitted. In the same way the authorisation shall be given directly by the grantor of Mortgage and must fulfil the conditions as to its contents established in this paragraph. Non-fulfilment will result in the authorisation concerned failing in law, which means that the authorisation concerned can not be used as the basis for the making of a Deed of Grant of Mortgage. The PPAT must refuse an application to make a Deed of Grant of Mortgage if the Authorisation to Encumber with a Mortgage is not made in person by the grantor of the Mortgage or does not fulfil the conditions specified above.

Letter a

Not containing authority for any other legal action means in this provision, for example, not containing authority to sell or rent out the object of the Mortgage, or to extend the rights over the land.

Letter b

The intended meaning of substitution in this Act is a replacement for the recipient of the authorisation through assignment. Substitution does not include the recipient of authority delegating another party to act as his proxy; for example, the board of directors of a bank might delegate the authority received to the head of a branch or some other party.

Letter c

Explanation of the basic elements in encumbering with a Mortgage is very much needed in order to protect the interests of the grantor of the Mortgage. The amount of the debt in this letter means the amount of the debt according to the contract as specified in Article 3 paragraph (1).

*Paragraph (2)
Sufficiently Clear*

*Paragraph (3)
Sufficiently Clear*

Paragraph (4)

Land which has not yet been registered is land as specified in Article 10 paragraph (3). The time limit for use of Authorisation to Encumber with a Mortgage concerning rights over land which has not yet been registered has been made longer than that concerning land which has been registered as in paragraph (3) since the making of a Deed of Grant of Mortgage for rights over land which has not been registered must be done jointly with an application to register the right over the land concerned, as determined in Article 10 paragraph (3), the requirements for which must be fulfilled first.

The requirements for registration of rights over the land which have not yet been registered include submission of documents which need time to be obtained, such as a statement of the history of the land, a statement from the Land Office that the land in question is still uncertificated and, if the evidence of ownership is still in the name of a deceased person, a statement of inheritance and division of inheritance.

The provisions of this paragraph are also valid for land which has been certificated but has not yet been registered in the name of the grantor of Mortgage as a new holder of rights over the land, that is assignment, partition, or amalgamation of rights over the land has not yet been registered.

Paragraph (5)

In the context of implementing development and bearing in mind the interests of weaker economic classes, the time limits for the validity of an Authorisation to Encumber with a Mortgage as specified in paragraphs (3) and (4) do not apply to certain grants of credit established by the government, such as credit programmes, small loans, home owner's credit and other such loans. Determination of the time limits for the validity of an Authorisation to Encumber with a Mortgage for these types of credit shall be made by the Minister with authority in land matters after co-ordination and consultation with the Minister of Finance, the Governor of the Bank of Indonesia and other relevant officials.

Paragraph (6)

The provisions on time limits for the validity of the Authorisation to Encumber with a Mortgage are intended to prevent dilatoriness in using the authorisation. These provisions do not preclude the possibility of making a new Authorisation to Encumber with a Mortgage.

Article 16

- (1) Should the loan guaranteed by a Mortgage be assigned through *cessie*, subrogation, inheritance or any other cause, the Mortgage shall also be assigned in law to the new creditor.
- (2) The assignment of the Mortgage as specified in paragraph (1) shall be registered by the new creditor at the Land Office.

- (3) The registration of assignment of Mortgage as specified in paragraph (2) shall be done by the Land Office by recording it in the Mortgage Land-book and the Land-book of rights over the land which has become the Object of Mortgage and copying the records onto the certificate of Mortgage and the certificate of rights over the land concerned.
- (4) The date of the record in the Land-book specified in paragraph (3) shall be the date seven days after receipt of all the documents needed for registration of the assignment of the Mortgage or, should the seventh day fall on a holiday, the next working day.
- (5) Assignment of the Mortgage shall come into effect for third parties on the date of the record specified in paragraph (4).

Elucidation of Article 16

Paragraph (1)

Cessie is the legal action of assignment of a loan by the creditor holding the Mortgage to another party.

Subrogation is the replacement of the creditor with a third party who has paid the debtor's debt.

An example of the other causes apart from those detailed in this paragraph would be a case where a company is subject to a take-over or a merger causing the assignment of the debt from the original company to the new company.

Because the transference of the Mortgage regulated in this provision happens in law it does not need to be proved with a deed made by a PPAT. An adequate record of the transference of the Mortgage may be made on the basis of the deed proving the assignment of the debt guaranteed to the new creditor.

See General Elucidation point 8.

Paragraph (2)

Sufficiently Clear

Paragraph (3)

Sufficiently Clear

Paragraph (4)

Sufficiently Clear

Paragraph (5)

Sufficiently Clear

Article 17

The form and contents of the Deed of Grant of Mortgage, the form and contents of the Mortgage land-book and other matters connected to the grant and register of the Mortgage shall be determined and implemented by Government Regulation as specified in Article 19 of Act 5 (1960) Concerning

Basic Agrarian Regulations.

Elucidation of Article 17
Sufficiently Clear

Article 18

- (1) A Mortgage may be redeemed for the following reasons:
 - a. Redemption of the debt guaranteed by the Mortgage
 - b. Release of land from the Mortgage by the holder of the Mortgage.
 - c. Discharge from a particular level of Mortgage by the Chairman of a District Court.
 - d. Revocation of rights over the land encumbered by the Mortgage.
- (2) Redemption of Mortgage due to release of the land from the Mortgage by the holder shall be made by the holder of the Mortgage making a written statement to the grantor of the Mortgage releasing the land from the Mortgage.
- (3) Redemption of Mortgage because of discharge from a particular level of Mortgage by the Chairman of a District Court happens because of a request by the purchaser of the rights over the land which is encumbered by the Mortgage that the right to the purchased land be discharged from the encumbrance of the Mortgage as regulated in Article 19.
- (4) Redemption of Mortgage because of revocation of the right over the land encumbered by the Mortgage does not cause redemption of the debt guaranteed.

Elucidation of Article 18

Paragraph (1)

In accordance with the accessory nature of Mortgage, its existence depends on the existence of a loan, repayment of which is guaranteed. If the loan is redeemed because of settlement or some other reason, the Mortgage concerned is by that very fact also redeemed.

In addition, the holder of the Mortgage may release the land from the Mortgage and the right over the land may be revoked, which would result in the Mortgage also being redeemed.

Rights to land may be revoked, amongst other reasons, because of the cases specified in Articles 27, 34, and 40 of Act 5 (1960) Concerning Basic Agrarian Regulations and in other legislation. In the case of the expiry of the period of validity of a Right of Use for Exploitation, a Right of Use for Building, or a Right of Use which has become an object of Mortgage and its extension on the basis of an application submitted before the end of that period, the Mortgage is intended to continue to adhere to the right over land concerned.

Paragraph (2)

Sufficiently Clear

Paragraph (3)
Sufficiently Clear

Paragraph (4)
Sufficiently Clear

Article 19

- (1) The purchaser of the object of a Mortgage, whether through public auction on the order of the Chairman of a District Court or through voluntary sale and purchase, may request of the holder of the Mortgage that the property purchased be discharged from all encumbrance of that part of the Mortgage which exceeds the purchase price.
- (2) The discharge of the object of the Mortgage from the encumbrance of the Mortgage specified in paragraph (1) shall be made by a written statement from the holder of the Mortgage which contains a release of the land from the encumbrance of the Mortgage in excess of the purchase price.
- (3) Should the object of Mortgage be encumbered by more than one Mortgage and agreement cannot be reached between the holders of the Mortgages concerning discharge of the object of Mortgage from the encumbrance which is in excess of the purchase price as specified in paragraph (1) the purchaser of the property may submit a request to the Chairman of the District Court whose jurisdiction covers the location of the object of Mortgage involved to establish such a discharge and at the same time come to a decision regarding the distribution of the proceeds of the sale by auction among the creditors and their ranking in accordance with prevailing legislation.
- (4) The request for discharge of the object of the Mortgage from the Mortgage encumbering it as specified in paragraph (3) can not be made by the purchaser of the property if the purchase was made through voluntary sale and in the Deed of Grant of Mortgage concerned the parties had explicitly covenanted that the object of Mortgage would not be discharged from the encumbrance of the Mortgage as specified in Article 11 paragraph (2) letter f.

Elucidation of Article 19

Paragraph (1)

This provision exists in a context of protecting the interests of purchasers of objects of Mortgage, so that the property purchased can be freed from the Mortgage originally encumbering it if the purchase price is not sufficient to pay the debt guaranteed.

Paragraph (2)

Sufficiently Clear

Paragraph (3)

The holders of a Mortgage who can not reach an agreement need to try to the utmost possible to reach an agreement concerning discharge of the object of Mortgage before the problem is submitted by the purchaser to the Chairman of the District Court. If necessary a mediation service agreed on by the parties concerned can be requested.

In determining the distribution of the proceeds from the sale of the object of Mortgage and the ranking of the holders of Mortgage as specified in this paragraph the Chairman of the District Court shall pay attention to the provisions set forth in Articles 6 and 5.

Paragraph (4)

CHAPTER V

EXECUTION OF A MORTGAGE

Article 20

- (1) Should the debtor default, then on the basis of:
 - a. the right of the holder of the first rank Mortgage to sell the object of Mortgage specified in Article 6, or
 - b. the executory title found in the certificate of Mortgage specified in Article 14 paragraph (2),

the object of Mortgage shall be sold at public auction in the fashion stipulated in legislation for the repayment of the loan to the holder of the Mortgage, who shall take priority over other creditors.
- (2) On agreement of the grantor and the holder of the Mortgage of the Land the sale of the object of the Mortgage shall be carried out by direct sale if by that means a higher price profiting all parties can be obtained.
- (3) The sale specified in paragraph (2) shall only be made on the expiry of a period of one (1) month after written notice by the grantor and/or the holder of the Mortgage to the parties concerned and announcement in at least two (2) newspapers distributed in the area concerned and/or the local mass media, and if no party objects.
- (4) Any agreement to execute the Mortgage in any fashion conflicting with the provisions in paragraphs (1), (2) and (3) shall be void in law.
- (5) Until the announcement of the auction is issued the sale specified in paragraph (1) may be prevented by payment of the debt guaranteed with the Mortgage and of the expenses incurred in the execution.

Elucidation of Article 20

Paragraph (1)

The provision of this paragraph is an expression of the possibilities provided by this Act for creditors holding a Mortgage in the event that they must execute.

In principle any execution must be made through public auction, because it is hoped that in this way the highest price may be obtained for the object of Mortgage. The creditor has the right to subtract repayment of the guaranteed loan from the proceeds of the sale of the object of the Mortgage. In the event that the proceeds from the sale are greater than the amount of the guaranteed loan the remainder becomes the property of the grantor of the Mortgage.

Paragraph (2)

In the event that it is thought that a public auction will not result in the highest price, by departing from

the principle specified in paragraph (1) the possibility is provided of making a direct sale, provided that this is agreed to by the grantor and the holder of the Mortgage, and the conditions made in paragraph (3) are met. This possibility is intended to speed up the sale of the Mortgage for the highest price.

Paragraph (3)

The requirement established in this paragraph is intended to protect the parties involved, for example the holders of second and third ranking Mortgages and other creditors of the grantor of Mortgage.

The announcement specified may be made through newspapers or through other mass media such as radio, television, or through two of these methods. The distribution area of the newspapers and mass media concerned must cover the location of the object of Mortgage concerned.

The meaning of the date of written notice is the date of sending of a registered letter, the date of dispatch by courier, or the date of dispatch of a facsimile. If there is any difference between the date of notice and the date of announcement as specified in this paragraph the period of one month shall be calculated from the later of the two dates.

Paragraph (4)

Sufficiently Clear

Paragraph (5)

To prevent auction of the object of Mortgage payment of the debt should be made before the announcement of the auction is issued.

Article 21

Should the grantor of the Mortgage be declared bankrupt, the holder of the Mortgage shall nevertheless be authorised to exercise all rights obtained in accordance with the provisions of this Act.

Elucidation of Article 21

This provision establishes more firmly the position of priority of the holder of Mortgage by excepting the object of Mortgage from the results of bankruptcy of the grantor of Mortgage.

CHAPTER VI

DELETION OF MORTGAGE

Article 22

- (1) After a Mortgage has been redeemed as specified in Article 18 the Land Office shall delete the record of the Mortgage from the Land-book of rights over land and the certificate.
- (2) On redemption of the Mortgage the certificate of the Mortgage concerned shall be

withdrawn and, together with the Land-book for the Mortgage declared no longer valid by the Land Office.

- (3) Should the certificate specified in paragraph (2) not be returned to the Land Office for any reason that fact shall be noted in the MortgageLand-book.
- (4) Application for deletion as specified in paragraph (1) shall be submitted by the parties concerned enclosing the certificate of Mortgage on which the creditor has noted that the Mortgage has been redeemed because the loan repayment of which was guaranteed by the Mortgage has in fact been repaid, or a written statement from the creditor that the Mortgage has been redeemed because the loan repayment of which was guaranteed by the Mortgage has in fact been repaid or because the creditor has released the land from the Mortgage.
- (5) Should the creditor not be available to make the statement specified in paragraph (4) the parties concerned shall submit an application for a court order for the deletion to the Chairman of the District Court the jurisdiction of which covers the place in which the Mortgage concerned is registered.
- (6) Should the application for a court order for the deletion arise from an action being heard by some other court the application shall be submitted to the Chairman of the District Court hearing that action.
- (7) An application for deletion of the record of the Mortgage on the basis of a court order as specified in paragraphs (5) and (6) shall be submitted to the Head of the Land Office enclosing a copy of the decree or order of the court concerned.

- (8) The Land Office shall delete the record of the Mortgage in accordance with the procedures established in prevailing legislation within seven (7) days calculated from receipt of the application specified in paragraphs (4) and (7).
- (9) Should payment of the debt be made in instalments as specified in Article 2 paragraph (2) the redemption of the Mortgage for the part of the object of Mortgage concerned shall be recorded in the Land-book and certificate of Mortgage as well as in the Land-book and certificate of rights over the land which has already been released from the Mortgage which originally encumbered it.

Elucidation of Article 22

Paragraph (1)

Once a Mortgage has been redeemed because of the events specified in Article 18 the deletion of the record of the Mortgage is for the sake of administrative convenience only and has no legal influence on the redemption of the Mortgage.

Paragraph (2)

Sufficiently Clear

Paragraph (3)

Sufficiently Clear

Paragraph (4)

Sufficiently Clear

Paragraph (5)

Sufficiently Clear

Paragraph (6)

Sufficiently Clear

Paragraph (7)

Sufficiently Clear

Paragraph (8)

Sufficiently Clear

Paragraph (9)

Sufficiently Clear

CHAPTER VII

ADMINISTRATIVE PENALTIES

Article 23

- (1) Officials who contravene, or are negligent in fulfilling, the provisions of Article 11 paragraph (1), Article 13 paragraph (2), or Article 15 paragraph (1) of this Act and/or its implementing regulations shall be liable to administrative penalties in the form of:
 - a. an oral reprimand;
 - b. a written reprimand;
 - c. a temporary suspension from their post;
 - d. dismissal from their post.
- (2) Officials who contravene, or are negligent in fulfilling, the provisions of Article 13 paragraph (4), Article 16 paragraph (4), or Article 22 paragraph (8) of this Act and/or its implementing regulations shall be liable to the administrative penalties set forth in prevailing legislation.
- (3) The imposition of penalties specified in paragraphs (1) and (2) shall be without prejudice to the penalties applicable under other prevailing legislation.
- (4) Further provisions concerning the administrative penalties specified in paragraph (1) shall be established by government regulation.

Elucidation of Article 23

Paragraph (1)

The meaning of official in this paragraph is the PPAT and notary mentioned in the relevant articles. Penalties shall be imposed on the official concerned by the official with the authority to do so according to the provisions of paragraph (4). The type of punishment imposed shall depend on the gravity of the offence.

Paragraph (2)

Sufficiently Clear

Paragraph (3)

Sufficiently Clear

Paragraph (4)

Sufficiently Clear

CHAPTER VIII

TRANSITIONAL PROVISIONS

Article 24

- (1) Mortgages which were in existence before the coming into effect of this Act under the

Hypothecation or *Credietverband* provisions of Article 57 of Act 5 (1960) Concerning Basic Agrarian Principles shall be acknowledged and shall furthermore continue in effect as Mortgages in accordance with this Act until their expiry.

- (2) The Mortgages specified in paragraph (1) shall make use of the provisions for their execution and deletion set forth in Articles 20 and 22 after the Land-book and certificates of the Mortgage concerned have been adapted to the provisions specified in Article 14.
- (3) Authorisations to Encumber with Hypothecation existing at the time of the passing of this Act shall be made use of as Authorities to Encumber with a Mortgage with a period of six (6) months calculated from the coming into effect of this Act with due attention paid to the provisions specified in Article 15 paragraph (5).

Elucidation of Article 24

Paragraph (1)
Sufficiently Clear

Paragraph (2)
The adaptation of Land-book and certificates of Mortgage shall be further regulated in legislation.

Before the Land-book and certificate of Mortgage involved have been adapted to the provisions of Article 14 their execution and deletion shall be carried out in accordance with the provisions in effect before the passing of this Act.

Paragraph (3)
The term Authorisation to Encumber with Hypothecation in this paragraph is intended to include Authorisations to Use Land as a Security.

Article 25

Provided they do not conflict with the provisions of this Act all regulations concerning the encumbrance with Mortgage with the exception of those specified in Article 29 shall remain in effect until their confirmation in the implementing regulations of this Act and in their application shall be adapted to the provisions of this Act.

Elucidation of Article 25
Sufficiently Clear

Article 26

Until further regulations have been made, regulations concerning the execution of hypothecation existing at the coming into effect of this Act shall, subject to the provisions of Article 14, be effective over execution of Mortgage.

Elucidation of Article 26

The meaning of regulations concerning execution of existing hypothecation in this paragraph is the

provisions made in Article 224 Reformed Indonesian Regulation (Het Herziene Indonesisch Reglement, Staatsblad 1941-44) and Article 258 Legal Procedures in Districts Outside Java and Madura Regulation (Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madura, Staatsblad 1927-227).

The provision of Article 14 which must be heeded is that the grosse acte Hypotheek which functions as documentary proof of hypothecation in the case of Mortgage is the certificate of Mortgage.

Further regulations refers to legislation specifically regulating the execution of Mortgages which replaces the special provisions concerning execution of hypothecation of land mentioned above.

As explained in General Elucidation point 9 the transitional provisions in this Article confirm that in the transition period the stipulations about procedural law above shall remain effective for execution of Mortgages with surrender of the certificate of Mortgage as the basis for execution.

CHAPTER IX

CLOSING PROVISIONS

Article 27

The provisions of this Act shall also be valid for encumbering condominiums and rights of possession to condominium apartments.

Elucidation of Article 27

Under this provision Mortgages may encumber condominiums and rights of possession to condominium apartments build on land subject to Right of Use of State Land.

See General Elucidation point 5.

Article 28

Unless otherwise stipulated in this Act, further provisions for the implementation of this Act shall be made in legislation.

Elucidation of Article 28

Implementing regulations which need to be issued include those concerning the office of PPAT.

See General Elucidation point 12.

Article 29

On the coming into effect of this Act the stipulations concerning Credietverband made in Staatsblad 1908-542 jo. Staatsblad 1909-542 as amended by Staatsblad 1937-190 jo. Staatsblad 1937-191 and stipulations concerning hypothecation specified in Book II of the Indonesian Civil Law Code in so far as they concern encumbrance of rights over land and objects connected with the land are declared to be no longer in effect.

Elucidation of Article 29

On the coming into effect of this Act all provisions about Credietverband become unnecessary. The repealed provisions about hypothecation, however, are only those involving hypothecation encumbering rights over land and property forming a single unit with the land.

Article 30

This Act shall be cited as the Mortgage Act.

Elucidation of Article 30

Sufficiently Clear

Article 31

This Act shall come into effect on the date it is passed.

So that all persons shall know it the passage of this Act shall be placed in the State Gazette of the Republic of Indonesia.

Elucidation of Article 30
Sufficiently Clear

Ratified in Jakarta
on 9 April 1996

SOEHARTO

PRESIDENT
OF THE REPUBLIC OF INDONESIA

Passed in Jakarta
on 9 April 1996

MOERDIONO

MINISTER OF STATE AND SECRETARY OF STATE
OF THE REPUBLIC OF INDONESIA