Legal Analysis of the Rights and Obligations of Financial Institutions Regarding the Loss of Customers' Property Rights Certificates as a Result of Natural Disasters

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Abstract

The loss of a customer's Certificate of Ownership (SHM) while it is in the possession of a financial institution as collateral for a loan is a legal issue that has implications for the rights, obligations, and civil liability of the financial institution. This study aims to analyze the legal regulations related to the obligations of financial institutions in storing and securing SHM based on the Banking Law, the Mortgage Law, and civil law provisions governing the relationship between creditors and debtors. In addition, this study examines the legal responsibility of financial institutions if the SHM is lost due to a natural disaster that meets the criteria of force majeure based on Articles 1244 and 1245 of the Civil Code. The method used is normative legal research with a regulatory, legal concept, and doctrinal analysis approach. The results of the study show that financial institutions are required to apply the principle of prudence in the storage of collateral documents, and if the loss occurs due to a natural disaster that is proven to be force majeure, financial institutions can be exempted from liability for compensation. However, financial institutions remain obliged to carry out administrative recovery, including assisting in the process of issuing replacement certificates and ensuring that customers' legal protection remains guaranteed. This study emphasizes the need for stricter document security standards to prevent the risk of loss due to disasters in the future.

I. Introduction

In the dynamics of the national economy, financial institutions, especially banks, play a central role in providing financing facilities that enable the public to engage in productive, consumptive, and long-term investment activities. The granting of credit is generally accompanied by the submission of collateral in the form of land rights, one of which is a Certificate of Ownership (SHM), which has high economic value and provides legal certainty regarding land ownership. These certificates are submitted to banks as collateral to ensure loan repayment in accordance with the provisions of Law Number 10 of 1998 concerning Banking, which regulates the principle of prudence in lending activities (Bone Lau et al., 2024). In this context, financial institutions have a legal obligation to store and maintain the security of customer documents, including land title certificates, as part of the principle of prudential banking.

However, problems arise when certificates used as collateral for loans are lost due to natural disasters, such as fires, floods, landslides, or earthquakes that damage the physical facilities where the documents are stored. The loss of certificates is not merely an administrative matter, but can have complex legal implications for both financial institutions and customers as land rights owners. This situation raises fundamental questions about the limits of the legal responsibility of financial institutions, the position of customer rights, the document recovery process, and the legal consequences for ongoing credit agreements. This is particularly relevant given that Indonesia is a country prone to natural disasters as categorized by the National Disaster Management Agency (BNPB), making the potential loss of land documents due to such events very likely.

In civil law, the relationship between a bank and its customers is essentially a contractual relationship that gives rise to reciprocal rights and obligations. The transfer of SHM as collateral is included in a collateral agreement that is subject to the

provisions of collateral law as stipulated in Law Number 4 of 1996 concerning Land Rights and Objects Related to Land. In this arrangement, the bank holds the position of mortgagee, while the customer, as the mortgagor, retains their rights as the owner of the land (eigenaar) (Kanitha & Primantari, 2025). The loss of the certificate as a physical object of collateral does not automatically terminate the legal relationship, but it does give rise to an obligation to restore legal certainty regarding the destroyed or lost document.

Financial institutions, as the parties that control the physical certificates during the credit period, are obliged to store them with appropriate security standards. This obligation is in line with the prudential principle as stipulated in Article 2 of the Banking Law, which requires banks to manage risks professionally and responsibly. In addition, Article 1367 of the Civil Code (KUHPer) emphasizes that a principal or party in control of another person's property may be held liable in the event of negligence that causes loss. Therefore, if the loss of a certificate is caused by a lack of document security systems, procedural negligence, or violations of operational storage standards, then the financial institution can be held legally liable (Gusra et al., 2023).

However, the issue becomes different when the loss of certificates is caused by force majeure. Articles 1244 and 1245 of the Civil Code state that a party may be exempt from liability if the loss of an object or damage occurs due to force majeure that is beyond human control. Major natural disasters such as flash floods, earthquakes, or fires caused by lightning strikes can be categorized as force majeure if financial institutions can prove that these events were truly beyond their control and could not have been predicted. Therefore, it is important to examine whether the disaster that caused the loss of the certificate meets the criteria for force majeure and how financial institutions can prove this (B. S. H. Putra & Suryono, 2020).

From the customer's perspective, the loss of a certificate can certainly cause psychological, administrative, and economic losses. A Certificate of Ownership is not only proof of land ownership, but also a vital document that forms the basis for various legal actions such as sales, inheritance, grants, encumbrances, and permit applications. In many cases, the absence of these documents prevents customers from regaining their rights or accessing land services. To provide protection against such circumstances, the government has regulated the mechanism for issuing replacement certificates through Government Regulation No. 24 of 1997 concerning Land Registration. Article 57 of the regulation stipulates that in the event of a lost certificate, the owner may apply for a replacement certificate to the Land Office by attaching the necessary documents, including a report of the loss and proof that the previous certificate was under the control of a financial institution (Gaol et al., 2024).

Problems arise when the loss of a certificate leads to disputes over who is responsible for bearing the costs and administrative processes of issuing a replacement certificate. There are various possibilities: whether the bank should be fully responsible, whether the burden of responsibility is shared with the customer, or whether the customer, as the original owner, bears all the costs. In some cases, banks argue that natural disasters constitute force majeure, which exempts them from liability for compensation. However, this argument cannot always be applied automatically because financial institutions are still required to prove that their document storage systems met adequate security standards prior to the disaster. If it is proven that the bank did not implement the appropriate document protection standards, the force majeure clause cannot absolve it of fault or negligence.

In this context, there is an intersection between contract law, collateral law, and land law, each of which has different legal consequences. The loss of certificates affects the legal relationship between banks and customers, but does not remove registered

collateral rights. Indonesian land law guarantees that the physical and legal data stored at the land office remains strong evidence of land ownership, even if the physical certificate is lost. However, the process of issuing a replacement certificate still requires a lengthy administrative procedure and requires joint responsibility between the land owner and the party in possession of the certificate at the time of its loss.

This phenomenon highlights the importance of in-depth legal analysis of the rights and obligations of financial institutions in cases where certificates are lost due to natural disasters. In addition to involving the principle of bank prudence, this case also tests the effectiveness of land regulations and legal protection for customers as legitimate property owners. With the prevalence of disasters in various regions of Indonesia, this study is relevant in providing clarity regarding the legal responsibilities of financial institutions, protection for customers, and legal settlement mechanisms that can be pursued when certificates are lost due to circumstances beyond human control. A comprehensive analysis of this issue is expected to provide a legal construct that is fair, proportional, and provides legal certainty for both parties.

Based on the focus of the research, this study aims to analyze and explain the legal regulations regarding the rights and obligations of financial institutions in storing, safeguarding, and securing customers' Title Deeds (SHM) used as collateral for credit. It also aims to examine the legal responsibility of financial institutions if a customer's Title Deed is lost due to a natural disaster as a *force majeure* event.

2. Research Method

This study uses a normative juridical method, which is a legal research approach conducted by examining the norms, principles, and provisions of positive law that regulate the rights and obligations of financial institutions and legal protection for customers when Title Certificates are lost due to natural disasters. Normative juridical

research focuses on the study of primary, secondary, and tertiary legal materials as the basis for analysis. The primary legal materials used include Law Number 10 of 1998 concerning Banking Supervision, Law Number 4 of 1996 concerning Mortgage Rights, the Civil Code, particularly the provisions concerning obligations and force majeure, and Government Regulation Number 24 of 1997 concerning Land Registration. Secondary legal materials were obtained through literature, legal journals, expert opinions, and relevant doctrines on institutional responsibility, security law, and customer protection.

The approaches used are the statute approach, conceptual approach, and case approach to understand the legal construction comprehensively. The analysis is carried out by interpreting legal provisions and relating them to theoretical facts about the loss of certificates due to natural disasters. The results of the study aim to provide a clear, systematic, and argumentative legal description of the responsibilities and legal position of financial institutions towards customers.

3. Results and Discussion

A. Legal Regulations Regarding the Rights and Obligations of Financial Institutions in Storing and Securing Customer Ownership Certificates (SHM) Used as Credit Collateral

In the legal relationship between financial institutions and customers, the submission of Title Deeds (SHM) as collateral for credit is a common practice that is explicitly regulated in the Indonesian legal system. SHM as a land document has an important value as authentic proof of ownership and the basis for encumbrance rights. Therefore, financial institutions have a legal obligation to maintain, store, and protect these documents during the credit period. This obligation is not only administrative in nature, but also has legal implications based on banking law, contract law, collateral law, and land law (Ardhanary, 2021).

The first legal basis for the obligations of financial institutions is Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. Article 2 of the law stipulates that banking activities must be carried out based on the prudential principle. This principle requires banks to manage assets and risks with a high standard of professionalism, including securing important documents such as land certificates used as collateral. The application of the prudential principle is directly related to the bank's obligation to ensure that the SHM under its control is safeguarded by a security system that is adequate, structured, and meets industry standards. If the bank fails to apply this principle, such negligence may result in legal liability (Pangesti & Sahetapy, 2023).

The obligation of financial institutions to store certificates also stems from the contractual relationship between the bank and the customer. When a customer submits an SHM as collateral for a loan, a collateral agreement in the form of a mortgage is legally formed as regulated in Law Number 4 of 1996 concerning Mortgages (UUHT). Article 1 paragraph 1 of the UUHT states that a mortgage is a security right on land for the repayment of debt that gives priority to creditors. In this context, even though the certificate is handed over to the bank, the right of ownership remains with the customer as the grantor of the Mortgage Right. The bank's control of the certificate is a consequence of the collateral system and aims to ensure the security of the collateral during the loan period (Ariesta, 2023).

The UUHT itself does not regulate in detail the obligations of financial institutions in storing certificates. However, doctrinally, the recipient of the Mortgage has an implicit obligation to keep the original document as proof of registration of the Mortgage. This is based on the provisions of Article 20 paragraph (1) of the UUHT, which states that the execution of mortgage rights is carried out based on a Mortgage certificate that has executory power. Thus, the existence of the original collateral

certificate is an important prerequisite for the fulfillment of the creditor's rights (D. P. Putri et al., 2024). The loss of the certificate not only harms the customer, but can also harm the bank itself by hindering the execution of rights in the event of a credit default. This emphasizes that the obligation to store certificates is an integral part of the bank's legal obligations.

In addition, the regulation of financial institutions' responsibilities can be reviewed from a civil law perspective, specifically the Civil Code (KUHPer). Article 1365 of the Civil Code states that any unlawful act that causes loss requires the perpetrator to compensate for the loss. If a bank is negligent in safeguarding certificates, resulting in their loss, damage, or theft, such negligence can be categorized as an unlawful act. Furthermore, Article 1367 of the KUHPer also emphasizes that parties in control of other people's property are responsible for losses arising from careless storage (Bella, 2021). In this context, the bank is the party that controls the physical SHM, so if loss occurs due to negligence, the customer has a legal basis to file a claim for compensation.

The principle of financial institution liability can also be analyzed through contract theory. The submission of a certificate as collateral is part of a credit agreement subject to Article 1233 of the Civil Code, which states that an obligation arises from an agreement or law. As the authorized recipient of the certificate, the bank is obliged to execute the agreement in good faith as stipulated in Article 1338 paragraph (3) of the Civil Code. Good faith does not only mean not cheating or deceiving, but also includes the positive obligation to maintain the security and integrity of documents entrusted by customers. If the bank does not provide a secure storage system, does not supervise the storage facilities, or does not implement risk mitigation procedures, then the bank may be deemed to have violated the principle of good faith.

Further regulations regarding the protection of land documents are also contained in Government Regulation No. 24 of 1997 concerning Land Registration. Article 32 of the Government Regulation emphasizes that a certificate is strong evidence of land ownership. Therefore, a certificate is not only an administrative object, but also an authentic document that must not be lost or damaged. The party in possession of the certificate is obliged to be responsible for its physical condition. Although PP 24/1997 does not directly regulate the bank's storage obligations, because the bank controls the document as collateral, this obligation is inherent in law and morality (Sitania et al., 2021).

In banking practice, the obligation to store certificates is usually explicitly stated in credit agreements and collateral agreements. These clauses often mention that banks are responsible for storing and securing collateral documents. Legally, the inclusion of these clauses is binding on both parties based on the principle of pacta sunt servanda as stipulated in Article 1338 paragraph (1) of the Civil Code. When a bank agrees to a custody clause, it is obliged to fulfill this obligation until the loan is repaid or the collateral rights are extinguished in accordance with the provisions of Article 18 of the Credit Guarantee Law (Rahmi, 2022).

Internal banking regulations also set standards for the storage of collateral documents. Bank Indonesia and the Financial Services Authority, as regulators, issue provisions regarding risk management, internal control, and the physical security of important documents. For example, the Financial Services Authority Regulation (POJK) on the Implementation of Risk Management requires banks to provide secure, risk-resistant storage facilities supported by internal control systems to prevent document loss (Mahendra, 2018). Although these documents are not laws and regulations, OJK standards are still binding and must be complied with by banks. Violations of these standards may be considered a violation of the principle of

prudence.

The bank's obligations are also related to the theory of fiduciary duty. Although SHM is not transferred through fiduciary, the bank's control over the documents gives rise to a fiduciary obligation that requires a high degree of prudence. Banks must safeguard documents with the same level of protection as they would their own assets. If a bank neglects the principle of fiduciary duty, it may be held legally liable.

In this context, the rights of financial institutions also need to be analyzed. The bank's right to the certificate is not a right of ownership, but a right of control as collateral. Banks have the right to store, hold, and use certificates as a basis for charging collateral rights. Article 29 of the Banking Law gives banks the right to accept collateral in the form of land rights as part of their lending activities. On the other hand, banks also have the right to reject unfounded claims or demands if the loss of certificates is not due to negligence but due to force majeure. Articles 1244 and 1245 of the Civil Code provide a legal basis that a party can be exempted from liability if the loss occurs due to circumstances that are unpredictable or unavoidable. However, to be able to use this defense, the bank must prove that a natural disaster actually occurred and that the bank's has implemented reasonable and procedural document storage standards (Faizal Nurkholis, 2024).

Overall, the legal regulations regarding the rights and obligations of financial institutions in storing SHM are comprehensive and derive from various legal regimes. Financial institutions are required to apply the principle of prudence, physically safeguard documents, comply with risk management standards, and execute agreements in good faith. The rights of financial institutions are limited to the right to control documents, not the right of ownership. When a certificate is lost, financial institutions can be held liable if they are proven to be negligent, but can be exempted if the loss of the certificate occurs due to force majeure that cannot be prevented. This

legal relationship shows a balance between the obligation to protect customers and the rights of financial institutions to carry out their intermediary functions safely and responsibly.

B. Legal Liability of Financial Institutions in the Event of Loss of Customer Ownership Certificates Due to Natural Disasters Categorized as Force Majeure

The loss of a customer's Certificate of Ownership (SHM) while in the possession of a financial institution is an issue that has significant legal implications, both for the financial institution as the holder of the collateral and for the customer as the rightful owner of the land. The situation becomes even more complex if the loss is caused by a natural disaster that meets the criteria for force majeure, which is a situation that is beyond human control and eliminates the ability of the bound party to fulfill its obligations. In the context of credit agreements, *force majeure* is a factor that can release financial institutions from liability as long as it is proven that the loss was truly beyond human control and did not occur due to negligence. Thus, the analysis of the legal liability of financial institutions must be based on the characteristics of force majeure and the applicable legal basis.

In Indonesian civil law, the principle of force majeure is regulated in Articles 1244 and 1245 of the Civil Code (KUHPer). Article 1244 states that a debtor is obliged to compensate for costs, losses, or interest if they are unable to fulfill their obligations, unless they can prove that the non-fulfillment of these obligations was caused by something unexpected and beyond their control. Meanwhile, Article 1245 emphasizes that there is no obligation to compensate for losses if the debtor can prove that the losses were caused by events that were beyond their control and beyond their will, such as natural disasters (Aziz et al., 2023).

In the context of banking, financial institutions are parties that control customer SHMs as collateral for credit. Therefore, the loss of a certificate constitutes a failure on

the part of the bank to safeguard the documents entrusted to it, which can be legally considered negligence unless proven otherwise. However, if the cause of the loss of the certificate is a natural disaster such as an earthquake, major flood, landslide, fire caused by lightning, or volcanic eruption, the bank's legal counsel can file a force majeure defense as long as it meets the legal elements as stipulated in the Civil Code (KUHPer).

As the party in physical possession of the certificates, the financial institution has the burden of proof to show that the loss was truly caused by a natural disaster and not by internal negligence. This burden of proof is in line with the general principle of civil law that the party alleging a circumstance must prove its claim. Thus, the bank is not automatically exempt from liability simply because it claims that a natural disaster occurred. The bank is required to demonstrate: (1) That the natural disaster actually occurred, as evidenced by official reports from the BMKG, BPBD, or other authorities; (2) That the disaster had a direct causal relationship with the loss of documents; (3) That the document storage procedures were carried out professionally in accordance with the principle of due care; and (4) That the loss did not occur due to inadequate security systems (J. K. Putra & Berliani, 2023).

If the bank can prove these elements, it may be exempted from the obligation to pay compensation to the customer. However, if the bank cannot prove that the loss of the certificate was due to force majeure or there are indications of negligence in document storage, the bank may be found liable under the provisions of Article 1365 of the Civil Code (KUHPer) regarding unlawful acts. This article states that a party that commits negligence resulting in losses is obliged to compensate for those losses. In this context, negligence can take the form of storing documents in an inappropriate place, lack of a security system, or failure of the internal risk management system.

National banking regulations require banks to apply the prudential principle as

stipulated in Article 2 of the Banking Law (Law Number 10 of 1998). The prudential principle is an obligation inherent in all bank operational activities, including the storage of customer collateral documents.

In relation to the loss of SHM due to natural disasters, the prudential principle requires banks to implement a secure and standard-compliant document storage system. This can take the form of storage in fireproof vaults, the use of digital backups, the implementation of multi-layered security standards, and the placement of documents in rooms with special protection (Asril, 2020). If, prior to the natural disaster, the bank had implemented all due diligence standards and the loss was still unavoidable, then the bank can be categorized as having fulfilled its obligations and can be exempted from legal liability.

Conversely, if a natural disaster reveals that the bank's storage facilities do not meet basic protection standards, for example, the vault is not fireproof or there is no emergency document rescue system, then the bank can be considered negligent and cannot claim force majeure as a defense. The legal relationship between the bank and the customer in the transfer of SHM is not only a social fact but also a legal relationship based on a credit agreement and a collateral agreement. In these agreements, the bank acts as the recipient of collateral rights and the recipient of document control, while the customer, as the owner of the certificate, provides collateral as security for the debt.

Article 1338 of the Civil Code states that all agreements made legally are binding on the parties. Thus, if a credit agreement contains a clause regarding the bank's obligation to maintain and secure collateral documents, then that clause is binding and must be implemented. Force majeure only applies if the agreement clause also provides for exemption from liability due to natural disasters. Many credit agreements include clauses stating that the bank is not responsible for the loss of

documents due to natural events beyond its control, but such clauses must remain consistent with the principle of good faith (Asry et al., 2024).

Good faith as referred to in Article 1338 paragraph (3) of the Civil Code requires the bank to prove that it has performed its obligations to the best of its ability. If negligence is found despite the exemption clause, the clause cannot fully protect the bank. In Law Number 4 of 1996 concerning Mortgage Rights (UUHT), financial institutions as mortgagees do not have an explicit obligation regarding the storage of certificates. However, because certificates are proof of mortgage registration, banks are obliged to keep the certificates for the duration of the credit period so that the execution process can take place in the event of default (K. Putri, 2020).

The loss of certificates due to natural disasters does not eliminate mortgage rights, but it can hinder administrative processes such as execution or registration. Therefore, banks must still assist customers in obtaining replacement certificates even if the loss was due to force majeure. This is in line with the principle that mortgage rights do not disappear simply because of the loss of physical documents as long as other administrative evidence is available, such as the minutes of mortgage registration at the land office.

If the loss of certificates due to natural disasters is proven to be force majeure, the bank's responsibility is not completely eliminated. The bank remains obliged to provide administrative protection to customers, including: (1) Filing an official report of loss with the police; (2) Processing and issuing an internal certificate of loss; (3) Coordinating with the land office (BPN) for the process of issuing a replacement certificate based on the provisions of Articles 57 to 59 of Government Regulation Number 24 of 1997 concerning Land Registration; and (4)Covering the costs of processing the replacement certificate if so stipulated in the agreement or if there is minimal negligence, even if it is not the main cause.

In practice, although not always mandatory, many financial institutions take cooperative steps to bear part or all of the costs of issuing a replacement certificate as a form of moral responsibility and consumer protection.

The loss of the certificate does not eliminate the customer's principal debt. The credit continues according to schedule because the loss of the document does not affect the substance of the agreement. However, if the certificate is lost due to a natural disaster, the bank is obliged to ensure that the customer is not legally disadvantaged. The bank also needs to ensure that the executory rights over the collateral can still be exercised after the replacement certificate is issued. If the customer has paid off the loan, the bank is still obliged to return the certificate in the form of a replacement certificate. In the event of the loss of the previous certificate, the bank must still issue a roya letter (letter of cancellation of collateral rights) to be given to the National Land Agency (BPN) as the basis for updating land data (Ika Atikah, 2022).

Even if the loss of the certificate was not due to the customer's fault, the customer still retains ownership of the land. Protection for customers is supported by the principle of consumer protection as stipulated in Law Number 8 of 1999 concerning Consumer Protection. Article 19 states that business actors are obliged to provide compensation if consumers suffer losses, unless the losses are not due to the negligence of the business actor.

If the bank can prove that the loss was purely due to force majeure, then the obligation to compensate is not borne by the bank. However, the bank is still obliged to facilitate the document recovery process without shifting the entire burden to the customer.

From the overall analysis, it can be concluded that financial institutions can be exempt from legal liability if the loss of the Certificate of Ownership was purely due to force majeure and the bank has implemented all security standards in accordance

with the principle of prudence. However, this exemption does not mean that the bank has no responsibility at all. The bank is still obliged to take administrative measures, assist in the process of issuing a replacement certificate, and ensure that the customer's rights are not harmed. Conversely, if it is found that the bank did not implement adequate document security measures, then the force majeure defense cannot be used, and the bank remains liable under civil law, the principle of good faith, and banking operational standards.

4. Conclusion

Based on an analysis of the obligations of financial institutions in storing SHMs used as collateral and their legal responsibilities in the event of loss due to natural disasters, it can be concluded that the legal relationship between banks and customers is built on the principles of prudence, civil contracts, and consumer protection. SHM as an authentic land document is an object that must be safeguarded with the highest security standards because it forms the basis for encumbering collateral rights and has significant legal value. Therefore, financial institutions have an inherent obligation to store them securely, implement risk management in accordance with OJK regulations, and execute credit agreements in good faith as stipulated in Article 1338 of the Civil Code. Negligence in storage can give rise to civil liability under Article 1365 of the Civil Code.

When SHM is lost due to a natural disaster that meets the elements of force majeure as stipulated in Articles 1244 and 1245 of the Civil Code, financial institutions can be exempted from the obligation to pay compensation as long as they can prove that the loss truly occurred beyond human control and was not due to negligence in document storage. However, exemption from liability does not eliminate the moral and administrative obligations of the bank. The bank is still obliged to assist in the process of reporting the loss, coordinating with the land office, and facilitating the

issuance of a replacement certificate so that the rights of customers remain protected.

Thus, the responsibility of financial institutions is proportional: they are exempt from compensation if force majeure is proven, but they remain obliged to carry out administrative recovery and protect the legal interests of customers. This demonstrates a balance between consumer protection and the principle of banking prudence.

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