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Legal Protection for Ownership of Joint Property which is the Object of Bank Credit Guarantee: Analysis of Supreme Court Decision No.301/K/Pdt/2020

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Abstract

Article 35 paragraph (1) and 36 paragraph (1), of the Act No. 1 of 1974 (Marriage Act) stipulates that joint property of husband and wife is property acquired by the husband and wife during the subsistence of the marriage and is disposed of with the consent of both the husband or the wife. All assets can be disposed of. In addition, Article 56(2) of the Marriage Act stipulates that within one year after returning to Indonesia (since the marriage was held abroad), couples must register documents proving their marriage on-

site with the Marriage Registry Office. However, in practice, there is a delay in registration of marriages contracted abroad under Supreme Court Decision No.301 K/ Pdt/ 2020. Therefore, this had an impact on the proof of total assets, and after the death of the plaintiff's husband, there were 2 Certificates of Building Use Rights (HGB), which were the plaintiff's rights, through mortgages as security for loans from banks.

Keywords: Legal Protection, Joint Assets, Credit Guarantee

1. Introduction

Property issues in marriage are regulated in Article 35 and 36 of the Marriage Act. In Article 35 (1) of the Marriage Act it is explained that property acquired during marriage becomes joint property, and in Article 36 (1) it is explained that regarding joint property, a husband or wife can act with the consent of both parties. What is meant by joint property is any property that is produced or obtained jointly by a husband/wife during the period of their marriage, except for what they receive or obtain as an inheritance or a special gift for one of the husband and wife.

In Decision No.08/Pdt.G/2017/PN Btm, the Plaintiff (Sharon Lee Mee Chyang) against the Defendant (Bank Central Asia) with the object of the lawsuit being 2 (two) certificates each: 1 (one) original Certificate of HGB No. 662, Batu Ampar District, Batam City in the name of Benyamin Simorangkir, and 1 (one) original Certificate of HGB No. 773, Batu Ampar District, Batam City in the name of Benyamin Simorangkir.

The plaintiff (Sharon Lee Mee Chyang) is a Singaporean citizen who was married to an Indonesian citizen, namely Benyamin Simorangkir, on 22 December 1995, as evidenced by the Singapore State Marriage Certificate and a photocopy of Overseas Marriage Reporting No.52/CPL-PK/VIII/ 2016 issued by the Batam City Population and Civil Registration Service and it turns out that Benyamin Simorangkir was also married to Nurmian Manalu as proven by Marriage Certificate No.146/m.GPKB.A/III/08 on March 31 2008 which was issued by the Punguan Christian Batak Church (GPKB) but at the end of July Benyamin Simorangkir fell ill and died, this is proven by Benyamin Simorangkir's death certificate No.2171-KM-23082016-0001 issued by the Batam City Population and Civil Registration Service dated August 23 2016.

In the lawsuit, the plaintiff states that when the plaintiff (Sharon Lee Mee Chyang), as the heir, as evidenced by a photocopy of the heir certificate issued by the chairman of the Batam district court on 22 October 2016, visited the defendant to collect 2 (two) certificates each: 1 (one) original Certificate of HGB No.662, Batu Ampar District, Batam City in the name of Benyamin Simorangkir, and 1 (one) original Certificate of HGB No.773, Batu Ampar District, Batam City in the name of Benyamin Simorangkir. However, the Defendant (Bank Central Asia) did not want to hand over the certificate because there was another party who wanted to take it, namely Nurmian Manalu, namely the second wife of Benyamin Simorankir. By the defendant's action of not handing over the certificate, the plaintiff claimed that the defendant had committed an unlawful act.

Before the defendant responded to the plaintiff's lawsuit, there was a request for intervention submitted by Benyamin Simorangkir's second wife, namely Nurmian Manalu, based on a Special Power of Attorney dated 12 February and registered at the Batam District Court clerk's office under register No.131/SK/2016/PN.Btm dated 2 February 2017 then intend to join in this matter. However, the judge gave consideration to giving an interim decision by rejecting Nurmian Manalu's intervention claim.

The Defendant responded to the Plaintiff's lawsuit stating that the Defendant and Benyamin Simorangkir with the approval of his wife Nurmian Manalu entered into Credit Agreement No. 37 dated 07 October 2015, with collateral in the form of a plot of land measuring 96 M2 along with the building standing on it in accordance with HGB Certificate No. 662, located in Sinar Bulan Asri Mulia Shopping Complex No. 1, Bengkong Laut Village, Batu Ampar District, Batam City, and the Collateral given by Benyamin Simorangkir to the Defendant, has also been encumbered with Mortgage Rights in accordance with the Deed of Granting Mortgage Rights No. 1217/2015 dated 07 October 2015 before Anly Cenggana, SH., Batam Notary and has been registered at the Batam City Land Office according to Mortgage Rights Certificate No.12970/2015 dated November 16 2015.

Credit Agreement No. 38 dated 07 October 2015 with a Home Ownership Credit (KPR) facility worth Rp. 500,000,000, with collateral in the form of a plot of land covering an area of 80 M2 and the building standing on it in accordance with HGB Certificate No. 773, located in the PT Complex. Asrimulia Moonlight No. 02, Bengkong Laut Village, Batu Ampar District, Batam City, and the Collateral given by Benyamin Simorangkir to the Defendant, has also been encumbered with Mortgage Rights in accordance with the Deed of Granting Mortgage Rights No. 1218/2015 dated 07 October 2015 before Anly Cenggana, SH., Batam Notary and has been registered at the Batam City Land Office according to Mortgage Rights Certificate No. 12952/2015 dated 16 November 2015.

The credit agreement made by Benyamin Simorangkir was carried out with the approval of his wife, Nurmian Manalu, as evidenced by a Marriage Certificate (Blessing from the Church) on a home ownership credit facility (KPR) worth Rp. 1,000,000,000, carried out before Notary Anly Cenggana, SH., Notary in Batam. In his consideration, the judge was of the opinion that because the Plaintiff was the heir of the late Benyamin Simorangkir, the Plaintiff was the party entitled to the legacy of her husband Benyamin Simorangkir, and declared 2 (two) certificates each: 1 (one) original Certificate of HGB No.662, Batu District Ampar, Batam City in the name of Benyamin Simorangkir, and 1 (one) original Certificate of HGB No.773, Batu Ampar District, Batam City in the name of Benyamin Simorangkir which is controlled by the Defendant is the Plaintiff's Rights.

Decision No.08/Pdt.G/2017/PN Btm, with the judge considering Article 1365 of the Civil Code and other regulations the judge granted the plaintiff's lawsuit by stating that the Defendant had committed an Unlawful Act, as determined by the judge whether the defendant had mastered or not provided 2 (two) Each certificate is 1 (one) original Certificate of HGB No.662, Batu Ampar District, Batam City in the name of Benyamin Simorangkir, and 1 (one) original Certificate of HGB No.773, Batu Ampar

District, Batam City in the name of Benyamin Simorangkir, which until now is still under the control of the Defendant, in this case the judge granted the Plaintiff's lawsuit stating that the 2 (two) Certificates controlled by the Defendant are the Plaintiff's Rights.

Decision No.08/Pdt.G/2017/PN Btm the judge gave a decision in favor of the plaintiff on the basis that the 2 HGB certificates were joint property obtained after their marriage and in the judge's consideration also stated that the defendant did not present any witnesses in this case, and the judge considered the petitum in the plaintiff's lawsuit which declared the heir certificate valid and valuable No: 07/WRS/2016/PN.Btm which was validated by the Chairman of the Batam District Court dated 20 October 2016 and declared the Plaintiff as the Heir of Benyamin Simorangkir and In his consideration, the judge also stated that the plaintiff was the heir of the late Benyamin Simorangkir, so the plaintiff was the party entitled to the legacy of her husband, Benyamin Simorangkir.

High Court Decision No.171/Pdt/2017/PT/PBR the judge canceled District Court Decision No.08/Pdt.G/2017/PN/Btm in his consideration the judge stated that those who approved the house ownership credit were Benyamin Simorangkir and Nurmian Manalu with the Appellant Initially the Defendant (BCA) so that everything that arises as a result of the agreement is only binding on both parties. Article 1340 of the Civil Code "an agreement only binds or applies to the parties who make it. So, with the death of Benyamin Simorangkir, the original Appellant, Defendant, was only responsible to Nurimian Manalu, who in the Credit Agreement acted as Benyamin Simorangkir's wife.

Decision No.301/ K/ Pdt/2020 Sharon Lee Mee Chyang (Petitioner for Cassation) filed a cassation petition against BCA (Respondent for Cassation) asking to cancel the Decision of the Pekanbaru High Court No.171/PDT/2017/PBR, but the Supreme Court is of the opinion that the Pekanbaru High Court's decision does not apply the law incorrectly considering that the party in the home ownership credit agreement approved by the Cassation Respondent in this case is Benyamin Simorangkir with the consent of his wife Nurmian Manalu so that the Cassation Petition has no legal relationship with the Cassation Respondent and rejects the Cassation Petition Sharon Lee Mee Chyang.

Based on the case above, it is interesting to research: "Legal Protection of Joint Ownership of Assets Used as Bank Credit Guarantee Objects (Analysis of Supreme Court Decision No.301/K/ Pdt/2020)".

2. Research Methods

To carry out this legal research, a type of normative juridical research is used, this approach is a method that involves the study of library materials as secondary data, which is also known as library research. This research focuses on discussing the results of this research, referring to the theoretical basics obtained from various literary or bibliographic sources such as textbooks, legal journals, archives or legal publication documents.¹

The research approach is a case approach, where normative legal research is a method that focuses on the analysis of legal cases that have occurred in the past or currently. This

¹ Ronny Hanitijo soemitro, *Metode Penelitian Hukum dan Jurimeri*, Bogor: Ghalia Indonesia, 2018, hlm. 9.

case approach aims to find patterns or trends that occur in these legal cases, as well as looking for solutions or suggestions that can be given to resolve related legal problems.

Apart from the case approach, it also uses a legislative approach. This approach is carried out by reviewing all statutory regulations related to the problem being discussed.² This legislative approach is also carried out by studying the consistency or suitability between a legal regulation and other regulations. After the primary and secondary data are collected, processing and analysis are then carried out using qualitative analysis methods in accordance with applicable regulations.

3. Result and Discussion

Article 35 (1) of the Marriage Act states that property acquired during marriage becomes joint property. Regarding joint property, husband and wife can act with the consent of both parties. This means that husband and wife have the same rights to joint property, namely property obtained during their marriage.

In the case in decision No.301/K/Pdt/2020, the Plaintiff (Sharon Lee Mee Chyang) is a Singaporean citizen who was married to an Indonesian citizen, namely Benyamin Simorangkir, on December 22 1995, as evidenced by the Singaporean Marriage Certificate and photocopy of Overseas Marriage Reporting No.52/CPL-PK/VIII/2016 issued by the Batam City Population and Civil Registration Service.

In this case, we can see that Sharon Lee Mee Chyang has reported her marriage, where Sharon Lee Mee Chyang married on December 22 1995, as proven by the Singapore State Marriage Act, while Sharon Lee Mee Chyang reported her marriage in Indonesia in 2016, as stated in written in the lawsuit stating that it is a photocopy of Reporting on Marriage Abroad No.52/CPL-PK/VIII/2016 issued by the Batam City Population and Civil Registration Service. In the author's opinion, of course, this is not in accordance with Article 56 (2) of Marriage Act which states that within 1 year after the husband and wife return to Indonesian territory, proof of their marriage must be registered. at the Marriage Registration Office where they live.

The procedure for carrying out a marriage is divided into four stages, namely:³

1. Report
2. Announcement
3. Prevention
4. Continuation

In Decision No.301/K/Pdt/2020, Sharon Lee Mee Chyang's husband, Benyamin Simorangkir, was also married to Nurmian Manalu as proven by Marriage Certificate No. 146/m.GPKB.A/III/08 on March 31 2008 issued by the Punguan Christian Batak Church (GPKB) in this case the marriage between Benyamin Simorangkir and Nurmian Manalu their marriage was still carried out under the hands of the marriage registration. This is also not in accordance with the provisions of Article 2(2) of Marriage Act which states that every marriage is recorded according to the applicable laws and regulations. There is a need to register

marriages, namely to regulate marriages in order to obtain protection.⁴

The purpose of marriage registration is to provide certainty and protection for the parties entering into a marriage, so as to provide authentic evidence that a marriage has occurred and the parties can defend the marriage to anyone before the law.⁵ The other purposes of registering marriages are:⁶

1. To ensure orderly administration in registering marriages.
2. As collateral for obtaining their rights to a marriage certificate, obtaining an identity card and family card, obtaining birth certificates for children born, obtaining death certificates if someone dies and so on.
3. Provide certainty regarding their marital status and legal protection.
4. Provide legal certainty regarding the status of the husband, wife and children.
5. Provide legal protection for certain civil rights arising from marriage.

If we look at it in terms of marriage act based on the author's analysis, in the first marriage the marriage registration was late, we can see this in Article 56 (2) of the Marriage Act which states that after the husband and wife return to Indonesian territory, within 1 year they must register proof of their marriage at the Marriage Registration Office where they live and in the second marriage, they do not register the marriage. Article 2 (2) of the Marriage Act explicitly states that every marriage is registered according to applicable regulations.

Marriage registration according to statutory regulations is about the legal meaning of marriage registration. In relation to this problem, the general explanation of No. 4 letter b of the Marriage Act states the principles or principles of marriage where a marriage is valid if it is carried out in accordance with the laws of each respective religion and belief and besides that each marriage must be recorded according to applicable regulations. However, in the explanation it is stated.

Based on the explanation of Marriage Act, it is explained that marriage registration is not a factor that determines the validity of a marriage, but only the procedures that must be carried out and marriage registration which is an administrative obligation that is required based on applicable regulations.⁷

According to Indonesian law, a valid marriage solemnized abroad must be recorded and reported to the Population and Civil Registry Service in Indonesia within a period of 1 year. Article 56 (2) of the Marriage Act reads: "Within 1 year after the husband and wife return to Indonesian territory, their proof of marriage must be registered at the Marriage Registration Office where they live." Marriage registration outside Indonesia is substantially administrative

⁴ *Ibid*, hlm 145

⁵ D.Y. Witanto, *Hukum Keluarga: Hak Dan Kedudukan Anak Luar Kawin Pasca Keluarnya Putusan MK Tentang Uji Materiil UU Perkawinan*, Jakarta: Prestasi Pustaka Publisher, 2012, hlm. 142

⁶ RachMadi Usman, *Makna Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan di Indonesia*, Jalan Brigjen. H. Hassan Basry Banjarmasin Indonesia, Agustus 2017, hlm, 259.

⁷ Muhammad Irvan & Kurnia Warman, *Proses Peralihan Hak Milik Atas Tanah Karena Pewarisan Dalam Perkawinan Campuran*, *Lambung mangkurat Law Journal*, Vol 4 No. 2 September (2019)

² Bambang Sunggono, *Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 2015, hlm. 17

³ *Ibid*, hlm 142.

in nature so that, if it is not registered, the marriage is considered to have never occurred by the state.⁸

If the marriage is not registered in Indonesia, the marriage is considered to have never existed. This is also reinforced by the Supreme Court Circular Letter No. 3 of 2015 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of the Year for the Court which reads:⁹ "In the event of a marriage conducted abroad which is not registered at the Marriage Registrar's Office in Indonesia, the marriage it was thought to have never existed." According to the author, recording and registering marriages needs to be done to obtain legal protection and legal certainty to create orderly administration in order to obtain civil rights and obtain legal protection.

In the lawsuit, the plaintiff states that when the plaintiff (Sharon Lee Mee Chyang), as the heir, as evidenced by a photocopy of the heir certificate issued by the chairman of the Batam district court on 22 October 2016, visited the defendant to collect 2 (two) certificates each: 1 original Certificate of HGB No. 662, Batu Ampar District, Batam City in the name of Benyamin Simorangkir, and 1 original Certificate of HGB No.773, Batu Ampar District, Batam City in the name of Benyamin Simorangkir. However, the Defendant (BCA) did not want to hand over the certificate because there was another party who wanted to take it, namely Nurmian Manalu, namely the second wife of Benyamin Simorangkir. By the defendant's action in not handing over the certificate, the plaintiff claimed that the defendant had committed an unlawful act.

Based on the case, the defendant did not want to hand over the certificate because there was another party who wanted to take it, namely Nurmian Manalu, namely the second wife of Benyamin Simorangkir. This was because Benyamin Simorangkir entered into the credit agreement based on the approval of his wife, namely Nurmian Manalu. Based on Article 35 and 36 of the Marriage Act, it is explained that property acquired during marriage becomes joint property, and with respect to joint property, the husband or wife can act with the consent of both parties.

Credit Agreement No.37 dated 07 October 2015, with collateral in the form of a plot of land covering an area of 96 M2 and the building standing thereon in accordance with Certificate of HGB No.662, located in the Sinar Bulan Asri Mulia Shopping Complex No. 1, Bengkong Laut Village, Batu Ampar District, Batam City, and the Collateral given by Benyamin Simorangkir to the Defendant, has also been encumbered with Mortgage Rights in accordance with the Deed of Granting Mortgage Rights No. 1217/2015 dated 07 October 2015 before Anly Cenggana SH Batam Notary and has been registered at the Batam City Land Office according to Mortgage Rights Certificate No. 12970/2015 dated November 16 2015.

Credit Agreement No. 38 dated 07 October 2015 with a Home Ownership Credit (KPR) facility worth Rp. 500,000,000, with collateral in the form of a plot of land covering an area of 80 M2 and the building standing on it in accordance with HGB Certificate No. 773, located in the PT

Complex. Asrimulia Moonlight No. 02, Bengkong Laut Village, Batu Ampar District, Batam City, and the Collateral given by Benyamin Simorangkir to the Defendant, has also been encumbered with Mortgage Rights in accordance with the Deed of Granting Mortgage Rights No. 1218/2015 dated 07 October 2015 before Anly Cenggana SH Notary Batam and was registered at the Batam City Land Office according to Certificate of Mortgage No. 12952/2015 dated 16 November 2015. The credit agreement made by Benyamin Simorangkir was carried out with the approval of his wife, Nurmian Manalu, which was proven with a Marriage Certificate (Blessing from the Church) on top of a home ownership credit facility (KPR) worth IDR. 1,000,000,000, carried out before Notary Anly Cenggana, SH., Notary in Batam.

In decision No. 08/Pdt.G/2017/PN. Btm the plaintiff presented 2 witnesses. The witness named Astrid Evelin, who is the biological sister of Benyamin Simorangkir, gave a statement that the witness was the one who took care of the credit application when the late. Benyamin Simorangkir wanted to apply for credit from the defendant and that there was a loan from BCA of Rp. 1000,000,000, with a term of 5 years and the one that was paid off was AIA Insurance to BCA, that the one who came when he demolished the shophouse was Alm. Benjamin Simorangkir and Nurmian Manalu.

The plaintiff's witness, Ahmad Zarowi, who is the section head at the Batam City Population and Civil Registry Office, said that marriages carried out in churches were not valid according to Indonesian regulations, namely the Marriage Act. The witness stated that the marriage occurred between the Plaintiff and the Plaintiff's husband, namely the late. Benyamin Simorangkir in Singapore was previously reported in Indonesia as complying with the regulations in force in the Unitary State of the Republic of Indonesia. The Witness confirmed that the evidence of the P-3 letter submitted by the Plaintiff, namely Reporting Marriage Abroad No.52/CPL-PK/VIII/2016 issued by the Batam City Population and Civil Registration Service, was a product of the place where the Witness currently works.

According to the author's analysis of this case, in this case Benjamin Simorangkir died on 23 August 2016, while Shereen Le Chyang registered her marriage on 15 August 2016 and the credit agreement between the defendant BCA and Benyamin Simorangkir was carried out on 07 October 2015. So in when making a credit agreement between Benyamin Simorangkir and the defendant BCA, the marriage between Benyamin Simorangkir and Shereen Lee Chyang had not been recognized by the state as well as the marriage between Benyamin Simorangkir and Nurmian Manalu which was still proven by a church blessing letter as we know that a marriage is valid if The marriage was recorded at the Civil Registry Office based on an interview with a law faculty lecturer, namely Dr. Ria Fitri, SH., M.Hum said that in state law a marriage that is not registered is an invalid marriage, so there is no right to have a civil relationship, meaning there is no state recognition because the marriage is invalid.¹⁰

Article 65 (2) of the Marriage Act states that the second and subsequent wives do not have the right to joint property that existed before the marriage with the second or subsequent wife occurred. However, this only applies to those who

⁸ Sheanny Scolastika, Keabsahan Pencatatan Perkawinan Diluar Indonesia Berdasarkan Peraturan Perundang-Undangan, *Jurnal Kertha Wijaksana*, Vo. 14, No. 2 (2020), hlm. 145

⁹https://kepaniteraan.mahkamahagung.go.id/images/peraturan/semba/SEMA_3_TAHUN%202015.pdf

¹⁰ Wawancara pada tanggal 5 maret 2024

register marriages, this is in accordance with Article 2 (2) of the Marriage Act which states that every marriage is recorded according to the law. Invalid marriages give rise to legal consequences in which the marriage is not recognized by the state, the marriage is not recognized by the state, there is no legal protection regarding the marital status of their assets.

When making credit agreements, you should use the principles of prudence and trust. The elements of a credit agreement are:¹¹

1. There are 2 parties, namely the credit giver and the credit recipient
2. There is trust based on the credit rating
3. There is an agreement to provide credit from the credit provider and to pay credit by the credit recipient either in written form or an instrument
4. There is delivery of goods, services or money from the credit provider to the credit recipient
5. There is an element of time
6. There is a risk
7. There are floral elements

The credit agreement entered into by Benyamin Simorangkir with the defendant BCA on the basis of his wife's approval was carried out before a notary using the collateral of the building use rights certificate. When making the credit agreement, the witness named Astrid Evelin, who is the biological sister of Benyamin Simorangkir, gave a statement that the witness was the one who took care of the credit application when the late. Benyamin Simorangkir wanted to apply for credit from the defendant and that there was a loan from BCA of Rp. 1000,000,000, with a term of 5 years and the one that was paid off was AIA Insurance to BCA, that the one who came when he demolished the shophouse was Alm. Benjamin Simorangkir and Nurmian Manalu.

According to the author's analysis based on the witness's statement, the bank and the notary when making the credit agreement used the consent of Benyamin Simorangkir's second wife, namely Nurmian Manalu, where Nurmian Manalu was the wife of Benyamin Simorangkir as proven by a photocopy of Marriage Certificate No. 146/m.GPKB.A/III/08 dated 31 March 2008, issued by the Punguan Christian Batak Church (G.P.K.B) Antiokhia Cipayung TMII East Jakarta, signed Rev. S. Sitompul and Pnt. S Simatupang, Congregation Teacher/Secretary, as evidence T-1 and Photocopy of Statement dated 7 October 2015 from Benyamin Simorangkir and Nurmian Manalu, as evidence T-2, where the assets are joint assets between Benyamin Simorangkir and Nurmian Manalu because in carrying out they have fulfilled the terms of the validity of the agreement.

As for the husband and wife's agreement in taking legal action against joint property, it can be interpreted as:

1. That both husband and wife must act together
2. That the husband can give his authority or consent to the wife or vice versa.

The agreement or agreement between the credit recipient and the bank, apart from regulating the rights and obligations of the parties, also functions as the principal agreement for the collateral agreement in the collateral agreement (accessoir), for example the binding of mortgage

rights in the mortgage rights deed is stated expressly and clearly in the number and date of the credit agreement as the main engagement.

Mortgage rights have the principle that mortgage rights follow the object in whoever's hands the object of mortgage rights is in. Based on this principle, the holder of mortgage rights will always be able to exercise his rights in whoever's hands the object is transferred to. Based on this principle, the 2 certificates are the rights of the defendant BCA, where the 2 certificates of building use rights will be given to Nurmian Manalu because the person who gave approval to the agreement was Nurmian Manalu's second wife. In practice, if a bank gives credit to an individual, it must be written down that in order to sign the credit agreement, the wife/husband has obtained approval.

One form of material security is land rights. Land rights are objects of collateral, which are favored by creditors because they are easy to sell and increase in price and have certificates which have strong evidentiary power. The imposition of mortgage rights on land rights that are used as collateral is based on the provisions of Law No.4 of 1996.

The forms of the principle of prudence (prudentiality principle) that a notary should carry out in the process of making a deed are, identifying the identity of the person presenting, carefully verifying the data of the subject and object of the person appearing, giving a grace period in processing the deed, acting carefully, carefully and Be careful in the process of making the deed, fulfill all the technical requirements for making the deed and report if there are indications of money laundering in transactions at the notary, forms of precautionary principles like this should be mandatory for notaries so that later the notary can prevent legal problems from arising. against the authentic deed he made at a later date.

One of the mortgage rights is building use rights, which is the object of the lawsuit from Decision No.171/Pdt/2017/PT/PBR Btm, an official derivative of Batam District Court decision No.8/Pdt.G/2017/PN.Btm, namely 2 Certificates each: 1 original HGB Certificate No.662, Batu Ampar District, Batam City in the name of Benyamin Simorangkir, and 1 original HGB Certificate No.773, Batu Ampar District, Batam City above the name Benjamin Simorangkir.

Sharon Lee Mee Chyang, the wife of Beyamin Simorangkir, married an Indonesian citizen, namely Benyamin Simorangkir, on December 22 1995, as proven by the Singapore State Marriage Certificate and a photocopy of the Overseas Marriage Reporting Number 52/CPL-PK/VIII/2016 issued by the Department. Population and Civil Registration of Batam City and Nurmian Manalu is also the wife of Benjamin Simorangkir as proven by Marriage Certificate No. 146/m.GPKB.A/III/08 on March 31 2008 issued by the Punguan Christian Batak Church (G.P.K.B). and BCA in entering into a credit agreement with Benjamin Simorangkir was carried out with the agreement of his wife, Nurmian Manalu, whose agreement was made before a notary.

According to the author's analysis regarding the proof that the joint assets of the 2 certificates of building use rights are the plaintiff's right, in this case the plaintiff cannot prove that the 2 certificates are because in this case the plaintiff was late in reporting the marriage, which is in Article 56 (2) of Marriage Act which states that within 1 year after the husband and wife return to Indonesian territory, proof of

¹¹ Niniek Wahyuni, Penerapan Prinsip 5c Dalam Pemberian Kredit Sebagai Perlindungan Bank, *Lex Journal Kajian Hukum dan Keadilan*, Vol.1 No. 1 (2017), hlm 8

their marriage must be registered at the Marriage Registration Office where they live. As we know, the purpose of registering marriages and reporting marriages is to provide legal certainty and legal protection and also to provide civil rights resulting from marriage. The plaintiff is a foreign citizen and Article 36 (1) of UUPA states that those who can have building use rights are Indonesian citizens.

So, in this case the plaintiff, namely Sheren Lee Chyang, is not considered to be the owner of the 2 certificates, especially in entering into a credit agreement between Benyamin Simorangkir and Acia Central Bank based on the approval of his wife, Nurmian Manalu, as stated in Article 35 (1) of the Marriage Act states that property acquired during marriage becomes joint property. In Article 35 (1) of the Marriage Act, it is stated that regarding joint property, husband and wife can act with the consent of both parties.

Another reason Sharon Lee Mee Chyang is not entitled to the 2 building use rights certificates according to the author is because Sharon Lee Mee Chyang is a foreign citizen, which is based on Article 36 (1) of UUPA, stated that those who can have building use rights are Indonesian citizens.

According to Prof. Dr. Darmawan, S.H., M.Hum is a lecturer at the law faculty, every marriage must be registered, there are consequences for the registration of a marriage whether the marriage between the wife and the wife is valid or not. Marriages that are not registered are still valid, only if you want to take legal action you must have a marriage certificate. So, in terms of the agreement made between Nurmian Manalu and Bank Central Asia, the wife's consent is only needed to agree to the agreement regarding whether the agreement's assets are inherited or joint assets.

According to Dr. Imanjauhari, SH, M.Hum, who is a lecturer at the law faculty of Syiah Kuala University, said that foreign nationals cannot control property rights in Indonesia's homeland and if we look at it from the perspective of the credit agreement made between the Asian Central Bank and Benyamin Simorangkir, it was done with approval. his wife Nurmian Manalu's agreement was valid even though the marriage between Nurmian Manalu and Benyamin Simorangkir was proven by Marriage Certificate No. 146/m.GPKB.A/III/08 dated 31 March 2008, issued by the Punguan Christian Batak Church (G.P.K.B) Antiokhia Cipayung TMII East Jakarta, signed Rev. S. Sitompul and Pnt. S Simatupang, Congregation Teacher/Secretary.

Decision No. 301/K/Pdt/2020, the judge held that Article 1340 of the Civil Code "agreements only bind or apply to the parties who make them". So, Sharon Lee Mee Chyang is not entitled to the 2 certificates of building use rights, especially since Sharon Lee Mee Chyang is a foreign citizen, which is stated in Article 36 (1) of UUPA. Those who can have building use rights are Indonesian citizens. So, this case can be linked to Aristotle's theory that justice is better than others because it is done for everyone's convenience, therefore achieving justice requires every society to follow the rules that apply in Indonesia.¹²

4. Conclusion

Proving the joint property of the 2 certificates of building use rights is the plaintiff's right, in this case the plaintiff

cannot prove that the 2 certificates are because in this case the plaintiff was late in reporting the marriage, which in Article 56 (2) of the Marriage Act states that within 1 year after the husband and wife return to Indonesian territory, proof of their marriage must be registered at the Marriage Registry Office where they live. Proving that not registering a marriage means the marriage is invalid according to Indonesian national law, as we know, the purpose of registering a marriage and reporting a marriage is to provide legal certainty and legal protection and also to provide civil rights resulting from the marriage.

The legal consequence of the Pekanbaru High Court Decision No.171//PDT/2017/PBR is that Sharon Lee Mee Chyang is not entitled to have 2 certificates each: 1 (one) original Certificate of HGB No.662, Batu Ampar District, Batam City in the name of Benyamin Simorangkir, and 1 original Certificate of HGB No.773, Batu Ampar District, Batam City in the name of Benyamin Simorangkir. This is because Sharon Lee Mee Chyang did not enter into an agreement with Bank Central Asia. Another legal consequence of this decision is that Sharon Lee Mee Chyang does not have legal protection, this is because Benyamin Simorangkir's first wife was late in registering her marriage as regulated in Marriage Act.

5. Suggestions

The need to socialize the importance of reporting marriages and registering marriages, and the need for banks and notaries in making credit agreements to adhere to the principle of caution in making agreements, the need for explanations in law if a husband or wife is late in reporting a marriage regarding what their marital status is. Indonesian country. With this socialization, they will receive legal certainty and legal protection for their marriage, including certainty regarding the property obtained during the marriage.

6. References

1. Bambang Sunggono. *Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 2015.
2. Febryanti Subaktiningsih Laardi. *Kajian Yuridis Kepemilikan Warga Negara Asing Terhadap Hak Atas Tanah Yang Diperoleh Dari Harta Bersama*, Jurnal Hukum. 2023; 1(2).
3. Giovanni Aditya Arum. *Konsep Keadilan (Iustitia) Perspektif St. Thomas Aquinas dan Relevansinya Bagi Pemaknaan Sila V Pancasila*, Lumen Veritatis: Jurnal Filsafat dan Teologi. 2019; 10(1).
4. Hans Kelsen. *General Theory of Law and State*, diterjemahkan oleh Rasisul Muttaqien, Bandung, Nusa Media, 2011.
5. John Rawls. *A Theory of Justice*, London Oxford University Press, Diterjemahkan dalam Bahasa Indonesia oleh Uzair Fauzan dan Heru Prasetyo, Pustaka Pelajarm Yogyakarta, 2006.
6. Kahar Masyhur. *Membina Moral dan Akhlak*, Jakarta: Kalam Mulia, 1985, hlm. 68.
7. Khoiri. *Gugatan Harta Bersama (Telaah Sema Nomor 3 Tahun 2008)*, Jurnal Hukum Keluarga dan Peradilan Islam. 2021; 2(1).
8. Muhammad Irvan, Kurnia Warman. *Proses Peralihan Hak Milik Atas Tanah Karena Pewarisan Dalam Perkawinan Campuran*, Lambung mangkurat Law Journal. 2019; 4(2).

¹² Shafa salsabila, Pembagian Harta Bersama Dalam Perceraian Ditinjau Dari Perspektif Teori Keadilan, *journal if civil and business law*, vol.4 no. 2, (2023).

9. Niniek Wahyuni. Penerapan Prinsip 5c Dalam Pemberian Kredit Sebagai Perlindungan Bank, *Lex Journal Kajian Hukum dan Keadilan*. 2017; 1(1).
10. RachMadi Usman, Makna Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan di Indonesia, Jalan Brigjen. H. Hassan Basry Banjarmasin Indonesia, Agustus 2017.
11. Remi Sjahdeini. Hak Tanggungan, asas-asas ketentuan-ketentuan pokok dan masalah yang dihadapi perbankan, Jakarta: Alumni, 1999.
12. Ronny Hanitjo soemitro. Metode Penelitian Hukum dan Jurimeri, Bogor: Ghalia Indonesia, 2018.
13. Shafa salsabila. Pembagian Harta Bersama Dalam Perceraian Ditinjau Dari Perspektif Teori Keadilan, *journal if civil and business law*. 2023; 4(2).
14. Siti Halilah, Fakhurrahman Arif. Asas Kepastian Hukum Menurut Para Ahli. *Jurnal Hukum Tata Negara*. 2021; 4(2).
15. Urip Santoso. Hukum Agraria & Hak-Hak Atas Tanah, Jakarta: Kencana, 2007.
16. Wangsawidjaja, Kredit Bank Umum, Jakarta: Lautan Pustaka, 2020.
17. Wayan Yasa, Penerapan Prinsip Kehati-Hatian Dalam Pembuatan Perjanjian Kredit Bank Dengan Jaminan Harta Bersama, *JEBLR*. 2022; 2(1).
18. Witanto DY. Hukum Keluarga: Hak Dan Kedudukan Anak Luar Kawin Pasca Keluarnya Putusan MK Tentang Uji Materiil UU Perkawinan, Jakarta: Prestasi Pustaka Publisher, 2012, hlm.142