

Legal Situation on *Roya's* Consent Deed Against the Loss of Mortgage Certificate

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Abstract. *The notary's authority in making Roya's Consent Deed is based on the debtor's statement before the Notary so that the statement or act is contested by the Notary in an authentic deed. This is in accordance with the Law on Notary Position; the legal consequence of the Loss of Security Certificate for the debtor is unable to take legal action against his / her land rights, namely not being able to merit, or not being able to guarantee the right to his land or transferred to another party. This study aims to determine and analyze the legal position of Roya's Consent Deed on the loss of a Certificate of Mortgage; Notary authority in drawing Roya Consent Deed against the loss of a Certificate of Mortgage; as well as legal consequences arising from the loss of a Certificate of Mortgage? The research method used is sociological juridical research methods. Based on the research, it is concluded that the Roya Consent deed is a statement from the debtor in a notarized manner, which says that the debtor has been paid off of his debt and the creditor agrees to write off the certificate of land rights encumbered by the Mortgage to be a certificate which is clean from any kind of engagement.*

Keywords: Situation; Roya; Loss; Certificate.

1. INTRODUCTION

Notary is a public official who has the authority to make authentic deeds and other authorities as referred to in Article 1 number 1 and Article 15 paragraph (1) of Act No. 2 of 2014 concerning the Second Amendment to Act No. 30 of 2004 concerning the Position of Notary. General Officials, but not every General Official is definitely Notary, because General Officials can also be PPAT or auction officers.¹ So not all of the deeds were made by a Notary, but also PPAT and auction officials.

The main authority of the Notary is to make authentic deeds regarding all actions, agreements and stipulations required by laws and regulations and / or which the interested party wants to be stated in the authentic deed, guarantees the certainty of the deed creation date, keeps the deed, provides grosse, copies and an excerpt of the deed, all of which as long as the deed is drawn up is not assigned or excluded to other officials or other people stipulated by the law².

The presence of a notary is required by legal regulations with the intention of helping and serving people who need authentic written evidence regarding conditions, events or legal actions.³

¹ Adjie, Habib. (2013). *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, Bandung: Refika Aditama. p. 15.

² Article 15 of Act No. 2 of 2014 concerning the Second Amendment to Act No. Notary Position

³ Adjie, Habib. (2011). *Hukum Notaris Indonesia Tafsir Tematik Terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris*. Bandung: Refika Aditama. p. 14.

Mortgage institutions as collateral for debt or credit, where according to Articles 25, 33, and 39 of the UUPA, it is stated that Property Rights, Business Use Rights and Building Use Rights can be used as debt with the burden of Mortgage Rights. This bonding of credit guarantees with Mortgage Rights is carried out when a customer or debtor who gets credit from a bank, makes immovable property in the form of land (land rights) and objects not related to the land as collateral without the debtor handing over the goods the guarantee physically to the creditor (bank). Thus the ownership rights to the land remain with the original owner or the owner of the Mortgage. Meanwhile, the Bank only has Mortgage Rights which give the right to first get payment of its debt from other creditors. The implementation of this guarantee agreement is a series of a principal agreement, namely a credit agreement, therefore the implementation of the guarantee agreement can only be done after the credit agreement is completed⁴.

If a debtor has finished his credit period with the bank by paying off all his debts, then immediately the creditor (bank) will return the guarantee of the certificate of land rights and the certificate of Mortgage which is a guarantee to the bank. Therefore, if the receivables are written off due to repayment or other reasons, the related Mortgage Rights will automatically be canceled, this is regulated in Article 18 paragraph (1), Act No. 4 of 1996.⁵

The abolition of the Mortgage Rights or the withdrawal of the Mortgage Rights or commonly known as *Roya*, is an administrative action that needs to be taken so that data on land is always in accordance with existing facts. Mortgage rights are not abolished because there is a *Roya*, but precisely because the Mortgage Rights have been abolished then it needs to be followed by processing, write-off notes on the Mortgage burden on the land book and the certificate of land rights concerned⁶.

The removal of the Mortgage or *Roya* has been regulated in Article 22 of the Mortgage Rights Act No. 4 of 1996, in the event that the Mortgage Certificate is lost in the *Roya* process, that is, the guarantor of the Mortgage (debtor) cannot carry out the *Roya* Mortgage Process at the local Land Office and the mortgage provider (debtor) is also unable to take legal actions, namely The Mortgage Rights (debtor) cannot sell the object of land rights or re-guarantee the certificate of land rights because the certificate of land rights is still encumbered by the Mortgage Rights, so for the write-off of *Roya's* expense records, the Land Office will usually request a Consent *Roya* Deed by a Notary Public. , as a substitute for the lost certificate of Mortgage Rights.⁷

The notary has the authority to make authentic deeds at the request of the parties for all (legal) actions, including the *Roya* Consent Deed which is one of the authentic deeds made by the Notary at the request of the guarantor of the Mortgage (debtor) as the party containing the statement of the party giving the rights Dependent that the Debtor's Certificate of Mortgage which is in his power has been lost, in which the

⁴Putra, Axel Budi., & Maryanto. (2019). Legal Analysis of the Form Deed of Sale and Purchase Agreements and the Disposal of Land Rights as the Basic Right to Apply Broking Which Has Expired. *JURNAL AKTA*: Vol. 6, No. 4, 733-740. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7624>

⁵ Sutedi, Adrian. (2010). *Hukum Hak Tanggungan*. Jakarta: Sinar Grafika, p.114.

⁶Winarti, & Ngadino. (2019). Review Of Juridical Registration Implementation And Transfer Of Land Or Building With Deed Land Sale In The Office Of The Samarinda City. *JURNAL AKTA*: Vol. 6, No. 4, 711-718. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7595>

⁷ Isabella, Marissa. (2015). *Implikasi Yuridis hilangnya sertifikat Hak Tanggungan dalam proses roya*, etd.repository.uqm.ac.id/index.php, accessed on 7 November 2015.

Certificate of Mortgage is a condition for debtors who have repaid their debts to be done by *Roya*⁸.

2. METHODS

The method used in this research is sociological juridical research which can easily find out the problems (cases) associated with other related phenomena or symptoms and explain about the implementation of legislation and reality in society. And the data collected in this study can be classified into two, namely primary data from field research and secondary data from literature studies.

3. RESULTS AND DISCUSSION

3.1. The Legal Position of *Roya's* Consent Deed on the Loss of Mortgage Certificate

Mortgage or so-called *Roya*, is an administrative action that needs to be taken so that data on land is always in accordance with existing facts⁹. The Mortgage Right is not abolished because there is a *Roya*, but precisely because the Mortgage Rights have been abolished, then it needs to be followed by management, write-off notes on the Mortgage burden on the land book and the certificate of land rights involved, as stated in Article 22 paragraph (1) of the Law of Mortgage right.

Government Regulation No. 24 of 1997, Article 2, regarding land registration, states that land registration is carried out based on the principles of simple, safe, affordable, up-to-date and open, therefore registration for the abolition of Mortgage Rights must be carried out based on the principles regulated in the land registration system. According to the provisions of Article 3, PP No.24 of 1997, land registration aims to:

- a. to provide legal certainty and legal protection to holders of rights over a plot of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights concerned.¹⁰
- b. to provide information to interested parties, including the Government, so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units;
- c. for the implementation of an orderly land administration.

However, in practice there are debtors who have paid off their debts at the bank and have received *Roya* letters, mortgage certificate and land title certificates, some do not apply for *Roya* at the Land Office because they do not understand what they are for. It is highly recommended that the bank provide an explanation of what *Roya* is, so that the repayment incident is followed up with an administrative settlement at the Land Office, and if a Certificate of Mortgage is lost, then for the deletion of expense records (*Roya*), the Land Office usually advises the debtor to immediately make *Roya's* Consent Deed before a Notary.

⁸ Chusna, Amalia., & Hafidz, Jawade. (2019). The Role of the Notary in the Credit Agreement with Mortgage Guarantee (Case Study in the Bank Tabungan Negara (Persero) Tbk). *JURNAL AKTA*: Vol. 6, No. 4, 719-726. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7668>

⁹ Adigita, Monicha R., Ma'ruf, Umar., & Witasari, Aryani. (2019). The Role and Protection of Laws to Notary Related To the Dispute That Made Between the Parties. *JURNAL AKTA*: Vol. 6, No. 4, 783-788. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7631>

¹⁰ *Ibid.*

Roya's Consent Deed in the Mortgage Rights Act is not specifically explained. *Roya's* consent is a statement of approval for *Roya*, which is usually used to replace a lost certificate of Mortgage Rights. *Roya's* Consent Deed can be said to be an authentic deed because it was drawn up before a Notary Public as a General Officer, therefore it has perfect evidentiary power¹¹.

The Deed *Roya* Permit for Mortgage has the same content and purpose, but the mention is different based on the habits of each Notary. For some people, the *Roya* Mortgage Certificate of Mortgage is something that is rarely encountered because it relates to the missing Mortgage Certificate, while the Mortgage Certificate is a guarantee for credit loans and not all people understand the Security Rights. Unlike the case with a certificate of land title, if the certificate is lost or damaged, a replacement certificate can be issued, for the certificate of the Mortgage Rights certificate is not issued a replacement certificate. Therefore, "A statement from creditors that the debt guaranteed by the Mortgage has been written off or has been paid in full, which is set forth in an authentic deed or in a statement letter under hand"¹².

Thus, it can be implicitly explained that the *Roya* license deed referred to in the conditions for conducting *Roya* by the Land Office, that the letter contains information from the creditor if the debt from the debtor has been written off or paid in full, which is set forth in an authentic deed or an underhand statement. In practice, the letter is indeed made by and before a notary. This is because a notary is a public official who has the authority to make authentic deeds, as long as the authority is not granted or obtained by other officials. The authority of the notary is, of course, as stated in Article 15 of the UUJN.¹³

The *Roya* permit deed is usually made due to an error from the customer when the file is returned by the bank because the debtor's loan has been paid off by the debtor not immediately processed, so it is lost or scattered. The Deed of *Roya* Permit for Mortgage made by a Notary, its position is only as a substitute for the Certificate of Mortgage lost in the *Roya* process, not for execution, so that its position cannot be equated with a Certificate of Mortgage which has executorial power because it is not regulated by law or strict rules. It is a requirement to carry out orderly land administration. In this case, it means that the position of the Mortgage License Deed made by a Notary is a custom in notary practice¹⁴.

Requirements for implementing of *Roya* Permit for Mortgage are as stated in the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010, concerning Service Standards and Land Regulations, regarding the requirements for the abolition of Mortgage Rights, namely¹⁵:

¹¹ Ferdiyanti, M. Indah Verena., Purnawan, Amin., & Soegiyanto. (2019). Setting the Effectiveness of Law Position and Code Notary to the Quality of Performance. *JURNAL AKTA*: Vol. 6, No. 4, 797-804. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7887>

¹² *Ibid.*

¹³ *Op.Cit.*, p. 87

¹⁴ Alam, Bahrul., & Khisni, Akhmad. (2020). Legal Protection of Holders of Land Loss Data In The City Land Office of Kendari. *JURNAL AKTA*: Vol.7, No. 2, 159-164. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7963>

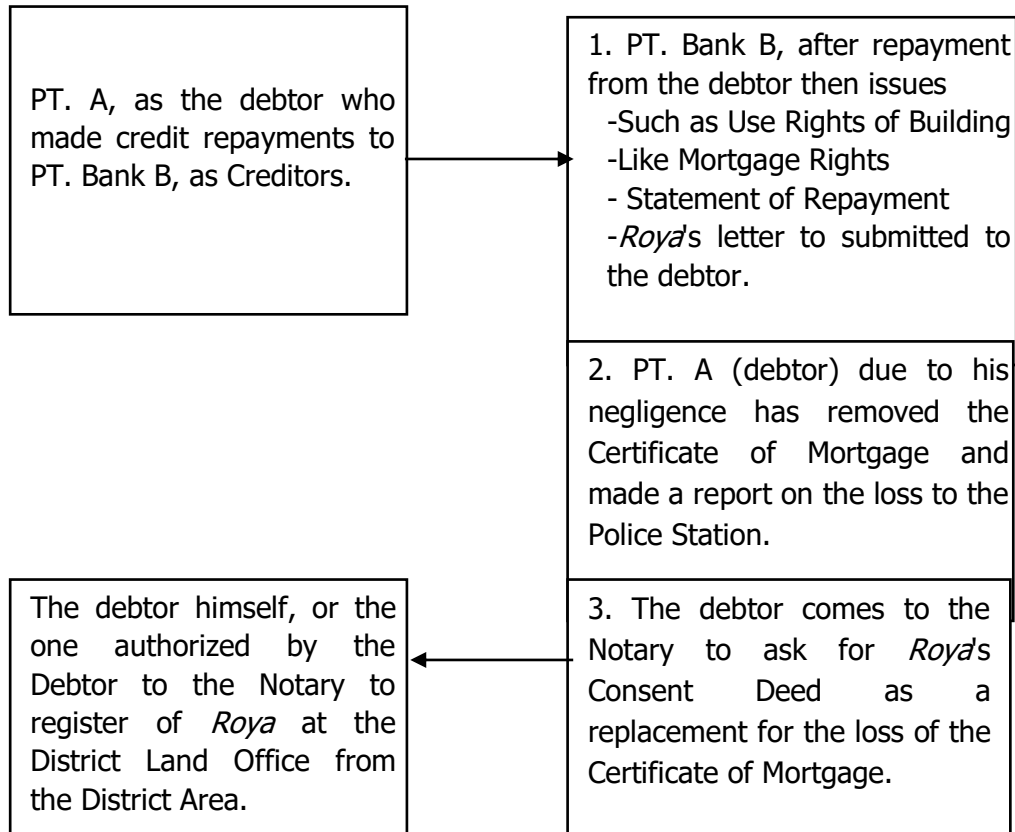
¹⁵ Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010, concerning Service Standards and Land Regulations, regarding the requirements for the abolition of Mortgage

Table 1. Requirements for implementing of *Roya* Permit

Law	Requirements	Cost	Time	Information
1. Act No. 5 / 1960	1. Application form which has been filled in and signed by the applicant or his proxy on sufficient duty stamp	In accordance with the provisions of the Government Regulation concerning types and rates of non-tax State revenue applicable to the National Land Agency of the Republic of Indonesia	5 (five) days	The application form contains:
2. Act No. 4 / 1996	2. Power of Attorney if authorized			1. Self-identity
3. PP No. 24 / 1997.	3. Copy of identity applicant (KTP, KK) and power of attorney if empowered, which has been matched with the original by the counter clerk			2. Area, location and use that land begged.
4. PP No. 13 / 2010	4. Photocopy of Deed of Establishment and Ratification of Legal Entities that has been verified with the original by the counter clerk, for legal entities			
5. PMNA/ KBPN No. 3/1997	5. Land certificate and Mortgage Certificate and / or consent <i>Roya</i> if the Certificate of Mortgage is lost <i>Roya</i> Letter / Statement of Settlement / Debt Repayment from Credit Copy of ID card of the HT provider (debtor), HT recipient (Creditor) and / or their proxies that have been matched with the original by the counter clerk			
6. SE.KBPN No.600-1900 Date July 31, 2003				

Source: Primary data, 2020.

Scheme of the Issuance of *Roya's* Consent Deed Simulation



3.2. Notary's Authority in Preparing *Roya's* Consent Deed of Loss of Mortgage Certificate

The notary has the authority to make authentic deeds at the request of the parties for all (legal) acts, including the *Roya* Consent Deed which is one of the authentic deeds made by the Notary at the request of the guarantor of the Mortgage, namely PT. A as the debtor, which contains the statement of the mortgage provider (debtor) that the Certificate of Mortgage which is in its power has been lost, in which the Certificate of Mortgage is a requirement for debtors who have repaid their debts to be done by *Roya*. This is in accordance with the provisions of Article 15 paragraph (1) and (2) of Act No. 2 of 2014 concerning the Second Amendment to Act No. 30 of 2004 concerning the Position of Notary, namely¹⁶:

a. The notary is authorized to make authentic deeds regarding all deeds, agreements, and provisions required by laws and regulations and / or that the interested party wants to be stated in the authentic deed, guarantees the certainty of the date of making the deed, keeps the deed, provides grosse, copies and excerpts of the deed, all of this as long as the drawing up of the deed is not assigned or excluded from other officials or other people determined by law.

In addition to the authority as referred to in paragraph (1), the Notary is also authorized:

¹⁶ Article 15 paragraph (1) and (2) of Act No. 2 of 2014 concerning the Second Amendment to Act No. 30 of 2004 concerning the Position of Notary

- a. ratify the signature and determine the certainty of the date of the letter under the hand by registering in a special book;
- b. book the letters under hand by registering in a special book;
- c. make a copy of the original letter under hand in the form of a copy containing the description as written and described in the letter concerned;
- d. validate the compatibility of the photocopy with the original letter;
- e. provide legal education in connection with making deeds;
- f. make deeds related to land; or
- g. make a deed of auction minutes.

3.3. Legal Consequences Arising from the Loss of the Certificate of Mortgage

With the completion of *Roya*, the certificate of land rights is in a clean condition and the rights holder can take legal actions, namely transferring the rights to the land to another person by way of selling, grants, inheritance and can also be leased or can guarantee it back to creditors. So that the parties who will have an interest in the land can know that the buildings and land to be purchased or to be guaranteed are completely free from all debt burdens to be burdened with Mortgage Rights. If it is really clean, it is not encumbered with Mortgage Rights, then the party that will buy, or creditors is willing to buy, or accept as collateral for the land because it is truly safe, secure and protected from the interests of third parties¹⁷.

The legal aspect that arises from the abolition of Mortgage Rights (*Roya*) on land certificates is that with the abolition of Mortgage/*Roya* certificates of land rights, this can be known by the public and the public will know that the land rights that have been imposed by the Mortgage Rights have been free, clean and back in its original state¹⁸.

Roya must be carried out immediately for the sake of administrative order and if the certificate of land title is not immediately issued or deleted, then the certificate of land title is still burdened with the Mortgage Rights, in this case the PT B as creditor (Bank). Because it is still burdened by the creditor (Bank), the owner of the land title certificate cannot take legal action, before the certificate of land title is removed.

However, in practice, when the debtor has paid off his debt to the bank and received a Certificate of Settlement from the Bank, *Roya's* Cover Letter addressed to the Land Office, as well as the Certificate of Mortgage and Land Rights Certificate, the debtor does not immediately submit a *Roya* application to the Land Office to immediately carry out a write-off. Record of mortgage burden on the land book and certificate of land rights. This is clearly detrimental to the debtor himself because in the land title certificate, the Mortgage Rights are still recorded, even though in reality the debts from the debtors to the creditors have been repaid. So thus *Roya* or the withdrawal of the Mortgage burden must be carried out if the debtor has paid off his debt to the creditor

¹⁷ Harjanto, Fery., & Gunarto. (2018). Effects Of Creation Deed of Sale and Purchase of Land Which Does Not Match Procedure of Making Land Deeds. *JURNAL AKTA*: Vol. 5, No. 4, 857-864. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/3718>

¹⁸ Rachmawati, Noor., & Hanim, Lathifah. (2018). Notary Role in The Establishment of Foreign Investment Limited Company Based on The Act No. 25 Of 2007 on Investment in Semarang. *JURNAL AKTA*: Vol. 5, No. 4, 965-974. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/3939>

(Bank), by submitting a *Roya* application to the Land Office¹⁹.

If the Mortgage Certificate for some reason cannot be returned to the Land Office, then this is recorded in the Land Title Book (Article 22 paragraph 3 Act No.4 of 1996), this provision provides convenience if the Certificate of Mortgage cannot be returned, then with a statement It is different, either with a *Roya* Consent made before a Notary Public and submitting it to the Land Office and requesting the Mortgage to be registered on the land book and on the land certificate because the debt has been written off²⁰.

The legal consequence of the loss of the Mortgage Certificate is very detrimental to himself as the owner of the certificate of land title which is no longer bound by collateral for a debt, because as long as the certificate of land title is burdened with mortgage rights even though it has been said to be paid off by the creditor but has not done the *Roya* at the office.

Land, then the owner or holder of a certificate of title to the land cannot perform any legal action whether it is a transfer of rights or an imposition. So the deposits can be done in the following cases:

- a. Order of the Head of the District Court at the request of an interested party if the creditor is not willing to provide a statement;
- b. *Roya's* statement is partially / partially if it is agreed to pay off the debt by installments;
- c. The object of the Mortgage is auctioned or sold through / under hand.

Then if the Mortgage Certificate is lost due to some reason, the Land Office recommends making a *Roya* Consent Deed before a Notary, because if the Certificate of Mortgage is lost without making *Roya's* Consent Deed, it will not be able to be written off because *Roya's* consent deed is used as the basis for write-off as a replacement of the lost certificate of Mortgage Rights.

4. CLOSING

4.1. Conclusion

The notary's authority in making *Roya's* Consent Deed is based on the debtor's statement before the Notary so that the statement or act is contested by the Notary in an authentic deed. This is in accordance with the provisions of Article 15 paragraph (1) of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary Public.

4.2. Suggestion

The Mortgage Rights will be subject to sanctions, this is to prevent the debtor from being negligent to immediately apply for his certificate of land rights and also to avoid losing the Certificate of Mortgage Rights. And as a substitute for a lost Mortgage Certificate, the Land Office should make a regulation for withdrawal of the Mortgage

¹⁹ Widyawati, & Handoko, Widhi. (2018). The Notary Role / PPAT in Improving Legal Awareness Society to Perform Registration Rights to Land Based on Government Regulation No. 24 of 1997 on Land Registration. *JURNAL AKTA*: Vol. 5, No. 4, 975-980. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4127>

²⁰ Deen, Thaufiq., Victoria, O. Argo., & Sumain. (2018). Public Notary Services In Malaysia. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

Rights that can be done without the *Roya* Consent Deed, enough with a Statement Letter under the stamped hand accompanied by evidence of loss from the Police only. And for the Notary / PPAT, because *Roya* is the authority of the National Land Agency that arises because of a legal action made by the PPAT Deed, the role of PPAT in carrying out its duties and positions must be in accordance with the provisions of the Law, as well as being thorough, careful and precise in making deeds so that meet the standards or requirements in accordance with the provisions of the Land Office in order to avoid disputes by interested parties and in making SKMHT and APHT Deeds, PPAT should provide an explanation of the rights and obligations of debtors and creditors if the debtor has paid off his debt to the Bank or creditors, to immediately claim the guarantee of the land rights.

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