

The Implementation of Partial Roya on the Settlement of Deposit Rights

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Abstract. *On the one hand the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 provides a solution to the practice of partial roya, but on the other hand the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 is contrary to the provisions of Article 2 paragraph (1) Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. The problems in this study can be formulated as follows: 1) How is the partial roya regulated in the Act No. 4 of 1996 concerning Mortgage Rights?, 2) Obstacles and solutions in the implementation of partial roya towards the settlement of Mortgage Rights in the city of Semarang? This research uses an empirical legal research approach based on field research or primary data research. The specification of the research used is analytical descriptive in nature, namely describing legal symptoms, systematically describing factually and accurately and analytically, namely by providing an assessment of the results of the description without intending to provide general conclusions. The results of the research and discussion show that the partial roya arrangement is in Article 2 and Article 22 of the Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. Obstacles and Solutions in the implementation of partial royalties for the settlement of Mortgage Rights in Semarang City, namely: 1) Banks are slow in providing a statement of settlement or roya letters, 2) The debtor does not immediately register the Mortgage (roya) registration, 3) Services at the Land Office The slow city of Semarang.*

Keywords: Mortgage; Partial; Redemption; Roya.

1. Introduction

Land according to UUPA Number 5 of 1960 concerning Basic Agrarian Regulations, is part of the earth. This can be seen from the provisions of Article 1

paragraph (4) which states that in the sense of the earth, apart from the surface of the earth, it also includes the body of the earth beneath it and that which is under water, which means land is the surface of the earth.

The more explicit definition of land can be seen in Article 4 paragraph (1) of the Act No. 5 of 1960 concerning the Basic Agrarian Regulations which states that on the basis of the right to control from the State as referred to in Article 2 it is determined that there are various kinds of rights. on the surface of the earth, which is called "land", which can be given to and owned by people, either alone or together with other people and Legal Entities.

Land in the life of the nation and state actually has a very strategic role because it contains (3) three important aspects, namely: economic, social and legal aspects,¹ so that the state is obliged to regulate the use of land for its citizens. Indonesian citizens or Indonesian legal entities can be granted land rights by the state as confirmed in the provisions of Article 4 paragraph (1) of the Act No. 5 of 1960 concerning Basic Agrarian Regulations which states that:

On the basis of the State's right to control as referred to in Article 2, it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by people, either individually or jointly with other people and entities. -legal entity.

Land rights granted by the state to its citizens, both individuals and legal entities, have economic value that can be used as collateral for debt through a guarantee institution called a mortgage. Mortgage according to the provisions Article 1 paragraph (1) UUPA Number 4 of 1996 Concerning Mortgage Rights on Land and Objects Related to Land is a security right that is imposed on land rights as referred to in the Basic Agrarian Principles Regulations, whether or not the following objects other creditors which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors.

¹Idham, 2004, Consolidation of Urban Land in the Perspective of Regional Autonomy, Alumni: Bandung, p. 1

Mortgage rights include material guarantees, namely guarantees in the form of absolute rights over an object, which has the following characteristics:²

1. Having a direct relationship with certain objects from the Debtor;
2. Can be defended against anyone; and
3. Always follow the object (*droit de suite*) and can be transferred or transferred to other parties.

Mortgage rights are born because of an agreement that is follow-up (*assecoir*) on the principal agreement in the form of a credit or debt agreement. Follow-up agreements (*assecoir*) are required to guarantee repayment of a debt that has been agreed upon and stated in the credit agreement (principal agreement) by the parties, namely creditors (banks) and debtors (customers). In line with the opinion of M. Bahsan that *the obligation to submit collateral by the Debtor in the context of borrowing money is closely related to the agreement between the parties who borrow money.*³

One of the characteristics inherent in the Mortgage is the encumbrance of the Mortgage against several objects, cannot be divided. The provisions of Article 2 paragraph (1) of the Act No. 4 of 1996 Concerning Mortgage Rights on Land and Objects Related to Land in its explanation states that Mortgage encumbers the object of Mortgage and every part thereof. Having paid off part of the guaranteed debt does not mean freeing some objects of the Mortgage from the burden of the Mortgage, but the Mortgage continues to burden all objects of the Mortgage for the remaining unpaid debt.

The provisions of Article 2 paragraph (1) can be deviated based on the provisions of article 2 paragraph (2) Act No. 4 of 1996 Concerning Mortgage Rights on Land and Objects Related to Land, but with the condition that Mortgage rights imposed on several land rights have been agreed in the Deed of imposition of Mortgage Rights regarding the settlement of debt guaranteed by means of installments equal to the value of each land right that is part of the Mortgage Object, which will be released from the Mortgage, which means that

²Sri Soedewi Masjchoen Sofwan, 2013, Guarantee Law in Indonesia, Principles of Guarantee Law and Individual Guarantees, 6th Print, Liberty Offset: Yogyakarta, p. 46-47

³M.Bahsan, 2007, Indonesian Banking Guarantee and Credit Guarantee Law, Raja Grafindo Persada: Jakarta, p. 2

the Mortgage only burdens the remaining object of the Mortgage that has not been paid off.

Partial royalty policy⁴ (partial deletion) Mortgage rights are strictly regulated in the Regulations State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration. Article 124 paragraph (1) and paragraph (2) of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 states:

(1) Registration of the cancellation of Mortgage Rights over some Mortgage Objects can be carried out based on the settlement of part of the guaranteed debt, provided that:

a. The object of Mortgage consists of several rights; and

b. The possibility of erasing part of the Mortgage Right because the settlement of some of the debt is agreed in the Deed of Granting Mortgage Right.

(2) Registration of the cancellation of the Mortgage over some Mortgage objects can also be carried out even if it does not fulfill these provisions based on the release of the Mortgage on some of the Mortgage objects by the Mortgage holder as set forth in an Authentic Deed or underhand statement by clearly stating the part of the Mortgage object that is freed from the burden of Mortgage Rights.

The provisions above provide an opportunity for a partial roya (partial write-off) of Mortgage Rights after payment of a portion of the debt whose value is equal to or greater than the object of Mortgage Rights.

Based on these matters, there is a discrepancy between Regulations (1) with other Regulations, giving rise to legal issues in the implementation of partial royalties which in the end can harm the party giving the Mortgage Right (Debtor) if the recipient of the Mortgage does not want to carry out the partial royalty.

⁴Explanation of Researcher / Writer

Partial Roya is a Mortgage which is a credit guarantee that can be used in bank guarantees for repayment of debt from the Mortgage (Debtor) causing the Mortgage to be partially removed against the Mortgage Object which is often referred to as a partial Roya.

Those who can do roya are Notaries / PPAT

2. Research Methods

This research uses an empirical legal research approach,⁵ associated with legal principles, legal norms, laws and regulations,⁶ relating to the implementation of partial roya towards the settlement of Mortgage Rights in the city of Semarang. The specification of the research used is analytical descriptive in nature, namely for humans, other conditions/symptoms.⁷ Descriptive means describing legal phenomena, describing in a systematic and factual manner accurate the implementation of partial roya towards the settlement of Mortgage Rights in the city of Semarang, while analytical means providing an assessment of the results of the description without intending to provide general conclusions. Types and sources of data used in this study, namely primary data as main data and secondary data as supporting data. Data collection techniques used in this study, field research or interviews and literature studies. Data analysis was performed using qualitative analysis methods.

3. Results and Discussion

3.1. Partial Roya Arrangements in the Act No. 4 of 1996 concerning Mortgage Rights

Roya (deleting) Mortgage is a final process of implementing debt agreements or credit agreements between financial institutions (Banks, BPRs, Cooperatives and others) as creditors and customers as debtors due to debt repayment. Article 2 of the Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land divides roya into two types, namely:

a. The whole royal

Stipulated in Article 2 paragraph (1) of the Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, which states that Mortgage rights cannot be divided, unless agreed in the Granting Deed Mortgage as referred to in paragraph (2).

b. Royal partial

Stipulated in Article 2 paragraph (2) of the Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land states that if the Mortgage is imposed on several land rights, and it is agreed in the APHT concerned, that Settlement of the guaranteed debt can be made by way of installments equal to the value of each land right which is part of the object of the Mortgage, which will be released from said Mortgage, so that then the Mortgage only burdens the remaining objects of the Mortgage to guarantee the remaining unpaid debts.

⁵Zainuddin Ali, 2010, *Legal Research Methods*, Sinar Graphic: Jakarta, p. 19

⁶Soerjono Soekanto and Sri Mamudji, 2011, *Normative Legal Research a Brief Overview*, Radja Grafindo Persada: Jakarta, p. 11

⁷Bambang Sunggono, 2007, *Legal Research Methodology*, Rajawali Press: Jakarta, p. 36

Deletion (roya) Mortgage can be done if the debtor has paid off all of his debt obligations. The purpose of deleting (roya) on the land book/certificate of the land in question is so that it can be known by the public that the lands are free again and are not burdened by Mortgage Rights and the legal situation is rebalanced. If the granting of rights, the transfer of rights, the encumbrance of rights must be registered, the abolition of encumbrances must also be recorded so that they can be known by the public for the sake of legal certainty and certainty of rights.

Royal conditions according to the explanation of the Semarang City Land Office, namely:⁸

- a. Application form that has been filled out and signed by the applicant with a stamp duty
- b. Power of attorney if authorized
- c. Copy of applicant's identity (KTP, KK)
- d. Photocopy of the deed of establishment and validation of the legal entity that has been verified with the original by the counter staff for legal entities
- e. Original land certificate
- f. Certificate of Settlement/Debt Settlement from Creditors
- g. Photocopy of KTP giving HT (debtor), receiving HT (creditor) or their proxies that have been matched with the original by the counter clerk.

Based on the explanation from the Semarang City Land Office, the process of dropping (roya) Mortgage rights in general can be explained as follows:⁹

- a. The debtor asks the creditor for a statement of debt repayment.
- b. The creditor provides a statement letter of repayment of the debt.

⁸Interview, Heri Apriyanto, Coordinator of the Substance Registration Group of Land and Communal Land Spaces and Institutional Relations of the Semarang City Land Office, April 13, 2022

⁹Interview, Heri Apriyanto, Coordinator of the Substance Registration Group of Land and Communal Land Spaces and Institutional Relations of the Semarang City Land Office, April 13, 2022

c. After receiving a statement letter for repayment of debt from the creditor, the debtor submits a request for a land fee to the Land Office, bringing with him the documents needed to make the land fee, namely:

- 1) Photocopy of the Debtor's KTP legalized by a Notary
- 2) Copy of Debtor's KK legalized by Notary
- 3) Creditor Bank Code
- 4) Photocopy of the latest PBB legalized by a notary
- 5) APHT
- 6) Statement of document validity made by a notary.

d. The Land Office makes Roya on the land that is charged with Mortgage Rights;

Based on the results of the study, it can be explained that the roya process registration service at the Semarang City Land Office is divided into 2 (two) lines, namely:¹⁰

a. Through Priority Counter Services

Priority Counter Service is a service specifically for residents who come directly to arrange land deeds without the help of a third party such as a notary/PPAT or other parties.

Roya Process Requirements through Priority Counters:

- 1) Fill out a stamped BPN application form
- 2) Submit Original Certificate of Ownership
- 3) Submit the Original Mortgage Certificate
- 4) Submit the original Roya letter

¹⁰Interview, Heri Apriyanto, Coordinator of the Substance Registration Group of Land and Communal Land Spaces and Institutional Relations of the Semarang City Land Office, April 13, 2022

- 5) Submit a copy of the certificate owner's identity card
- 6) Submit a Copy of Family Card
- 7) Submit a Copy of Land and Building Tax

b. Through the Jewel Counter Service.

Permata Service or Independent Registration of Land Deeds is a service intended for Land Deed Officials (PPAT). With this service, the PPAT can carry out the input/entry of files/data on the transfer of land rights from the PPAT office via online.

Roya Process Requirements through the Gem Service Counter:

- 1) Fill out the BPN application form signed and PPAT stamped
- 2) Submit the original stamped Power of Attorney
- 3) Submit Original Certificate of Ownership
- 4) Submit the Original Mortgage Certificate
- 5) Submit the original Roya letter
- 6) Submit a copy of the certificate owner's identity card
- 7) Submit a Copy of Family Card
- 8) Submit a Copy of Land and Building Tax legalized by PPAT
- 9) Submit a roya application letter from the PPAT

c. After all the requirements are completed, the Debtor or PPAT can immediately register the Roya application at the Semarang City Land Office and pay a rate of Rp. 50,000.-.

d. After the roya process has been completed and the results of the certificate in the roya earlier are clean, they are handed over to the applicant

1. Obstacles and Solutions in the Implementation of Partial Roya Against Mortgage Repayment in the City of Semarang

As previously described, the implementation of partial roya has been regulated in the provisions of Article 2 in conjunction with Article 22 of the Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. The results of research in the field indicate that there are obstacles in the process of executing the Mortgage Right on loans that have been paid off, including:¹¹

a. Banks are slow in providing a statement of settlement or roya letter

The debtor after paying off the credit that had been his obligation, the bank as the creditor and the recipient of the Mortgage was not immediately given a roya letter. The reason for the bank not immediately providing a Roya letter is because they have to verify credit data which takes quite a long time.

b. The debtor does not immediately register the Mortgage Right

Debtors who have paid off their debts generally do not understand that after repayment has taken place, they will receive a roya letter which is used to submit a roya application at the Land Office. This roya letter is actually used to register the Mortgage cancellation (roya) at the Land Office, but in fact the debtor does not directly apply for the Mortgage cancellation (roya) to the Land Office even though he has received the Roya letter from the Bank.

c. Services at the Semarang City Land Office are slow

Another obstacle that also occurs in the implementation of mortgage rights is the slow service at the Land Office. One of the delays in service in the process of write-off (roya) Mortgage at the Semarang City Land Office, one of which is the fact that the book of land certificates that will be reclaimed is not found. This usually happens due to negligence by officials when after using the land book, they did not put it back in the available place.

The existence of obstacles in the process of implementing the cancellation (roya) of Mortgage Rights on loans that have been paid off, shows that there are still weaknesses in legal services in the community. To overcome these obstacles, it is necessary to take the following steps:

¹¹Interview, Heri Apriyanto, Coordinator of the Substance Registration Group of Land and Communal Land Spaces and Institutional Relations of the Semarang City Land Office, April 13, 2022

a. For banks that are slow to provide a statement letter or roya letter, the credit repayment department will coordinate with the Mortgage guarantee document storage section and the administration section to expedite the creation of the roya letter and submit documents in the form of certificates of land rights and mortgage rights.

b. For debtors who do not immediately register the Mortgage cancellation (roya), the bank will provide information and directions to the debtor regarding the application process for the Mortgage cancellation (roya). The bank will explain the function of the Roya letter to the debtor, so that the debtor can immediately process the request for cancellation (roya) of the Mortgage at the Land Office.

c. Regarding the slow service at the Semarang City Land Office, the public can only provide criticism, input and suggestions to the Land Office in order to improve service to the community, especially in this case the process of canceling (roya) Mortgage which has been determined by law by means of improve discipline and order in administrative services, so as not to impede the services that must be received by the community.

4. Conclusion

Partial roya arrangements in the Act No. 4 of 1996 concerning Mortgage Rightson Land and Objects Related to Land, specifically contained in Article 2 and Article 22 of the Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. Obstacles and Solutions in the implementation of partial royalties for the settlement of Mortgage Rights in the City of Semarang, namely: a) Banks are slow in providing a statement of settlement or roya letters, b) The debtor does not immediately register the Mortgage (roya) registration, c) Services at the Land Office The slow city of Semarang. Solutions to overcome these obstacles are as follows: a) For banks that are slow in providing a statement of settlement or roya letter, then the credit repayment division will coordinate with the Mortgage guarantee document storage section and the administration section to expedite the making of the roya letter and the submission of documents in the form of certificates of land rights and mortgage rights, b) For debtors who do not immediately register the mortgage (roya) Mortgage, the bank will provide information and directions to the debtor regarding the process of requesting the cancellation (roya) of the Mortgage. The bank will explain the function of the roya letter to the debtor, so that the debtor can immediately process the request for cancellation (roya) Mortgage at the Land Office, c) Regarding the slow service at the Semarang City Land Office, the public can only give criticism.

5. References

Books:

- [1] Bambang Sunggono, 2007, *Metodologi Penelitian Hukum*, Rajawali Press: Jakarta
- [2] Idham, 2004, *Konsolidasi Tanah Perkotaan Dalam Perspektif Otonomi Daerah*, Alumni: Bandung
- [3] M.Bahsan, 2007, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Raja Grafindo Persada: Jakarta
- [4] Soerjono Soekanto dan Sri Mamudji, 2011, *Penelitian Hukum Normatif suatu Tinjauan Singkat*, Radja Grafindo Persada: Jakarta
- [5] Sri Soedewi Masjchoen Sofwan, 2013, *Hukum Jaminan di Indonesia, Pokok-pokok Hukum Jaminan dan Jaminan Perorangan*, Cetakan ke-6, Liberty Offset: Yogyakarta
- [6] Zainuddin Ali, 2010, *Metode Penelitian Hukum*, Sinar Grafika: Jakarta

Regulation:

- [1] Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects on it Related to Land
- [2] Act No. 5 of 1960 concerning Basic Agrarian Regulations
- [3] Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration
- [4] Regulation State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration
- [5] The 1945 Constitution of the Republic of Indonesia