

August 29th 2018

THE 4th INTERNATIONAL AND CALL FOR PAPER

Legal Construction and Development in Comparative Study
The Role of Indigenous and Global Community in Constructing National Law

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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INFORMATION OF THE CONFERENCE AND CALL PAPER

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THE 4th INTERNATIONAL AND CALL FOR PAPERS

"Legal Construction and Development In Comparative Study"
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29-30 August 2018

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Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

INVITED SPEAKERS :

1. Prof. Henning Glaser
Thammasat University, Thailand
2. Dr. Hilaire Tegnau, LL.M.
Faculty of Law, Sorbonne University
3. Prof. Shimada Yuzuru
Nagoya University, Japan
4. Prof. Dr. Topo Santoso, S.H., M.H.
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This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

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Faculty of Law, Sultan Agung Islamic University

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584

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AND CALL FOR PAPER**

“Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)”

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, HilaireTegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.**

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fifth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, August 31th 2018

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah is an absolute act that we must say after conducting the International Conference and Call for Paper by theme : “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” which was held by Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang, on August 29th 2018.

This conference tried to reviews different theories of legal development focusing on The Role of Indigenous and Global Community in Constructing National Law in order to highlight their similarities and differences. In the field of law, the substance of the discussion does not lie in 'whether the law is traditional because of the heritage of the past or not', but on the meaning of justice contained in the law. Often in discussing legal matters, we are caught up in the understanding of law in a procedural sense, not a law in a substantive sense-that satisfies the sense of justice. So it is not realized, there is a reduction of the meaning of the law substantively (which meets the sense of justice) becomes law procedurally. Especially when human life enters the era of globalization characterized by modern, as well as loaded with contemporary challenges and issues.

Globalization, in general people understand it is a process in the life of mankind to a society that covers the whole globe. This process is possible and facilitated by advances in technology, especially communication and transportation technology. Such understanding is not much different from the understanding of globalization as a process that refers to "a single interdependent world in which capital, technology, people, ideas, and cultural influences flow across borders". With such understanding, we are gradually going to live in a one world where individuals, groups and nations become more interdependent. In the global human society there will be patterns of social relationships that are different from before. And that too is a portrait of social life not found before.

Therefore, to discuss more about legal construction and development, Faculty of Law, Sultan Agung Islamic University was confidence to conduct a conference by the theme “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who had contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, August 31th 2018

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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ROYA MECHANISM OF LAND RIGHTS AS COLLATERAL FOR BANKING BANKS BANNED BY AUCTION OFFICERS BECAUSE THEIR CREDITS ARE PROBLEMS

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ABSTRACT

This study aims (1) to determine the auction mechanism in which the debtor is in default and then the guarantee is auctioned off. (2) to find out the mechanism of the mortgage roya whose debtor is in default (3) to find out whether there are obstacles in the implementation of roya and what are the steps taken by the Batang Regency Land Office to overcome the obstacles that occur in the implementation of the roya rights to the land. . This study uses an empirical juridical approach. Based on the research, it can be concluded that in essence (1) the auction mechanism and roya occur if the debtor cannot pay off his debt, the collateral that becomes the debtor's debt, namely SHM 240 Pasusukan will be auctioned, then the auction winner will be found from the auction results. And the Auction Winner will perform Roya. Roya Land rights that are the object of auction are requested to the Land Office (2) Obstacles in implementing mortgage rights at the Land Office consist of: a. The duration of the roya exceeds 5 (five) days from the date the application is received completely. B. There are obstacles in roya which does not consist of several land rights c. Roya's incomplete file requirements resulted in Roya not being done.(3) Steps that can be taken by the Land Office in overcoming obstacles in the implementation of Mortgage Rights are as follows: a. There must be a sanction if the time period exceeds the provisions. B ... Incomplete ROya files can be overcome with various solutions, including legalization of introduction to Roya by a notary or camat

Keywords: Mechanism, Auction, Roya, Mortgage

A. INTRODUCTION

Banks are defined as financial institutions whose business activities are collecting funds from the public and channeling these funds back to the public and providing other bank services.¹. Every credit issued by a bank must be accompanied by a guarantee by the debtor to the creditor (Bank). This credit guarantee is all the assets of the debtor, both existing and future assets².

In this case the bank will enter into a credit agreement with the debtor. Then, from the results of the agreement, a Deed of Granting of Mortgage Rights is issued which can then be made a Mortgage as the basis for proof that the debtor has debt and collateral against the bank. The bank will register the certificate of rights over the land to KPKNL with the assistance of an auction official from KPKNL accompanied by the required documents for the auction. After the auction is held, the winner of the auction will be found. Through an open auction sale, it is hoped that a fair price or at least close to reasonable will be obtained, the auction winner will claim the Mortgage Rights in the event that the previous debtor was in default

In practice, especially in rural areas, most of the debtors have paid off their debts to the Bank and received a Roya letter, but the land title certificate still contains notes on the imposition of the Mortgage even though in fact the land has been cleared of the burden, including in the case of SHM 240 Pasusukan. This is detrimental to the auction winner himself because it is as if the auction winner still has a debt to the bank where he borrowed credit with guarantees of Coverage, even though in fact the debt has been paid off.

Based on the description above, the problems discussed are as follows:

¹ Kasmir. 2010. *Bank dan Lembaga Keuangan lainnya*. Jakarta: Raja Graffindo Pers.Jakarta

²Law of the Republic of Indonesia No.10 / 1998, 10 November 1998, Article 1 paragraph 1

1. What is the mechanism for the implementation of the auction, such as Freehold Title Number 240, Pesusukan Village, Bawang District, Batang Regency, which is collateral for debtors in banks that have been auctioned off by auction officials because of bad credit?
2. What is the mechanism for implementing RoyaSertipikat Hak Milik Number 240, Pesusukan Village, Bawang District, Batang Regency, which is collateral for debtors in banks that have been auctioned off by auction officials because of bad credit?
3. Are there any obstacles in implementing Roya and what are the steps taken by the Batang Regency Land Office to overcome the obstacles that occur in implementing the Roya on the land rights?

B. DISCUSSION

1. Mechanism for Auction of Land Rights as Collateral for Bad Credit which is the Object of the Auction (Property Rights File 240 Pesusukan Bawang)

An auction is the process of buying and selling goods or services by offering to the bidder, offering a higher price bid, and then selling the item to the highest bidder. Here PT. Bank Pundi Indonesia, Tbk submitted an auction application for SHM 240 Pesusukan Bawang in accordance with the application letter dated December 8, 2015 so that the regulations regarding the conditions that must be fulfilled by | Banks in submitting an auction application refer to the Regulation of the Minister of Finance Number 93 / PMK.06 / 2010 concerning auction implementation instructions,

After the files are declared administratively complete and formally correct so that the Letter of Determination of the Day and Date of Auction Number: S-2221 / WKN.09 / KNKL.04 / 2015 dated December 10, 2015 is issued, according to that letter the auction will be held on Monday, December 21. 2015 at 14.30 paced at PT. Bank | Pundi Indonesia, Tbk Kendal Branch Jalan Raya Utama Tengah No.298, Weleri, Kendal. Prior to the auction, PT. Bank Pundi Indonesia, Tbk had made 1 re-auction announcement through the daily newspaper Radar Pekalongan on 14 December 2015 and had notified the debtor regarding the implementation of the auction number: 02 / SAM- | PKI / SP LELANG / 1215 dated 14 December 2015.

Then, based on the Letter of Assignment ST-1139 / WKN.09 / KNL..04 / 2015 dated December 21, 2015 the auction official in charge of carrying out the execution process in the auction process SHM 240 Pesusukan Onion auction is Eko Yuwono, Bachelor of Law. Furthermore, in accordance with the Letter of Determination of the Day and Date of Auction Number: S-2221 / WKN.09 / KNL.04 / 2015 the auction execution of the guarantee object of SHM 240 Pesusukan Bawang guarantees. Prior to the implementation of the auction, the auction official checks and verifies the legality of the prospective auction participants, the auction guarantee money can be deposited directly to the auction official prior to the auction because the required auction guarantee money is under Rp. 20,000,000.00, which is Rp. 10,000,000.00. as listed in the Minister of Finance Regulation Number 93 / PMK.06 /,

2. Roya Mechanism of Mortgage Rights to Land as Credit Collateral that is the Object of the Auction (Property Rights File 240 Pesusukan Bawang)

The applicant comes and fills in the application form from the Land Office, then the application file is submitted by the applicant to the Land Office counter clerk to check the completeness of the requirements and pay a fee of Rp. 50.000.- then the file is sent to the data entry officer to be inputted in the Computerized Land Office (KKP). The Roya file with the Pesusukan property is then ready to be typed by the Roya executive officer. Typing roya using red ribbon and carbon.

The executor of Roya handed over to Mr. Sutoyo, SH as the Head of Transitional Subsection, Assignment of Rights and Land Deed Maker Officer to check whether the typing result was good, and the completeness of the roy file according to the requirements, as well as checking

whether there were differences in writing with KTP or KK. After being checked by Mr. Sutoyo, SH as Head of Transitional Sub-Department, Assignment of Rights and Land Deed Maker Officer. The certificate of Hak Milik 240 Pasusukan will be initialized, then the roya file is forwarded to Mr. Edi Sumarsono, Aptnh as Head of the Section for Land Rights and Land Registration (HTPT) of the Batang Regency Land Office to request his initials. After being initialized, the Roya file is returned to the Roya Executor for further sorting the files that are included in the document,

3. Obstacles in Implementing Roya and Steps Taken to Overcome Obstacles in Implementing Roya at the Batang Land Office

a. Barriers to Implementing Roya at the Batang Regency Land Office

1) The Roya term exceeds 7 (seven) days from the date of application

In Article 22 paragraph 8 of the UUHT it is stated that the Land Office shall remove the Mortgage burden according to the procedures stipulated in the prevailing laws and regulations within 5 (five) working days from the receipt of the application as referred to in paragraph 4 and paragraph 7.³Based on the provisions in Article 22 paragraph 8 of this UUHT, the time period for implementing the Roya should not exceed the period of 5 (five) days from the date the Roya application is received in full.

2) Roya Completeness Requirements Not Fulfilled.

In implementing roya, must meet the following requirements:

- a. Application letter
- b. Letter of Roya Mortgage from creditors
- b. Certificate of land rights
- c. Certificate of Mortgage
- d. Photocopy of KTP or identity of the applicant
- e. Photocopy of KTP or identity of the recipient of the power of attorney accompanied by a power of attorney if the application is authorized.

b. Steps Taken in Overcoming Obstacles in the Implementation of Roya at the Batang Regency Land Office

1) Timeliness in Completion of Mortgage Rights

In Article 23 paragraph 2, it is stated that officials who violate or neglect to comply with these provisions can be subject to administrative sanctions in accordance with the applicable provisions. The application of these sanctions is not found in the practice of implementing roya that exceeds a period of 5 (five) days due to errors or negligence of officials related.

2) Roya Requirements Must Be Fulfilled

- a. There must be Roya's Cover Letter from the creditor
- b. Must attach a land title certificate
- c. Must attach a Certificate of Mortgage

C. CLOSING

Based on the description above, several conclusions can be made, namely as follows:

1. Conclusions

- a. The auction mechanism occurs when the debtor is unable to pay off his debt, the collateral that becomes the debtor's debt, namely SHM 240 Pasusukan will be auctioned, then the auction winner will be found from the auction results. And the winner of the auction will perform Roya Mortgage Rights.

³ Mortgage Law Article 22 Paragraph 8

- b. The Roya Mortgage Mechanism for land rights that is the object of auction is requested to the Land Office based on a letter from the Head of the National Land Agency, Deputy for Education and Land Registration on behalf of the State Minister for Agrarian Affairs / Head of the National Land Agency number 6003720-D.IV, the Minutes of Auction function as Roya's letter a separate Roya letter from the creditor is required in registering the transfer of rights at the local Land Office. In making a roya to the Land Office is the winner of the auction after paying the auction fee and the flyover fee has been determined.
- c. Obstacles in implementing mortgage roya in the Land Office consist of:
 - 1) The roya period exceeds 5 (five) days from the date the application is received.
 - 2) There are obstacles in the mortgage rights roya that do not consist of several land rights.
 - 3) The incompleteness of the Requirements for the Mortgage Rights Roya resulted in the Mortgage Roya not being made.

Steps that can be taken by the Land Office in overcoming obstacles in the implementation of the Mortgage Roya are as follows

 - 1) There are sanctions if the period exceeds the provisions as well as a systemic service mechanism that does not result in obstruction of roya services
 - 2) It is better if roya fees are paid through a designated bank and the Land Office must be committed to implementing good governance.
 - 3) Incomplete roya files can be overcome with various solutions, including legalizing the introduction of roya by a notary public, making a replacement certificate, Konsen Roya, expanding the definition of roya partial in a more flexible manner.

2. Suggestion

Based on the description of the problems discussed in this thesis, there are several suggestions, namely as follows:

- a) The arrangement and implementation of the Mortgage Roya must be predictable, meaning that it must be known how long it will take, the costs and the procedures that must be taken by the land rights owner to apply for a Mortgage Roya at the Land Office.
- b) The regulation and implementation of Mortgage Rights must be in the nature of stability, meaning that it can provide order and protection of the legal interests of each party both to debtors or creditors. For auction winners or notaries who have received the roya letter, they must immediately carry out the roya to the Land Office
- c) For the Land Office that has received a Roya letter from the applicant, either by the Debtor or Notary, to immediately carry out a roya or write-off of the burden note on the winning bidder's land title certificate for 5 days after receiving the documents in accordance with the prevailing laws and regulations.

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