

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"
The Role of Indigenous and Global Community in Constructing National Law

29-30 August 2018

IMAM AS SYAFEI BUILDING
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.
Indonesia University (UI), Indonesia
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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,

A handwritten signature in black ink, consisting of a long, sweeping horizontal line that curves upwards at the end, followed by a small vertical stroke and a hook.

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

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THE ROLE OF LAND ASSET OFFICERS ON THE INSTALLATION OF LIABILITY RIGHTS WITH THE NAME OF THE DEAD OF THE WORLD OF DECLARATION OF DECLARATION OF DECLARATION PROCEDURES TO THE HERITAGE EXPERT

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ABSTRACT

The purpose of this research is to find out the role of land deed-making officials in the installation of mortgage rights with the name of a certificate of ownership that has passed away, which is carried out by the process of inheriting inheritance to the Inheritance based on justice, the problem of the role of land deed maker officials in the installation of mortgage rights under the title title certificate. Property that has passed away, which is carried out by a process of inheriting inheritance to an inheritance based on justice, and how to overcome the problem of the role of land deed-making officials in the installation of mortgage rights under the name of a certificate of ownership that has passed away, which is carried out by a process of inheriting inheritance to a justice-based heir. This study uses a normative juridical approach,

Based on the results of the research conducted by the author, the following results are obtained: The Role of Land Deed Maker Officials in the Installation of Mortgage Rights with the Name of Ownership Certificates that have Died, which is carried out by the Inheritance process to Inheritance Based on Justice, Problems and How to Overcome Problems with the Role of the Making Officials Land Deed for the Installation of Mortgage Rights with the Name of Ownership Certificate that has passed away, which is carried out by the Inheritance process to an Inheritance-based.

Key words: Land Deed Maker Official, Mortgage, Ownership Certificate, Inheritance

A. INTRODUCTION

The national development that we are carrying out is a form of mandate for the welfare of the people. In carrying out development activities, the funding factor plays an important role. We can get these funds from various sources, including by way of credit or credit from banks.

Banks in providing credit to entrepreneurs / customers are required to have confidence in the ability and ability of the debtor to pay off their debts as agreed, because the credit provided by the bank contains risks, so that in its implementation the bank must pay attention to the principles of sound credit.¹

To reduce this risk, the guarantee of credit extension in the sense of confidence in the ability and ability of the debtor to pay off his debt is an important factor that must be agreed by the bank. To obtain this confidence, before extending credit, a bank must conduct a careful study of the character, ability, capital and collateral as well as business prospects, known as 5C in banking.²

Based on the description above, this paper will discuss the Role of Land Deed Making Officials in the Installation of Mortgage Rights with the Name of a Certificate of Ownership that has Died, which is carried out by the process of Inheritance to Justice-Based Inheritance; Problems of the Role of Land Deed Making Officials in the Installation of Mortgage Rights with the Name of Certificate of Ownership that have died, which is carried out by the process of inheriting inheritance to justice-based heirs; as well as how to overcome the problem of the role of land deed-making officials in the installation of mortgage rights with the name of a certificate of ownership that has passed away, which is carried out by the process of inheriting inheritance to justice-based heirs

¹ Retnowulan Sutantio, SH., dkk, 1997/1998, *Penelitian Tentang Perlindungan Hukum Eksekusi Jaminan Kredit*, BPHN p. 1

² Ibid., p. 2

B. DISCUSSION

1. The Role of Land Deed Making Officials in the Installation of Mortgage Rights with the Name of Ownership Certificate that has died, which is carried out by the process of Inheritance to Justice-Based Inheritance

a. Process of Deriving Inheritance,

The process of installing a mortgage with the name of a certificate of ownership that has passed away must go through the inheritance stage. Turun Waris means a series of processes for transferring land ownership from the name of the deceased certificate or the heir to the name of all heirs, from the stage of collecting heir data, signing the Certificate of Inheritance to the stage of registering Derived Inheritance at the Land Office.³

Requirements for Inheritance Registration at the local BPN office:

- 1) Fill out the application form and signed by the applicant.
- 2) Power of Attorney for Registration to the Land Office if the registration is carried out by PPAT.
- 3) Photocopy of the identity of the applicant / heirs (KTP, KK) and legalized power of attorney if empowered, which has been matched with the original by the counter clerk.
- 4) Original certificate that has been plotted.
- 5) Certificate of Death and Certificate of Inheritance which have been legalized by the competent authority.
- 6) Legalized photocopy of the last year's PBB SPPT, which has been matched with the original by the counter clerk.
- 7) SPPD BPHTB that has been verified by DPPKAD.
- 8) Land Value Zone.

The registration process for the inheritance mentioned above until PNPB is paid to the bank usually only takes less than one day. It's just that the new certificate will come out after the next five days.

b. Guarantee Engagement Stage

This Collateral Agreement is carried out by PPAT based on an order given by the bank. The Collateral Engagement process by PPAT is carried out with the following conditions:

- 1) Because the guarantee or land certificate is still in process at the Land Office, the PPAT binds the credit guarantee that is still in the process of inheriting using a power of attorney to impose mortgage rights (SKMHT).⁴
- 2) Photocopy of KTP and KK of all heirs
- 3) Certificate of Death and Certificate of Inheritance.
- 4) Photocopy of guarantee or Land Certificate which is in the process of Deriving Inheritance at the Land Office.

After the guarantee agreement requirements are complete, then all the heirs will appear to PPAT for the signing of the SKMHT Deed, witnessed by two witnesses from the relevant PPAT employees and also witnessed by the Bank Officials who will disburse the credit.

c. Mortgage Installation Stage

This stage is carried out after the Inheritance Certificate has been completed at the Land Office. Based on the SKMHT deed that has been signed by all parties, the Deed of Granting Mortgage can be implemented, the things that need to be prepared for the installation of Mortgage Rights in the Land office are as follows:

- 1) Certificate Check.
- 2) Making a Deed of Granting Mortgage Rights (APHT) on the basis of an SKMHT that has been signed by all parties, only the Bank Officials sign the APHT deed, because based on the SKMHT all parties, in this case the heirs, have authorized the signing of the deed.⁵

³ Interview with PPAT Hepi Bandaranake, SH, MKn

⁴ Interview with PPAT H. Fathurahman Ridlo, SH

- 3) Photocopy of KTP and KK of all parties.
- 4) Photocopy of SPPT PBB.
- 5) Photocopy of Bank Credit Agreement Letter.
- 6) Power of Attorney from the Bank Official to PPAT registering with the Land Office.
- 7) Application Letter from Bank Officials to register for Installation of Mortgage Rights.
- 8) Introduction to PPAT for registering APHT deeds to the Land Office.

After all the requirements are complete, then the application for installation of mortgage rights is registered at the Land Office. The process of installing Mortgage Rights at the Land Office after the files have been paid, will be after 7 working days, the products that will be issued by the Land Office as a legal consequence of the Registration of Mortgage Rights are the issuance of a Certificate of Mortgage in the name of the creditor or the bank that registered the Mortgage Installation.

Mortgage certificate is proof that a person has collateral rights imposed on land rights owned by the guarantor (usually the debtor), which gives priority to the holder of the Mortgage Rights compared to other creditors.⁶

2. Problems of the Role of Land Deed Making Officials in the Installation of Mortgage with the Name of a Certificate of Ownership that Has Died, which is carried out by the Process of Inheritance to Justice-Based Inheritance

Problems usually arise in determining who is entitled to be called an heir, the determination of heirs can be based on a certificate of inheritance made by the head of the village and the sub-district head, but the statement of inheritance is made without any research at all so it is not known exactly how many heirs are. an heir. For example, if an heir who has more than one wife, the wife can make her own Inheritance Statement. This condition results in frequent inheritance disputes due to the overlapping Inheritance Information.⁷

In the case of the Inheritance Process to be used as a credit guarantee at the Bank, usually the problem that arises is the objection of one of the heirs to sign the documents related to the Inheritance process and the signing of the Credit Guarantee binding at the Bank, this happens because one of the heirs feels that he is not applying for credit at the bank, only relatives apply for credit at the bank, but because the guarantee is still the name of the parent and there is no distribution of inheritance, automatically all heirs must sign documents for the process of inheritance and collateral binding at the bank.

3. How to overcome the problem of the problem of the role of land deed-making officials in the installation of mortgage rights with the name of a certificate of ownership that has passed away, which is carried out by the process of inheriting inheritance to justice-based heirs

In this case, the PPAT must be able to provide solutions or solutions for the parties so that each is still legally protected and gets justice.

Solutions that can be provided to the parties, in this case the heirs, in order to get justice and legal certainty are:

1. Providing counseling about the law to the heirs about the importance of safeguarding shared assets, so that each of them realizes and lives up to their rights and obligations as a family.
2. The process of installing the mortgage has been regulated in the UUHT, so we must comply with these rules. In the case of the installation of a mortgage with the name of the Property Certificate who has passed away, the heirs must also comply with the existing regulations.

⁵ Interview with PPAT Hepi Bandaranake, SH, MKn,

⁶ www.hukumonline.com

⁷ Irma DevitaPurnamasari, SH, MKn, 2014, *Panduan Lengkap Hukum Praktis Populer : Kiat-kiat Cerdas, Mudah, Dan Bijaks Memahami Masalah Hukum Waris*. Bandung: Kaifa, p. 94

If all the heirs support each other's success in advancing their business, the process of applying for a Bank Credit by Installing Mortgage with the Name of a Certificate of Ownership who has died can be carried out fairly without anyone feeling aggrieved.

C. CLOSING

Based on the research and discussion above, it can be concluded that The role of the official who makes land deeds in installing a mortgage with the name of a certificate of ownership who has passed away must go through the stage of inheritance. Registration of inheritance at the Land Office must be completed by the heirs, these conditions include: Making Inheritance Certificate, Certificate of Inheritance is a letter made by / in front of an authorized official, which explains who the heirs of a person have passed away. Based on the Inheritance Information, the heirs can get their rights, especially the inheritance of the inheritance.

The role of the Land Deed Making Official in conjunction with the Inheritance Process Stages, namely carrying out the Collateral Binding Process at the bank where, the Heirs sign the Deed of the Power of Attorney to impose a mortgage, which later when the inheritance is completed, based on the Deed of Power of Attorney to impose the mortgage can be directly increased for the implementation of the making of the deed of granting mortgage rights.

The role of the Official for Making Land Deeds then makes a Deed of Granting Mortgage which is based on the Power of Attorney to Charge Mortgage Rights which is only signed by the Bank Official as the representative of the bank that disbursed the credit. After that, PPAT will register the Deed of Granting Mortgage Rights at the Land Office, so that a Certificate of Mortgage will appear in the name of the creditor or bank.

In its implementation, the problems that occur are, at the time of determining the heir and the unwillingness of one or several heirs to sign the deeds relating to the Inheritance Process and Installation of Insurance Rights, because one or more of these heirs do not feel borrowed. or apply for credit at the Bank.

How to overcome the problem of the problem of the role of land deed-making officials in the installation of mortgage rights with the name of a certificate of ownership that has passed away, which is carried out by the process of inheriting inheritance to justice-based heirs

It is better if in order to reduce the legal risk in the future in the installation of Mortgage Rights, it is better to purely use Collateral on behalf of the Debtor, so that in its implementation, after carrying out the Inheritance process, the transfer process is carried out directly on the name of one of the heirs as the Debtor by making a Joint Rights Sharing Deed (APHB), thus no party will be harmed so that the principle of justice will be created for all parties.

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