

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 Tegnán, 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 horizontal stroke with a small upward flick at the end, followed by a shorter horizontal stroke below it.

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

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LEGAL ASPECTS OF AUCTION CONCERNS AS ASSETS AUTHENTIC IN THE EXECUTION AUCTION OF LIABILITY RIGHTS

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ABSTRACT

This study aims to analyze the extent to which the power of the auction minutes as the authentic deed in the auction of mortgage rights execution can be used to fulfill the creditors' rights to pay off creditors' receivables when the debtor defaults, the minutes of auction already have executorial power and to know and analyze the obstacles and solutions for implementing the treatise. auction as an authentic deed in the auction for execution of mortgage rights.

This research uses a normative juridical approach, which is an approach from the point of view of secondary data sources, in this case the laws and regulations and legal theories. The specification of this research is descriptive analytical because this research is intended to provide a clear, detailed, systematic and comprehensive description of the whole process.

Based on the research, it was found that minutes of auction constitute an authentic deed which can be proven legally enforceable and therefore should not be contested. Evidence of the auction minutes as authentic deeds is evidenced by article 165 HIR and article 285 of the RBG which states that the autenti deed was made by or in front of a powerful public official. This is also strengthened by article 1868 of the Civil Code which states that an authentic deed is a deed made in the form determined by law by or before a public official in power so that The Minutes of Auction Deed have executorial power as the basis for the execution of the auction decision. Obstacles in implementing the minutes of auction are divided into juridical obstacles based on Article 20 paragraph 1 of Law No. 4/1996 and non-juridical obstacles from the attitude of the debtor who does not comply with the auction decision.

Keywords: Auction, Mortgage, Minutes of Auction

A. INTRODUCTION

Law No. 4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land was ratified on April 9, 1996, in the State Gazette of the Republic of Indonesia Number 42 of 1996, while the explanation is placed in the Supplement to the State Gazette of the Republic of Indonesia Number 3632. abbreviated as UUHT. The UUHT was formed to replace the old regulations governing the granting of guarantees with land and related objects as its objects. For this reason, it is hoped that there will be progress in realizing the objectives of the Basic Agrarian Law in developing the National Land Law, by creating unity and simplicity of law regarding land rights for the people as a whole.

Article 8 of Law Number 10 of 1998 concerning Banking states that in extending credit, banks must have confidence in the ability and ability of the debtor to pay off his debt as agreed, with the intention that the bank must carry out a careful assessment of the character, capability, capital, collateral and business practices of the debtor to meet his performance, if at any time the debtor defaults.

The guarantee institution by banking institutions is considered the most effective and safe is land with guarantee of mortgage rights. This is based on the ease in identifying the object of the mortgage, clear and definite execution, besides that the debt guaranteed by the Mortgage must be paid in advance of other claims with money from the auction of land which is the object of the

mortgage.¹ Indeed, the thing that cannot be ignored in the credit agreement is legal protection for creditors when the debtor is in default, especially if the debtor is stuck in payment.

This research only focuses on the process of transferring land rights through an auction (sale in advance), where the auction is carried out in the context of repayment of debts secured by mortgages. In Article 1 of Law Number 4 of 1996 or referred to as the Law of Mortgage (UUHT), it is stated that the definition of a security right is a guarantee right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations - Agrarian Principal, along with other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors.

The legal basis for the execution of mortgage rights is regulated in Article 20 of the UUHT, where in that Article it can be seen that basically the execution or sale of land rights encumbered with Mortgage Rights can be carried out in 2 ways:

1. The auction is based on the provisions of Article 6 of the UUHT

If the debtor is in default, the holder of the first mortgage has the right to sell the object of the mortgage on his own power through a public auction and to collect the loan from the sale.

2. The auction is based on Article 20 Paragraph (1) letter b jo. Article 14 Paragraph (2)

The formulation of Article 14 paragraph (2) of the UUHT clearly states that a certificate of Mortgage has executorial power just as a court decision has permanent legal force.

Sales made by auction will guarantee the legal certainty of a buyer for the ownership of the auction object (land), because from each auction implementation a minutes of auction will be issued which is an authentic deed of the purchase of an item through the auction process, so that with evidence of auction minutes The title to the object of auction (land) will fall to the winner of the auction, even though the title to the land has not been fully obtained, because the right to the land must be registered, in order to obtain complete legitimacy of the land rights with the local Land Office.

The minutes of the auction are evidence of a direct transfer of rights of a change in juridical data on land sold through the public auction, so that according to Articles 36 (1) and (2) of Government Regulation Number 24 of 1997 that maintenance of land registration is carried out if there is a change in physical data. and juridical data on the object of land registration that has been registered and the right holder concerned must automatically register the changes as referred to in paragraph (1) to the local Land Office where the land is located. So that from the registration of land rights, a certificate will be issued as proof of rights, and issued for the benefit of the right holder concerned.²

The problem that arises in the research is regarding the execution of mortgage rights, which in practice is now carried out through parate execution based on Article 6 of the UUHT. The auction was deemed inappropriate, because in the agreement letter for the extension of the payment period made by the debtor and creditor, it states that the day on which the auction is held, is before the due date for payment. In this case, it is necessary to observe whether the minutes of the auction are legally valid, considering that the auction was conducted without the presence of the debtor.

Based on the background of the above problem, the writer raises this research with the title "Legal Aspects of Auction Minutes as Authentic Deeds in the Auction of Mortgage Execution". The problems studied are the extent to which the power of the auction minutes as the authentic deed in the auction for the execution of mortgage rights can be used to fulfill the creditors' rights in order to settle the creditors' receivables when the debtor defaults ?; Do the auction minutes have executorial power? As well as what are the obstacles and solutions for implementing the auction minutes as authentic deeds in the auction for execution of mortgage rights?

¹ Retnowulan Sutantio, *Penelitian Tentang Perlindungan Hukum Eksekusi Jaminan Kredit* (Jakarta: Departemen Kehakiman RI, 1999), p. 8

² Ibid, p. 486.

B. Discussion

1. Definition of Minutes of Auction

The definition of auction in Article 1 point 1 Minister of Finance Regulation Number 93 / PMK.06 / 2010 replaces the Minister of Finance Regulation Number 40 / PMK.07 / 2006 which has been amended by the Minister of Finance Regulation Number 150 / PMK.06 / 2007, and the Minister of Finance Regulation Number 61 / PMK.06 / 2008 concerning Guidelines for Auction Implementation, that The auction is sale of goods open to the public with a price bid in writing and / or verbally increasing or decreasing to reach the highest price preceded by an auction announcement.

The auction must be conducted in the presence of the auction official. Based on this, it can be explained that. An auction is the sale of goods in public led by an auction official by way of price bidding in public, verbally and up-up or down and or in writing and privately preceded by an auction announcement.³

In its implementation, the auction as an agreement is subject to the minutes of auction clauses. The Minutes of Auction Clause is an agreement that binds the parties to the auction, which is a special law that applies to the parties in the auction. In Minister of Finance Regulation Number 93 / PMK.06 / 2010 replaces the Minister of Finance Regulation Number 40 / PMK.07 / 2006 which has been amended by the Minister of Finance Regulation Number 150 / PMK.06 / 2007, it is stated that Minutes of Auction are minutes of auction implementation prepared by the Auction Official which constitute an authentic deed having perfect evidentiary power for the parties, and every auction execution is made a Minutes of Auction by the auction official.⁴

Article 35 *Vendu Reglement* regulates Minutes of Auction the same as .News. Auction. Auction minutes are the basis of auction sales authentication, auction minutes record all events that occur during the auction sale. The formulation of the Minutes of Auction as the minutes prepared by the Auction Official is inaccurate, because the minutes of auction are more characteristic of an authentic deed drawn up before the Auction Official.⁵

Minutes of Auction include authentic deeds made before officials, because they meet the formal requirements and material requirements of an authentic deed made before officials. Formal requirements, namely drawn up before the authorized official according to the law, attended by parties, namely the seller and the auction buyer; both parties are known or introduced to the Auction Official, mentioning the identity of the Auction Officer; mentioning the place, day, month and year of making the auction minutes; The auction official reads out the deed in front of auction sellers and buyers; signed by all parties; and affirmation, reading, translation and signing of the closing part of the deed. While the material requirements, the Minutes of Auction contain information on the agreement of the parties between the seller and buyer of the auction, The contents of the two-sided *rechthandeling* of the form of sale and purchase through auction or regarding the legal relationship (*rechtbetrekking*) between the seller and buyer of the auction and the making of the deed is intentionally intended as evidence. The Minutes of the Auction are perfect proof of the existence of the auction.

2. Definition of Authentic Deed

The definition of a deed according to Article 165 *Staatslad Year 1941 Number 84* is

³ S. Mantayborbir dan Iman Jauhari, *Hukum Lelang Negara di Indonesia*, Pustaka Bangsa Press, Jakarta, 2003,, p. 7-8.

⁴ Article 53 and Article 58 Regulation of the Minister of Finance Number 150 / PMK.06 / 2007 concerning Amendments to the Regulation of the Minister of Finance Number 40 / PMK.07 / 2006 concerning Guidelines for Auction Implementation.

⁵ M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Gramedia, Jakarta, 1994, p. 187.

"A letter made in this way by or in front of an authorized employee to make it sufficient evidence for both parties and their heirs as well as relating to other parties as a legal relationship, regarding all the things mentioned in the letter as a notification of a direct relationship with the matters on the deed. "

An authentic deed is a deed made by an official who is authorized to do so by the authorities, according to the stipulated provisions, either with or without assistance from the interested party, which records what is requested to be contained in it by the interested party. An authentic deed mainly contains a statement of an official, which explains what he has done and seen in front of him.

In articles 165 HIR and 285 Rbg, authentic deed is a deed made by or before an official who is authorized to do so, is complete evidence between the parties and their heirs and those who get the rights thereof regarding what is contained therein and even as mere notification, but the latter is only notified in relation to the matter on the deed. The officials referred to include, among others, Notaries, Registrars, Bailiffs, Civil Registry Officers, Judges and so on.

In Article 101 paragraph (a) of Law no. 9 of 2004 concerning State Administrative Courts, states that an authentic deed is a letter made by or in front of a public official, who according to the statutory regulations is authorized to make said letter with the intention of being used as evidence about legal events or events listed in therein.

C. CLOSING

The researcher argues that the minutes of auction are authentic deeds that can be proven legally enforceable and therefore should not be contested. Evidence of the auction minutes as authentic deeds is evidenced by article 165 HIR and article 285 of the RBG which states that the authentic deed was made by or in front of a powerful public official. This is also strengthened by article 1868 of the Civil Code which states that an authentic deed is a deed made in the form determined by law by or in the presence of a powerful public official. So that in this case, the auction minutes issued have fulfilled all the elements as an authentic deed document.

In every auction, the auction official is obliged to produce a Minutes of Tender so that every sale of goods in public through the auction is valid. The Minutes of Auction Deed are prepared as evidence of a sale and purchase transaction in each auction so that the Minutes of Auction can provide legal certainty for all interested parties.

BIBLIOGRAPHY

- al-Zuhaili, Wahbah, 1997, *Al-Fiqh al-Islami wa Adillatuh Jilid IV*, Dar Al-Fikr, Damaskus.
- Amin, Mochammad, 1984 *Hukum Kependudukan dan Surseance*, Garuda, Malang.
- Anwar, Syamsul, 2010, *Hukum Perjanjian Syariah*, Rajawali Pers, Jakarta.
- Arif Budiman, 1995, *Teori Pembangunan Dunia Ketiga*, Gramedia, Jakarta.
- Boedi Harsono, 1999, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, isi dan pelaksanaannya*, Djambatan.
- Herowati Poesoko, 2007, *Parete Executie Obyek hak Tanggungan*, LaksBang PRESSindo, Yogyakarta.
- J. Satrio, 1998, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan*, Citra Aditya Bakti, Bandung.
- Penjelasan Umum Undang-undang Hak Tanggungan*

- S. Mantayborbir dan Iman Jauhari, 2003, *Hukum Lelang Negara di Indonesia*, Pustaka Bangsa Press, Jakarta.
- Subekti, 1977, *Hukum Acara Perdata*, BPHN, Jakarta.
- Sudargo Gautama, 1996, *Komentar Atas Undang-Undang Hak Tanggungan*, Citra Aditya Bakti, Bandung.
- Sunaryati Hartono, *Peranan Peradilan Dalam Rangka Pembinaan dan Pembaharuan Hukum Nasional*, Mandar Maju, Bandung. 2000