

Settlement of Disputes on the Implementation of Registration of the Deed of Granting Mortgage Rights that Exceeds the Time Limit

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Abstract. *Those granting mortgage rights must be present before the PPAT, if for some reason they cannot appear in person, they must appoint another party as their attorney with a Power of Attorney to Charge Mortgage Rights (SKMHT) which must be followed by a Deed of Granting Mortgage Rights (APHT) in accordance with Article 15 paragraph (3) Mortgage Rights Law no later than 1 (one) month after the SKMHT is signed. The aim of this research is to identify and analyze how to resolve disputes over the registration of mortgage rights that exceed the time limit and legal certainty for creditors in the case of registration of mortgage rights that exceed the time limit in the case of this research. The approach method used in this research is a sociological juridical approach. The research specifications used are analytical descriptive. The data collection techniques used were interviews and observation. The data analysis technique uses a qualitative descriptive analysis method by drawing conclusions inductively. The research results showed that there was a dispute over the registration of the Mortgage Rights Registration Deed which exceeded the time limit due to the disorganized administration of the Land Deed Making Official (PPAT) in this research. The solution in completing the registration of a deed granting mortgage rights that exceeds the time limit in this research is carried out by mediation to obtain a win-win solution or no one feels too disadvantaged, and legal certainty for creditors in the case of registering a deed granting mortgage rights that exceeds this time limit is concurrent.*

Keywords: *Granting; Land; Registration; Mortgage; Solution.*

1. Introduction

Technological developments now also have an impact on economic development as part of national development which is one of the efforts to realize just and prosperous people's welfare, based on Pancasila and the 1945 Constitution of the Republic of Indonesia. With the increase in national development, the need also increases. funds will be available, most of which will be obtained through credit activities.¹In the Basic Agrarian Law Law Number 5 of 1960, in order to unify land law, a security right for land was created which was named mortgage right.²With the enactment of this law, the things that can be designated as land rights as collateral for receivables with mortgage rights are property rights, business use rights and building use rights as land rights that must be registered.

Mortgage is a security right over land to pay off certain debts, which gives certain creditors priority position over other creditors. Which means, if the debtor breaks his contract, the creditor holding the Mortgage Rights has the right to sell through the general customer the land used as collateral according to the law.³Legal ownership of land rights is proven by the existence of a certificate of land rights in the name of the right holder which can be obtained after registration by the Ministry of ATR/BPN in the local area. objects related to land as intended in the UUPA as well as realizing the unification of national land law.⁴

Article 15 paragraph (3) UUHT states that for registered land rights, SKMHT must be followed by a Deed of Granting Mortgage Rights (hereinafter abbreviated to APHT) no later than 1 (one) month after the SKMHT is signed, while Article 15 Paragraph (4) UUHT states that land rights that have not been registered must be followed by APHT no later than 3 (three) months after the SKMHT is signed. So there is an obligation for PPAT to complete becoming APHT before the SKMHT period ends. If this time period is not met, the SKMHT becomes "null and void" (Article 15 paragraph (6) Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land).

The problem or dispute that arises here is that the use of SKMHT is applied in the event that the debtor cannot come directly and as a condition for it to be

¹Purwahid Patrik and Kashadi, 2008, Guarantee Law, Faculty of Law UNDIP, Semarang, p. 49.

²Adrian Sutedi, 2010, Mortgage Law, Sinar Graphics, Jakarta, p. 5.

³Ibid, p. 5.

⁴Boedi Harsono, 1999. Indonesian Agrarian Law History of the Formation of the Basic Agrarian Law, Content and Implementation, Seventh Printing, Revised Edition. Djangkat, Jakarta, p. 23.

followed up immediately by making an APHT. In principle, SKMHT is given for a certain period of time, if PPAT is negligent in following up SKMHT to become APHT, then there will be losses suffered by the bank as a creditor. The debtor will be asked to re-sign the SKMHT if the specified time period has expired. If the SKMHT becomes APHT before the time has come, then the bank's position as a creditor or credit provider could become a problem in the future. Banks that have received APHT for the credit issued are given a preferential position in terms of credit guarantee status, whereas if they have not yet received APHT, the bank's position will be that of a concurrent creditor.

Granting of Mortgage Rights is carried out before the PPAT, so the Deed of Granting of Mortgage Rights must be registered at the local land office to fulfill the publicity requirements, namely "No later than seven working days after the Deed of Granting of Mortgage Rights (APHT) is signed by both parties" , PPAT must send the APHT along with other documents to the land office. Registration is legally mandatory, because it determines the birth of the Mortgage Rights in question. This means that from the date of registration the creditor becomes the holder of the Mortgage Rights. The Land Office issues a certificate of proof of title, called a "Mortgage Rights Certificate". If a collateral object whose Deed of Granting Mortgage is registered late by the PPAT even though it is clearly stated in Law Number 4 of 1996,

However, in reality there are still many Deeds Granting Mortgage Rights (APHT) that are not registered by the Land Deed Making Officer (PPAT) at the Land Office in accordance with the provisions of the Mortgage Rights Law. This has an impact on the right of the recipient of the Mortgage Right to carry out execution on the land which is the object of the Mortgage Rights if the person giving the Mortgage breaches his promise/default because the Mortgage Rights were born at the time the registration for the grant of the Mortgage Rights was carried out, in other words, before the registration of the grant of the Mortgage Rights was carried out, then Mortgage rights never exist.

2. Research Methods

This research uses a Sociological Juridical approach method which uses research specifications analytical descriptive. The data used includes secondary data and primary data. The data collection techniques used were interviews and

observation. The data analysis technique uses a qualitative descriptive analysis method by drawing conclusions inductively.

3. Results and Discussion

3.1. Solutions for Completing Registration of Deeds of Granting Mortgage Rights that Exceed the Time Limit in the City of Semarang

Problems or disputes often occur in social life. Problems or disputes usually occur in various areas of human life. Differences of opinion, conflicts of interest, and even fear of being harmed are often the reasons why these problems or disputes occur. The definition of alternative dispute resolution according to Maria SW Sumardjono is dispute resolution through non-judicial channels which is generally achieved through negotiation methods led or initiated by a neutral or impartial third party.⁵

Alternative Dispute Resolution(ADR) is defined as Alternative to litigation and Alternative to adjudication. The choice of one of these two meanings has different implications. As an alternative to litigation, ADR is a non-litigation dispute resolution mechanism by considering all forms of efficiency and for future purposes as well as being profitable for the disputing parties. Meanwhile, if ADR is interpreted as an alternative to adjudication, it can include consensus dispute resolution mechanisms such as negotiation, mediation and conciliation. Alternative Dispute Resolution (APS) is a form of dispute resolution outside of court based on an agreement (consensus) carried out by the parties to the dispute either without or with the help of neutral third parties. According to Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, in Article 1 Number 10, states that: "Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert assessment."⁶

Discussions regarding APS need to be developed so that they can overcome congestion and backlogs of cases in court. The term APS is a term given to the grouping of dispute resolution through negotiation, mediation, conciliation and arbitration processes. Some interpret APS as an Alternative to Litigation where

⁵Maria SW Sumardjono, 2008, Land Dispute Mediation, Kompas Media Nusantara, Jakarta, p. 4.

⁶Rachmadi Usmani, 2012, Mediation in Court: In Theory and Practice, Sinar Graphics, Jakarta, p. 8.

all dispute resolution mechanisms outside of court, including arbitration, are part of APS. Article 1 Number (10) of Law Number 30 of 1999 concerning Arbitration stipulates that APS itself is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely resolving disputes outside of court by means of consultation, negotiation, mediation, conciliation or expert assessment. . Meanwhile, APS as an Alternative to Adjudication includes consensus or cooperative dispute resolution. Nader and Todd, as quoted by Siregar, divided seven ways of resolving disputes, namely:⁷

1. Lumping it

The party who feels unfair treatment fails to pursue his claim. He decides to ignore the problem or issue that gave rise to his demands and he continues his relationships with parties that he feels are detrimental to him.

2. Avoidance

The party who feels aggrieved, chooses to reduce relations with the party who harmed him or to stop the relationship altogether, for example in business relations something similar could happen. By avoiding it, the problem that causes the complaint is avoided.

3. Coercion

One party forces a solution on the other party, this is unilateral. Coercive actions or threats to use force generally reduce the possibility of a peaceful resolution.

4. Negotiations

Both parties facing each other are decision makers. Solving the problems faced was carried out by the two of them, they agreed without any third party interfering. Both parties try to convince each other, so they make their own rules and do not solve them by starting from existing rules.

5. Mediation

Dispute resolution through a negotiation process to obtain agreement between the Parties with the assistance of a Mediator. A mediator is another party who has a Mediator Certificate as a neutral party who assists the Parties in the negotiation process to seek various possible dispute resolutions without resorting to deciding or forcing a resolution.

⁷Nurnaningsih Amriani, 2012, Mediation: Alternative Dispute Resolution in Court, PT. Raja Grafindo Persada, Jakarta, p. 46.

6. Arbitration

The process of resolving a dispute by one or more people (arbitrator, arbitrator or arbitration court) who provides an arbitration decision. Arbitration decisions are legally binding on both parties and are enforceable in court. Arbitration can be carried out if the parties to the dispute cannot reach an agreement on their own.

7. Adjudication

The way to resolve disputes between the two conflicting parties is through the court as a problem solver.

An alternative is one of two or more ways to achieve the same goal or end. A dispute is a condition where a party feels disadvantaged by another party, and then that party conveys this dissatisfaction to the second party. If a condition shows a difference of opinion, what is called a dispute occurs. In the legal context, especially contract law, what is meant by dispute is a dispute that occurs between parties due to a violation of the agreement that has been stated in a contract, either in part or in whole. So, in other words, there has been a breach of contract by the parties or one of the parties, because the obligations that must be carried out or fulfilled are not fulfilled or fulfilled, but are insufficient or excessive, which ultimately results in the other party being harmed.⁸

Hasim Purba in his journal writing generally clarifies the typology of disputes into three forms, namely:⁹

1. Horizontal Disputes, namely: between a community and other communities.
2. Vertical Disputes, namely: between society and the government, and
3. Horizontal-Vertical Disputes, namely: between the community and entrepreneurs (investors) who are backed up by the government (unscrupulous officials) and thugs.

Those involved in deliberations have the right to speak and express their opinions. The opinions and views of each party must be heard and considered

⁸Amriani, Nurnaningsih, 2012, *Mediation: Alternative Dispute Resolution in Court*, PT. Raja Grafindo Persada, Jakarta, p. 12.

⁹Hasim Purba, 2013, "Agrarian Reform and Land for the People: Peasant VS Plantation Disputes" *Law Review Journal*, V. PPPM Land – STPN, Number 37 Year 12, April 2013. Page. 23-34.

fairly by all parties involved. The main goal of deliberation is to reach an agreement or consensus that can be accepted by all parties. Decisions taken during deliberations must reflect the results of a democratic and participatory negotiation process.

In the context of settlement between PPAT and Creditors, consensus deliberation is used as a tool to reach agreement in resolving problems related to power of attorney to impose mortgage rights that have not yet been completed. The parties to the dispute hold meetings and discuss openly to find a solution that is acceptable to all parties. Decisions taken through consensus deliberation are the result of mutual agreement and are not forced by either party.

Apart from consensus deliberation, another non-litigation process that is often used in dispute resolution is mediation. Mediation is a process in which a neutral mediator helps the disputing parties to reach an agreement. Mediators do not have the authority to impose decisions on the disputing parties, but they act as facilitators to assist in negotiations.

In terms of settlement solutions between PPAT and Creditors, mediation can be used if consensus deliberation does not produce a satisfactory agreement. A neutral mediator will help both parties to reach an agreement that ends their dispute. So, in resolving legal anthropology disputes, there are various non-litigation methods such as deliberation for consensus and mediation which are used to reach an agreement between the parties to the dispute. This process places dispute resolution within the control of the disputing parties, with the hope of achieving a resolution that is faster, more cost-effective and beneficial to all parties involved.

Based on the results of research by the author regarding the dispute resolution solution taken or taken by PPAT in the city of Semarang and creditors in one of the banks, namely using non-litigation resolution. This is because the parties still uphold the cultural values, habits or customs of Indonesian society and this is in line with the ideals of Indonesian society as stated in the 1945 Constitution. The way to resolve this is by deliberation and consensus to take decision.

After the consensus deliberation mechanism is carried out by the parties, the consensus deliberation results in a decision between the two parties and a joint decision that has been agreed to by both parties. The decision that was agreed to by both parties was that PPAT was given an additional 1 month to complete the

pending work with the consequence of bearing the entire cost of the SKMHT to APHT upgrade process. So the existence of "Musyawarah Mufakat" as a form of alternative resolution mechanism (Alternative Dispute Resolution) is not something foreign to society, because dispute resolution is part of living social norms, or at least has existed in society.

3.2. Legal Protection Efforts for Creditors in the Case of Registration of Deeds Granting Mortgage Rights that Exceed the Time Limit in the City of Semarang

A detailed explanation of the process of imposition of Mortgage Rights by PPAT and various aspects related to the registration of Mortgage Rights. This process is very important in property and banking credit transactions because it involves protecting the interests of creditors as well as legal certainty related to collateral for property. Basically, registration of Mortgage Rights is a crucial step in ensuring the validity of property collateral as part of a credit transaction. PPAT plays an important role in carrying out this task and must ensure that all legal requirements and procedures are met.

Regarding the problem of delays in registering Mortgage Rights, understanding the time limits set out in the regulations is very important, and the PPAT must ensure the completeness of the documents before signing the APHT. Delays in registration can have serious consequences, such as loss of creditor preferential rights and potential legal problems. Apart from that, cooperation between PPAT, banks and the Land Office is also an important factor in ensuring the registration process runs smoothly and on time. The use of electronic systems can help speed up and simplify this process, but it is still important to maintain the integrity and security of documents and comply with all applicable legal requirements.

According to Article 10 paragraph (1) UUHT, the initial stage of granting Mortgage Rights is preceded by a promise to provide Mortgage Rights as collateral for repayment of certain debts, which is stated in the debt and receivable agreement and is an inseparable part of the debt and receivable agreement in question. When viewed from the sequence of activities, the imposition of Mortgage Rights actually consists of 3 stages, namely:¹⁰

1. The first stage is the debt and receivable agreement.

¹⁰Maria Darus Zaman, 1980, Bank Credit Agreement, Alumni, Bandung, p. 121.

2. The second stage is granting mortgage rights by making an APHT.
3. Registration stage and granting of Mortgage Rights certificate.

Leveling is the final stage of the process of assigning mortgage rights. In other words, registration is carried out if first, there is a debt agreement or other agreement that gives rise to debts and receivables which contains a promise to provide land rights as collateral. This debt and receivable agreement is always made in writing either privately or by notarial deed, where this debt and receivable agreement is the basis for carrying out legal actions related to the provision of the guarantee in question. However, in practice, at the request of the parties, especially creditors, which are generally banks, more often than not, notarial deeds are made. Second, this promise is then realized by granting mortgage rights to the land in the APHT before the PPAT. This means that the mortgage must be with an authentic deed,

One of the principles of Guarantee Rights in general, both material and individual guarantees, is the "accessoir principle", which means that both the birth and survival, transfer and termination of the Guarantee Rights depend on the principal agreement in the form of debts and receivables. If the main agreement is invalid, then the accessory agreement is null and void. In practice, Notaries or PPATs only make deeds at the request of the parties, no notarial or PPAT deeds are made out of position or without being asked. Even though a Notary or PPAT makes a deed at the request of the parties, this does not mean that every time there is a request, the deed must be complied with. A notary or PPAT is obliged to refuse to make a document if the conditions specified for its making are not met. Every Notary or PPAT must be fully aware of this.

The risk of provisions that require registration is that there is also a time limit for sending the registration files. In Article 13 paragraph (2) it is stated that no later than 7 working days after signing the APHT, the PPAT is obliged to send the APHT and other required documents to the Land Office. The grace period of 7 days is calculated from the time the APHT is signed. It can be concluded that this time limit provision may be given regardless of whether the documents or documents required for registration have been received completely by the PPAT or not, but for the sake of PPAT security, the APHT should only be signed if all the documents or documents required for registration have been completed. As the author stated above.

If there is a delay in registering the Mortgage Rights which exceeds the 7 day period, for example due to negligence on the part of the parties who have not completed the required documents, the PPAT cannot be held responsible, then the PPAT is responsible for the losses suffered by the creditor (in the event of a blocking of the object of the Mortgage Rights so that the registration process is hampered), or the PPAT is subject to certain sanctions. In Article 23 UUHT, there are witnesses for PPAT who commit negligence (delays in registering Mortgage Rights beyond the specified time limit), in the form of verbal warnings, written warnings, temporary dismissal from office, dismissal from office.

Based on the form of preventive action that can be taken by creditors to prevent disputes over the registration of mortgage rights that exceed the time limit, if it is linked to the objective theory according to Gustav Radbruch, it must include 3 (three) elements, namely legal justice which functions to carry out the value of justice according to Radbruch as a measure. for justice and unfairness of the legal system. The value of justice is also the basis of law as law, thus justice has both normative and constitutive characteristics for law. Justice is the basis for every dignified positive law.¹¹

Gustav Radbruch said that law is the bearer of the value of justice, justice has both normative and constitutive characteristics for law. It is normative because it is justice, positive law has a rank and is constitutive because justice must be an absolute element of the law, without justice a rule does not deserve to become law, in this case with the existence of Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights which applies throughout Indonesia provides equal legal rights and obligations for mortgage services.

Meanwhile, legal certainty in this research is the existence of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 concerning Determination of Time Limits for the Use of Power of Attorney Imposing Mortgage Rights to Guarantee the Repayment of Certain Credits, with the issuance of this regulation because it takes into consideration speed of time, convenience, in order to make public services more effective and efficient, this provides certainty for the public in carrying out the process of issuing mortgage rights. Associated with the legal certainty of determining the time limit for

¹¹Yovita A. Mangesti & Bernard L. Tanya, 2014, Legal Morality, Genta Publishing, Yogyakarta, p. 74.

upgrading SKMHT to APHT, that by implementing a time limit in the process of increasing to mortgage rights based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 concerning Determination of Time Limits for the Use of Power of Attorney to Encumber Mortgage Rights to Guarantee Repayment of Certain Credits. Legal certainty in the form of preventive action by creditors to prevent mortgage rights registration disputes that exceed the time limit, namely by routinely asking about the progress of the Mortgage Rights binding process at the relevant PPAT Office so that similar incidents do not happen again, either with the staff in charge or with the PPAT directly.

From the description above, it can be seen that PPAT has an important role and responsibility in the process of registering Mortgage Rights, because besides that he must carefully collect all documents which are sources of juridical data as required by the authority to make APHT and is required to submit the APHT he has made. along with the necessary documents to the Land Office for registration. The role of the Land Office in the process of imposing Mortgage Rights is also very important, because of registration. For creditors holding mortgage rights, the most important thing about the birth of mortgage rights is that the creditor's special rights apply to third parties.

4. Conclusion

The solution for completing the registration of the Deed of Granting Mortgage Rights that exceeds the time limit in the city of Semarang, namely between PPAT and Creditors, is resolved in a non-litigation manner, namely through consensus deliberation with ideal standards for PPAT in carrying out the registration. The occurrence of this dispute was caused by several factors, if seen from the PPAT who made a mistake in accepting orders that were too overloaded, apart from that, incomplete files from debtors were not followed up properly, thus causing delays in the registration process for the Deed of Granting Mortgage Rights. Another factor that causes disputes is from the debtor and creditor themselves, by not fulfilling the complete requirements so that the PPAT cannot continue carrying out the Mortgage process, so that if the debtor makes early repayment then the creditor and debtor will be disadvantaged in this case. The creditor's position is that there is no legal certainty, or they are still concurrent creditors. Efforts to provide legal protection for creditors in the case of registration of a Deed of Granting Mortgage Rights that exceeds the time limit in Semarang City

must not make the creditor a concurrent creditor, namely a creditor who does not hold material security rights over the debtor, because it is still in the SKMHT stage and has not yet reached the stage. APHT. The mechanism for legal protection of creditors here is by resolving the dispute, namely by calling the disputing parties and taking a persuasive approach to the parties. The persuasive approach aims to find the best solution so that problems do not arise again. So that in this case there is legal certainty for the creditor and does not cause losses to either the debtor or the PPAT.

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