

LEGAL CONSEQUENCES OF MAKING DEED OF GRANTING OF SECURITY RIGHTS BY NOTARY WITH A GUARANTEE OBJECT THROUGH DIFFERENT BANK

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ABSTRACT

The study objectives is to know legal effect of making deed of granting of security rights by notary in regard to notary supervisory board's authority (MPN) to carry out supervise and guidance function in Supreme Court decision number 769 K/Pdt.Sus.Pailit/2016. The case starting from building use permit certificate 3505/Meruya North has listed in temporary asset of PT.Mega Graha International, eventhough the certificate entitled named by The Hwie Gwan. The arising legal consequences by giving back the certificate to The Hwie Gwan. The legal consequences for debtor to respect and receive the Judge Board decisioan according to article 1388 civil law code. In the case, the debtor (The Hwie Gwan) obligated to meet the credits, one of them is to sell the land which granted. The legal consequences for debtor because default then article 1243, 1244 civil law code is be valid.

Keywords: security right, legal consequences, debtor, creditor, notary.

INTRODUCTION

Notary is authorized to provide counseling (Article 15 paragraph (2) letter e UUJN) or legal advice in making deeds to the parties. When these suggestions are accepted and agreed upon by the parties then added into the deed, then the suggestions must be assessed as statements or testimony of the parties themselves. The making of authentic deeds is divided into two kinds of deeds consisting of minuta deeds and copies of deeds, where the minuta deed is kept by the notary as a notary archive known as notary protocol, where the notary protocol is a state archive, while a copy of the deed is given to each party. However, if there is a dispute between the parties, then it is enough to show a copy of the deed, because a copy of the deed is a testimony of an event for those who made it, so that the deed is a perfect evidence. However, in reality it is needed in the framework of examinations carried out by investigators, because the copy of the deed is not enough for the examination to be complete evidence, then need depth evidence is Minuta Deed. (Notodisoerjo, 2003: 137).

According to Article 1868 of the Civil Code jo article 1 number (1) of UUJN which states that a notary is a public official who has general authority to make authentic deeds. Then explained in Article 1 paragraph (7) of UUJN Jo. Article 1870 and 1871 of the Civil Code, authentic deed is a perfect and binding evidence because of the facts written in it. So based on these regulations, if there are other people or parties, including investigators denying the truth of the deed, the person concerned must be able to prove otherwise. Authentic deeds provide perfect evidence among the parties and their heirs and have binding powers. Perfect means an authentic deed is sufficient to prove an event or circumstance without the need for additional evidence. Binding means that everything that is included in the deed must be trusted and deemed to have actually happened, so if there are parties who argue or doubt the truth, then that party must prove the doubts and the untruthfulness of the authentic deed (Alexander, 2012).

The notary can make mistakes in carrying out his duties and authority, for example: mistakes regarding the inability of the Notary in making authentic deeds, resulting in the loss of the authority of the deed made, or the power proof of the deed is no longer complete the parties concerned, but become a private deeds / letters, because the deed is made outside his working area as a Notary. This mistake can occur, because it comes from the Notary itself which is commonly called a professional mistake (beroepsfout), resulting in the Narcotics being held accountable for the losses suffered by interested parties, due to the loss of the deed to the District Court, where the Notary concerned practice.

This study as discussion basis is Supreme Court Decision Number 769 K / Pdt.Sus.Pailit / 2016, Case: PTBANKOCBCNISP, Tbk., The Cassation Appellant, the Plaintiff, against BERNARD NAINGGOLAN, SH, MH, as Curator of PT MEGA GRAHA INTERNASIONAL (In Bankruptcy), as Cassation Respondent, Defendant; The Supreme Court. That now The Cassation Appellant, the Plaintiff has filed Other Claims in front of the Commercial Court trial at the Central Jakarta District Court as follows: 1) Regarding the Legal Basis for Submitting Other Claims in Case A Quo, and 2) other claims in the case a quo, the reason is that the Defendant acted as Curator who unilaterally and unfounded law included 1 (one) plot of land and the building based on the Building Use Certificate (SHGB) Number 3505 / North Meruya registered or the Hwie Gwan in the Bankruptcy List of Boedel PT .Mega Graha International (In Bankruptcy). The Cassation Respondent / the Defendant at all cannot show the documents that prove the existence of the Equity Participation Certificate of Building use permit Number 3505 / North Meruya into PT.Mega Graha International. Based on the things mentioned above, it is proven that Judex Facti has broke the law because it has misjudged the Evidence of the Unilateral Statement of PT.Mega Graha International Director, Evidence T-9, T-10 and T-11, because it is clearly Evidence of the Unilateral Statement of the Director It actually shows that the Building Use Permit Certificate Number No.3505 / North Meruya belongs to The Hwie Gwan and does not belong to PT.Mega Graha International.

The legal consequences of Building Use Permit Certificate Number 3505 / North Meruya are not belong to PT. MegaGraha International's Bankruptcy Assets.

Security Rights originated from hypothetical rights which are legal components and part of object law which is substantially regulated in Book II Civil Code. For subsequent Security Rights regulated in Law No. 4 of 1996 concerning Security Rights (UUHT). As long as the achievements in the loan agreement that is secured by the Security Right are fulfilled properly by the debtor, then the liability as a guarantee right does not show its function. The new Security Rights function if the debtor breaks the contract. In the case that the Security Right grantor cannot attend before a Notary or PPAT, Article 15 UUHT provides an opportunity for the Security Right grantor to use a Power of Attorney to Charge Mortgage (SKMHT). The grantor of Security Rights must appoint another party as his attorney with a Power for imposing an Security Right in the form of authenticity and must fulfill certain conditions.

RESEARCH METHOD

According to Peter Mahmud Marzuki (2006: 35), legal research is a process of finding legal rules, principles, and doctrines in order to answer the legal issues that faces.

originates from the submission of a major premise which is then proposed to a minor premise, then from the two premises a facts or conclusion is drawn (Peter Mahmud, 2006: 47).

DISCUSSION

1. Security Rights Analysis in the Supreme Court Decision Number 769 K / Pdt.Sus.Pailit / 2016

The research analyzes the Supreme Court Decision Number 769 K / Pdt.Sus.Pailit / 2016, on cassation at the Jakarta Supreme Court, bringing legal consequences to the debtor in this case as the plaintiff. According to Wignjodipuro, (1983: 38), legal consequences are due to legal action. Legal consequences can be a change or diminish of a legal situation or relationship. Apart from that, the legal consequences can also be sanctions, when taking actions against the law. Decision of the Supreme Court, which confirms the South Jakarta court's decision in the case: Building Use Permit Certificate Number 3505 / North Meruya with the reason that Building Use Permit 3505 / North Meruya Certificate has been submitted by the Respondent to the Temporary Asset List of PT.Mega Graha International (here after called "List of Assets / Boedel Bankrupt"), dated September 9, 2015. Even though the certificate is owned / registered in the name of The Hwie Gwan and is not registered in the name of PT.Mega Graha International.

In this case, The Hwie Gwan and PT Mega Graha International have a credit relationship as stated in the credit agreement deed made by a Notary guaranteed collateral rights (certificate of Building Use Permit Number No.3505 / North Meruya), as previously explained that the agreement is not a moral engagement but a legal agreement which has legal consequences, the legal consequence of a legal agreement is the entry into force of the agreement as a law for those who make it. What is meant by acting as a law for those who make it contains an understanding that the agreement of the parties as outlined in the agreement must not be denied and binding on the parties, unless there is an agreement between the parties that the law is declared sufficient for that. More precisely this has been regulated in Article 1338 of the Civil Code which reads:

Thus, the legal consequences for creditors in this case PT. Credit Bank X with the ratification of the Agreement Deed made by a Notary, this also applies to the case with the Supreme Court Decision Number 769 K / Pdt.Sus.Pailit / 2016, then the Power of Attorney imposes an Security Right that existed in the Deed of Granting of Security Rights based on Article 6 Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Relating to Land, is "If the debtor is break the contract, Security Right first Holder has the right to sell the Security Right object on his own power through a public auction and take repayment of the debt from the proceeds of the sale, as well as explained in the explanation of the Security Rights Law which reads "The right to sell the object of Security Right on his own power is one embodiment of the preferred position which belongs to the Security Right Holder or the first Security Right holder things have more than one Mortgage holder.

The right is based on the promise given by the Security Right grantor that if the debtor is breaked the contract, Security Right grantor has the right to sell the Security Right object through a public auction without requiring the approval of the grantor and then repaying the loan from the sale before another creditor. The remaining sales stay to belong the right of the Security Right grantor.

But related to the Supreme Court Decision Number 769 K / Pdt.Sus.Pailit / 2016, the object of mortgages can be sold by submitting an Application for Security Rights Execution of Building Use Permit Certificate Number 3505 / North Meruya at State Wealth Services and Auctions (KPKNL) Jakarta IV on September 15, 2015 (Exhibit P-12); however, it turned out that the KPKNL Jakarta IV stated that it could not continue the auction application for the execution of Security Rights for the Building Use Permit Certificate Number 3505 / Meruya Utara by reason of the Building Use Permit Certificate Number 3505 / North Meruya has been listed by the Defendant into the Temporary Asset List of PT. Mega Graha International (hereinafter referred to as " Property List / Boedel Bankrupt ").

In regard to the actions of PT. Mega Graha International which unilaterally has listed Building Use Permit Certificate Number 3505 / North Meru into the property list/ Boedel Bankruptcy, dated September 9, 2015 (Evidence-13), even though clearly and obviously the Building Use Permit Certificate Number 3505 / North Meruya is not included PT.Mega Graha International's Property List / Boedel Bankrupt.

In relation to the above case, the reason for entering Building Rights Certificate Number 3505 / North Meruu into the Bankruptcy / Boedel list because the cost of purchasing the asset comes from the property of PT ButterGraha International is a very misleading and unlawful reason, with the legal fact that the certificate land was made before PT.Mega Graha International, so it is appropriate that the Supreme Court judges give a decision to reject the appeal from the Cassation Appellant: PT BANK OCBC NISP, Tbk.

The above decision in accordance with Law No. 4 of 1996 concerning Security Rights is expected to provide legal certainty regarding the binding of collateral with land and property related to the land as collateral, which so far has been regulated using Creditverband provisions in the Law Book Civil Law (Civil Code)

However, in reality there are often objects in the form of buildings, plants and works that are permanently a unit with the land that is used as collateral and is also guaranteed. As is known that the National Land Law is based on customary law, which uses the Horizontal Separation Principle, which explains that every legal action concerning land rights does not automatically include these property (Patrik and Kashadi, 2009: 171).

Thus the decree is in accordance with the Law of the Republic of Indonesia Number 4 of 1996 concerning the Security Right on Land and its property relating to Land, with the stipulated of the Law concerning a strong land rights guarantee institution with the following characteristics:

- a. Giving priority position or overtaking to the holder;
- b. Always follow the object that is guaranteed in whose the object is belong;
- c. Fulfill the principle of speciality and publicity so that it can bind third parties and provide legal certainty to interested parties;
- d. Easy and definite execution.

Explanation of Article 4 of Security Rights Law, there are two absolute elements of land rights that can be used as objects of Security Right are:

- a. This right in accordance with the applicable provisions must be registered in the public register, Land Office. This element is related to the preferred position given to the creditor of the Security Rights to other creditors. For this, there must be a record of the Security Right in its land book and certificate that is burdened so that everyone can find out (publicity principle), and
- b. This right according to its nature must be transferable, so that if necessary it can be realized immediately to pay the debt guaranteed repayment.

There are legal consequences when the reasons for cassation cannot be justified, the aquo dispute land / Building Use Permit Certificate Number 3505 / North Meruya is PT.Mega Graha International's asset which is a guarantee of debt payment to the Plaintiff and according to the provisions as a separatist creditor Plaintiff has been given the opportunity to sell alone for 2 (two) months but this is not carried out by the Plaintiff;

Based on the considerations above, it turns out that the decision of the Commercial Court at the Central Jakarta District Court Number: 02 / Pdt.SusGLL / 2016 / PN.Niaga.Jkt.Pst. March 17, 2016 in this case does not conflict with the law and / or act, so that the cassation application submitted by the Cassation Applicant: PT. BANKOCBNISP, Tbk. it must be rejected.

Other legal consequences for the Building Use Permit Certificate 3505 / Meruya Utara must be issued from PT.Mega Graha International's property / boedel list, even though clearly and obviously the Building Use Permit Certificate 3505 / Meruya Utara is owned / registered in the name of The Hwie Gwan and not registered in the name of PT.Mega Graha International, so that it is clear that the Building Use Permit Certificate 3505 / Meruya Utara is not belong to PT. Mega Graha International Property / Boedel

Authority for Handling Violations of the Notary Ethics Code by the Notary Supervisory Board

The Notary Supervisory Board has the authority to impose sanctions on the notary. This sanction is stated or regulated in UUJN, also mentioned again and added in the decision of the Minister of Law and Human Rights Number M.39-PW.07.10 of 2004. With such a regulation there was a sanction arrangement that was not mentioned in the UUJN but it was apparently regulated or mentioned also in the decision of the Minister of Law and Human Rights Number M.39-PW.07.10 of 2004, are:

- a. Regarding MPW's authority to impose sanctions in the form of verbal warnings and reprimands in writing, but in the ministerial decree number 2 point 1 stipulates that MPW is also authorized to impose sanctions as mentioned in 85 UUJN. The difference in sanctions regulation indicates inconsistencies in the regulation of sanctions, which should be used as guidelines, the provisions of Article 73 paragraph 1 letter a of the UUJN, meaning that MPW is not authorized other than imposing sanctions for verbal reprimand and written reprimand;
- b. Regarding MPP's Authority, the imposition of sanctions in Article 84 of the UUJN. In item 3 point 1 of the Decree of the Minister of Law and Human Rights Number M.39-PW.07.10 of 2004 that MPP has the authority to implement the sanctions mentioned in Article 84 UUJN. Article 84 UUJN is a civil sanction, which in its implementation does not require MPP to implement it and MPP is not an institution for the execution of civil sanctions.

The implementation of these sanctions does not necessarily apply, but there must be a verification process carried out in the general court, and there is a decision from the court through a lawsuit, that the notary deed has proof power as a private deed.

CONCLUSION

This case originated from the Building Use Permit Number No.3505 / North Meruya has been listed into the temporary Asset List PT. Mega Graha International (hereinafter referred to as "Property List / Boedel Bankruptcy "), dated September 9, 2015. Though the certificate is owned / registered in the name of The Hwie Gwan and is not registered in the name of PT.Mega Graha International.

The legal consequences that arise are the need to return the certificate that enlisted into the property List / Boedel Bankruptcy that registered in the name of The Hwie Gwan. Legal consequences on Creditors with the ratification of the Credit Agreement Deed made by a Notary, with guaranteed Security Rights, based on Article 6 of Law No. 1. 4 of 1996 concerning Security Right on land along with objects relating to land, entitled to sell the object of mortgage on its own is one of the embodiments of the preferred position (preferent). The legal consequences for the debtor must respect and accept the Judge's Decision according to Article 1338 of the Civil Code.

SUGGESTION

1. The judge as the public justice provider, should implement Article 28 paragraph (1) of Law No. 4 of 2004 concerning Judicial Power which was later amended by Law No. 40 of 2009 that: "Judges must explore, follow, and understand the legal values and sense of justice that live in society". Judges must actively play a role in finding the law and forming new laws and developing laws, so that a sense of justice will be felt by the people of Indonesia, as a preventip and repressive effort against business crimes committed by corporations.
2. Debtor Creditors and Debtors in binding credit agreements, should prioritize good faith in fulfilling the rights and obligations of each party.
3. A notary as a public official, upholds the notary ethics code and applicable law in carrying out its obligations to ensure legal certainty and justice for the parties

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