

POSITION OF ROYA CONSENT DEED MADE BY NOTARY AS A REPLACE FOR THE LOSS OF MORTGAGE RIGHTS CERTIFICATE

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ABSTRACT

Roya deed is one of authentic deeds made by a notary at the request of a creditor or a former debtor as a party that contains a creditor's statement that the debtor's certificate of mortgage has been lost. In this provision, there is a vague norm regarding the authority of the notary to make roya consent deeds. This type of research was a normative juridical research that departs from the obscurity of norms. This study used secondary data supported by primary data. The legal materials used in this study were primary, secondary and tertiary legal materials. The legal material collection technique used was the Approach Method. The research results show that the roya consent deed has a position as a substitute for the lost mortgage certificate, which functions as a registration requirement for roya, and a notary in making the roya consent deed is responsible for the civil law. Then, the obstacle was the long process of completing the requirements, and the efforts faced by the parties involved in the drafting of the Roya Consent Deed which were not binding. However, the applicant can be replaced with a request for a court ruling regarding Roya's permission to have permanent and binding legal forces.

Key words: Mortgage, Roya Consent Deed, Notary Responsibilities

A. INTRODUCTION

Banking Institutions are institutions that act as intermediaries between parties that have surplus funds (*surplus of funds*) and parties requiring funds or *lacks of funds*, of course, requiring significantly in carrying out their business activities or operations.¹ The function of seeking and collecting funds from the public in the form of deposits plays an important role in the growth of a bank, because the volume of funds that are successfully raised or saved will of course also determine the volume of funds that can be developed by the bank in the form of investment that generates, for example in the form of providing credit. ²

Bank operations in the sector of providing credit facilities are the main function of the banking business, namely the function of channeling funds to those who need them after receiving fundraising from fund depositors.³ In the elucidation of Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, it is determined that credit provided by banks contains risks and to reduce these risks the bank must have confidence in the ability and ability of the debtor to repay the debt.

Mortgage rights as a guarantee institution will be registered by the bank through a notary / PPAT to the local Land Office so that a Deed of Granting Mortgage Rights (APHT) will be issued on the land which is the guarantee. If the credit process between the debtor and the bank has been completed because the debtor has paid off the debt - debt, then the mortgage on behalf of the debtor can be written off which is called Roya. In the legal dictionary, roya means erasing or erasing.⁴ Roya mortgage rights are regulated in Article 22 of Law Number 4 of 1996 concerning mortgage rights over land and objects related to land, Roya is the removal of Mortgage Rights on the land book and certificate. if the mortgage right is abolished, the Land Office carries out a roya (write-off) the mortgage note on the land book and the certificate so that the Certificate of Mortgage is declared invalid by the Land Office. In practice, if the certificate of mortgage for some reason is not returned to the Land Office then it is recorded in the land book of the Mortgage Rights by attaching the Roya Consent Deed as the basis for the certificate of mortgage has been lost to guarantee legal certainty, the term Roya Consent Deed is: an authentic deed made by a notary as a substitute for a lost certificate of mortgage.⁵

In the process of making the Consent Roya deed, the debtor faces the notary, so that the role of the notary is very much needed in the process of roya guarantee rights, because the debtor needs legal certainty and authentic evidence for his actions. Therefore, this deed of consent roya legally requires the assistance of a notary in his capacity as a public official who has the authority to make an authentic deed.

¹ Hermansyah, 2014, *Indonesian National Banking*, 8th edition, Jakarta: Kencana Prenada Media, p: 43

² Ibid, p: 43

³ Gunarto Suhardi, 2003, *Banking Business from a Legal Perspective*, Yogyakarta: Kanisius, p: 75

⁴ JCS Simorangkir, 2005, *Legal Dictionary*, Jakarta: Sinar Grafika, p: 150

⁵ Rudi Indrajaya and Ika Ikmasari, *Op.Cit.*Hm: 38

B. LITERATURE REVIEW

1. Definition of Deed

Based on the origin of the word, the term deed comes from the Latin "acta" which means *geschrift* or letter,⁶ while A.Pitlo is of the opinion that a deed is a signed letter, made to be used as evidence, and to be used by others for whose purpose the letter was made.⁷

In general, deeds are letters made by officials or parties that contain legal relationships or legal actions of the parties that regulate legal status, rights and obligations.

2. Types of Deeds

a. Authentic Deeds

Authentic deeds are deeds made by or before an official who is authorized to do so by the authorities, according to the stipulated provisions, or without the assistance of an interested party, which records what is requested to be included in it by the person concerned. with an interest, authentic deeds especially contain a statement of an official, which explains what he did and saw before him.

b. Unauthentic deed

Unauthentic deed is deed made by the parties that make the terms they agree on, and signed by the parties.

Unauthentic deeds according to Article 1874 of the Civil Code are deeds that are signed under hand, letters, lists, household affairs documents and other writings which are made without the intermediary of a public official.

3. Function of Deed

a. *Formality Causa*

Deed can have a formal function (*formality causa*) which means that complete or perfect (not to be valid) a legal act must be made a deed. Here deed is a formal requirement for the existence of a legal act.

b. *Probabilty Causa*

In the provisions of proof of birth from an authentic deed, the *principle of acta public probant sese ipsa applies*, which means that a deed that is born appears to be an authentic deed and fulfills the specified conditions, then the deed is valid or can be considered as an authentic deed, until proven otherwise. This means that the official's signature is considered the original until there is evidence to the contrary.

4. Public Notary

Notary has a very important position and role in creating healthy legal traffic, because the Notary Public has the authority or *authority* to make authentic deeds as perfect evidence which has been regulated in statutory regulations.

Ateng Syafrudin stated the definition of authority:⁸

"There is a difference between the notion of authority and authority. We must distinguish between authority (*gezag*) and authority (*competence, bevoegheid*). Authority is what is called formal power, power that comes from the power given by law. Law, while the authority (*rechtbe vogdheden*) authority is the scope of public legal action, the scope of governmental authority, not only includes authority in the context of carrying out duties and granting authority and distribution of its main powers stipulated in statutory regulations.

Notary as a public official, in carrying out his / her job duties, has the authority stipulated in article 15 of the Law of the Republic of Indonesia number: 2 of 2014 concerning amendments to Law number 30 of 2004 concerning Notary Position.

"Notaries are authorized to make authentic Deeds regarding all deeds, agreements, and stipulations required by laws and regulations and / or those interested in being stated in the authentic Deed, guarantee the certainty of the date of making the Deed, keep the Deed, provide grosse, copies and quotations. Deeds, all of this as long as the making of the Deed is not assigned or excluded to other officials or other people as stipulated by the law. "

5. Obligations of Public Notary

Notary in carrying out his profession to act as a public servant because he is appointed by the government to serve the public's needs for evidence as well as those related to other Notary powers

In carrying out his / her duties, a Notary is obliged to provide advice or input before the applicant puts his will into the deed, such as who is allowed to carry out legal actions, what is and is not according to the law regarding the deed to be made and regarding what must be completed to anticipate a when there will be a problem with the deed.

⁶ Victor.M.Situmorang, et al, 1992,*Grosse Akta in evidence and execution*, Rineka Cipta, Jakarta, page: 24

⁷ Sudikno Mertokusumo, 1993,*Knowing the law (an introduction)*, Liberty, Yogyakarta, page: 120

⁸ Ateng Syafrudin, 2000,*Towards Clean and Responsible State Governance*, Journal of Pro Justitia Edition IV, Bandung, page: 22

6. Object of Mortgage

In relation to the above, article 4 of the UUHT has determined land rights that can be used as objects of mortgage rights, namely:

1. Land rights that can be encumbered with mortgage rights are
 - a. Property
 - b. Rights, Business
 - c. Use Rights, Building Use Rights In
2. addition to land rights as referred to in paragraph (1), the right to use State land which, according to the applicable provisions, must be registered and according to its transferable nature, may also be burdened with a mortgage.

7. Procedure for Encumbrance of Mortgage Rights

The procedure for the imposition of security rights consists of 2 (two) stages:

- a. The stage of granting mortgage rights carried out in front of the official Land deed maker (PPAT) which is preceded by a secured debt agreement.
- b. The registration stage is carried out at the local Regency / Municipality land office.
It should be emphasized that according to article 1 point 4 of the UUHT, it is stated that the PPAT is a public official who is given the authority to make deeds of transfer of land rights, deeds of assignment of mortgage rights over land and deeds of authorization to impose mortgage rights.

8. Certificate of Mortgage

As proof of the existence of mortgage rights by the Land Office, a certificate of rights is issued which is named Certificate of Mortgage Rights (article 14 paragraph 1).

In the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number: 3 of 196, it is stated that the mortgage certificate consists of a copy of the mortgage land book made by the Land Office and a copy of the APHT made by PPAT which is then bound together in a document cover whose form is determined based on the regulation.

9. Abolition of Mortgage Rights

Article 18 of the UUHT determines the things that cause mortgage rights, including:

For the abolition of mortgage rights, see also articles 122-124 of the regulation of the Minister of Agrarian Affairs / Head of the National Land Agency number 3 of 1997.

- a. Abolition of debt secured by mortgage rights.
- b. Releasing of mortgage rights by holders of mortgages.
- c. Clearing of mortgage rights based on ranking by the head of the district court, and
- d. Abolition of land rights that are encumbered with mortgages.

C. RESEARCH RESULTS AND DISCUSSION

1. What is the position of the consent roya deed made by the Notary in implementing the termination of mortgage rights?

According to Notary Yulies Tiena Masriani, namely: Roya Consent Deed is one of the authentic deeds made by the notary at the request of the bank as a party which contains a statement from the bank that the certificate of mortgage which is under the debtor's power has been lost, where the certificate of mortgage is a requirement for the debtor who has paid off his debt to carry out the Roya process. In the status of the consent roya deed made by a notary as a substitute for the lost mortgage certificate because the deed is binding, without a consen roya deed, the application for the termination of mortgage rights cannot be processed at the local Land Office.⁹

According to Dewi Perwita Sari as a Judge at the Semarang State Administrative Court, she is of the opinion that the position of the consent roya as a substitute for the lost mortgage certificate is evidence in court cases, taking into account everything that occurs in court hearings without depending on facts and matters. submitted by the parties, then in accordance with the provisions of Article 107 of Law Number 5 of 1986 concerning State Administrative Courts, the Panel of Judges is free to determine what to prove, the burden of proof along with the assessment of evidence. On that basis, the evidence submitted by the parties is taken into consideration, but to try and decide the dispute, only relevant evidence is used and the remaining evidence is attached as an integral part of the case file.¹⁰

⁹ Results of an interview with Yulies Tiena Masriani on Sunday, 15 September 2019 at 12.00 WIB.

¹⁰ Results of Interview with Judge Dewi Perwita Sari on Tuesday 24 September 2019 at 09.00 WIB.

2. How can the obstacles facing the parties involved in the Roya consent deed

According to Notary Yulies Tiena Masriani argues barriers-barriers faced by parties involved in the roya consent deed sometimes the parties lazy to take care of a certificate of loss of police office due to busy their own from the parties involved.¹¹

According to the notary, Daror Mujahidi is of the opinion that the obstacles in making the Roya consent deed, namely the loss of the land certificate to be cultivated, are also an obstacle in implementing roya at the Land Office. The loss of land certificate that will be in roya process can occur at a bank, notary / PPAT or it may also be due to negligence of the owner of the land certificate himself. The missing Certificate of Mortgage can also be a cause of obstruction to the implementation of the Mortgage Roya at the Land Office. The loss of this Mortgage certificate can occur at a bank, notary / PPAT or maybe the owner of the land certificate himself or maybe at the Land Office. Sometimes the identity of the Roya applicant is no longer valid. As the National Identity Card is no longer valid, so are other identities.¹²

According to the notary Raden Ayu Sri Harini Saraswati Mintoro, he is of the opinion that the obstacles faced by the parties in making the Roya Konsen deed are:¹³

1. The long process of completing the requirements that must be completed by the parties involved such as requesting a certificate of a loss report. the police, which must be preceded by an introductory letter from the RT, RW, Lurah and Kecamatan, along with supporting data that is appropriate and legally correct.
2. The parties are often confused in requesting a certificate in full from the bank, which in fact the bank often suggests that the owner of the land certificate or the former debtor to process the request for a court order.

3. How is the effort made parties to the roya consent deed

According to Notary Daror Mujahidi believes that the efforts made parties to the roya consent deed namely: the roya consent deed is a notary deed should contain 4 (element), namely:¹⁴

1. Contains elements **clarity**
2. Contains elements of **completeness**.
3. Contains elements of **truth**
4. Contains elements of **validity**.

According to the notary Raden Ay Sri Harini Saraswati Mintoro, he argues that the efforts made by the parties in making the roya consent deed are: the roya consent deed is an authentic deed made by the notary as perfect evidence but not binding but the applicant can be replaced with a court ruling on Roya permission because in order to have permanent and binding legal force.¹⁵

According to Imam Sutaryono as the Acting Head of the Land Legal Relations Section of the Semarang City Land Office, he argues that to solve the above problems, it is better if the notary in making the Konsen Roya deed is based on facts from correct and complete documents, the land office only serves according to Standard Operational procedures. Services (SOP) for applications for the abolition of mortgage rights if the certificate of mortgage is lost, then in exchange, the deed of consent roya is made by a notary or based on a court ruling based on the Regulation of the Head of the National Land Agency of the Republic of Indonesia number: 1/2010. National Land Affairs of the Republic of Indonesia and payment of land service fees is carried out by the applicant by way of deposit at the bank and proof of this deposit is a requirement for taking the land certificate under his control. Instruction of the State Minister for Agrarian Affairs / Head of the National Land Agency No.2 of 1994 dated 18 March 1994 concerning the Prohibition of Acceptance of Power.¹⁶

D. CLOSING

1. Conclusion

- Based on the research that the author has done; the authors draw conclusions from this academic manuscript as follows: The
- a. status of the roya consent deed made by the Notary in implementing the termination of mortgage rights is one of the authentic deeds as a substitute for the lost certificate of mortgage, because the deed is binding without there is a Roya consent deed cannot process the application for the termination of mortgage rights at the local Land Office. The notary in making the roya consent deed is responsible both according to Civil Law, Criminal Law and State Administrative Law and in line with the provisions in UUJN and the Amendment Law of UUJN and the code of ethics.
 - b. The obstacles faced by the parties involved in making the Roya Consent Deed are in making the Roya Consent Deed which should have been drawn up and signed by the former creditor (bank) and former debtor, often the notary party in making the Roya Consent deed signed by the former debtor in the event that This is in order to provide legal certainty and also fulfill the elements in making authentic deeds, namely elements of clarity, elements of completeness, elements of truth and elements of validity.

¹¹ Yulies Tiena Masriani's interview results on Sunday, September 15 2019 at 12.30 WIB.

¹² Results of an interview with Daror Mujahidi on Wednesday, 18 September 2019 at 13.00 WIB.

¹³ Interview with Raden Ayu Sri Harini Saraswati Mintorogo on Monday, 23 September 2019 at 15.00 WIB

¹⁴ Results of an interview with Daror Mujahidi on Wednesday, 18 September 2019 at 13.30 WIB.

¹⁵ Interview with Raden Ayu Sri Harini Saraswati Mintorogo on Monday, 23 September 2019 at 15.00 WIB

¹⁶ Interview with Imam Sutaryono on Tuesday, September 24, 2019 at 09.00 WIB.

- c. Efforts made by the parties involved in drafting a roya consent deed made by a notary as a substitute for a certificate of mortgage What is missing is still asking for all the requirements for drafting a concession deed to be completed so that the next process can run smoothly so that the registration process for the termination of mortgage rights can be registered at the local land office. And in the drafting of the Roya Consent Deed, it can be replaced with a request for a court ruling regarding Roya's permission because it has permanent and binding legal force.

2. Suggestions

Based on the research that the author has done; the author will submit some suggestions as follows:

1. To the local Land Office agency to be more careful about the file which is strengthened by the Roya Consent Deed which is made before a Notary as a substitute for a certificate of mortgage lost and before issuing the object of dispute by examining the data / documents stored in the Land Office (the defendant) because it can be ascertained that the Land Book with the same number as the certificate of land rights held by the Plaintiff is a legal product of the local Land Office.
2. To each Notary, so that in making the Roya Consent Deed more carefully, checking the files of each file received so that there are no legal problems in the future, the requirements for making the Roya Consent Deed must be accompanied by a Certificate of Report of Loss from the Police or a statement from the parties in particular. facing and / or creditors of financial service providers in Indonesia.

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