

Implementation of Partial Roya against Abolition of Mortgage Rights in the City of Tegal

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Abstract. *One of the ways to get rid of Mortgage Rights is through the roya process. This research is about the implementation of partial roya towards the abolition of Mortgage Rights in Tegal City with the problem of what are the mechanisms and obstacles encountered in implementing the partial roya towards the abolition of Mortgage Rights in Tegal City? This study uses an empirical juridical approach, which is based on field research or primary data research. This specification of writing uses the nature of descriptive analysis. Analysis of the data used using qualitative analysis methods. The results of the study show that the implementation of partial roya can be an effective alternative in eliminating mortgage rights in the City of Tegal. By considering the relevant factors and implementing appropriate regulations, Partial roya can help reduce the financial and legal burden borne by individuals or groups who have mortgage rights. In addition, this research also underlines the importance of cooperation between local governments, financial institutions, and other related parties in implementing partial roya effectively. Clear regulations and support from related institutions are needed to ensure the successful implementation of partial roya and protection for all parties involved.*

Keywords: *Abolition; Mortgage; Partial; Roya.*

1. Introduction

The banking industry and financial institutions are currently experiencing a significant increase. This is indicated by the growth of financing institutions, both banks and non-banks, with very large financing values. This condition is the impact of the increasing public need for financing for various needs, especially as business capital. To provide a guaranteed guarantee of repayment of the financing or credit provided, the financing institution will require a guarantee from the prospective debtor or borrower. The guarantee is intended as a

condition for the debtor to gain access to financing or credit facilities, while for the creditor the guarantee will provide a sense of calm and confidence in the return of capital so that possible losses can be avoided. According to S.¹

Debt agreements are a common thing in people's lives. In practice, debt and receivable agreements are not only carried out by parties experiencing financial difficulties, but are also carried out by people with an established or stable financial condition. This is because the debt and receivable agreement is not only carried out to meet the financial needs of those experiencing problems, it is also carried out in order to fulfill the need for business capital and other needs such as consumer needs. Debt payments will always be made with various considerations and considering the integrity or character of the debtor is a very important consideration. This is due to considerations of integrity related to the problem of creditor trust that the debtor will be able to fulfill obligations in paying or repaying his debt properly. However, this does not guarantee that the debtor will repay the debt according to the agreement.²

Banks, non-bank financial institutions and financial institutions are expected to be able to provide financing or credit with conditions that are not burdensome through light collateral for the wider community, especially financing or credit for the middle to lower economic groups who need a lot of credit to meet their daily needs. As for financing or credit for people in the middle to upper economic class, it is generally used as a means of increasing business capital.³

Credit agreements are generally carried out with collateral binding agreements. The credit agreement is the principal agreement or main agreement, while the guarantee agreement is a supplementary agreement or assessor. This implies that the guarantee agreement depends on the main agreement and will end simultaneously with the main agreement. The guarantee agreement cannot stand alone without the main agreement that precedes it.

The term collateral is a translation of the words *zekerheid* or *causie*, which is oriented towards the debtor's ability to fulfill or pay off his debts to creditors by holding certain objects that have economic value as collateral for loans or debts received by the debtor from his creditors.⁴If the debt security object is in the form of land, then the debt security land is subject to the imposition of

¹S. Mantayborbir andjauhari Imam. 2003. Indonesian State Debt Management Law. National Library. Jakarta. p. 21.

²J. Satrio, B. 1993. Guarantee Law, Material Rights. Image Aditya Bakti. Bandung, p. 97.

³Rachmadi Usman. 2001. Aspects of Banking Law in Indonesia. PT Gramedia Pustaka Utama. Jakarta. p. 156

⁴Rachmadi Usman. 2008. Civil Guarantee Law. Graphics Light. Jakarta. p. 66

Mortgage. Debtors, as long as they obtain credit facilities, proof of land ownership in the form of a certificate of land rights will be charged with a Mortgage.⁵

Mortgage is a security right for land or buildings given to creditors to guarantee debts that must be paid by the debtor. The process of encumbering mortgage rights is carried out through 2 (two) activity stages, namely the stage of granting mortgage rights and the stage of issuing mortgage rights certificates.⁶ The process of imposing Mortgage can usually run smoothly. But in practice, the elimination of Mortgage is a problem that is often faced. One of the ways to get rid of Mortgage Right is through the roya process.

Article 22 of Law No. 4 of 1996 concerning Mortgage Rights over Land and Objects related to Land, hereinafter referred to as UUHT, provides regulations regarding the mortgage rights. The intended article states that roya is the deletion of Mortgage Rights in the book of land rights and certificates.⁷

Roya itself is a process of eliminating mortgage rights carried out voluntarily by creditors. Roya is carried out based on an agreement between the creditor and debtor. The roya process generally requires approval from the land office so that the removal of mortgage rights is legal and applies in general.

Tegal City, like other cities in Indonesia, has problems with eliminating mortgage rights. Mortgage rights are a legal instrument that has an important role in the world of finance and property. Mortgage rights provide the possibility for individuals or legal entities to use property as collateral to obtain loans from financial institutions. However, it is not uncommon for conditions to arise where the party who has the right to the Mortgage wants to write off or release the burden of the intended right, either in part or in whole.

Elimination of Mortgage Rights, one of the methods that can be applied is partial roya. Partial Roya is a legal concept that gives the possibility for the owner of the Mortgage Right to write off a portion of the said encumbrance without eliminating all of the existing Mortgage Rights. With the application of partial roya, the Mortgage owner can respond to needs and financial changes that may occur over time.

⁵Ariel Doni Dharmawan and Maryanto, "Legal Strength of Mortgage Rights Certificates in the Event of the Destruction of Mortgage Rights Objects Due to Natural Disasters in Grobogan Regency", *Deed Journal*, Vol 5 No 1 March 2018, p. 168

⁶Setyaningsih, Hidayat Abdulah, Anis Mashdurohatun, "The Role of Notaries in Making Deeds for Granting Mortgage Rights (APHT) Against Credit Agreements Between Creditors and Debtors with Guaranteed Mortgage Rights in Purwokerto". *Journal of Deeds*, Vol 5 No 1 March 2018, p. 189

⁷Primistha Elsyanita Devi. "Javanese Notary Responsibilities and Legal Power in Making Roya Consent Deeds", *Journal of Deeds*, Vol.1, No.2, p. 335

2. Research Methods

This research uses an empirical juridical approach (empiric legal research), namely legal research based on field research or research on primary data in order to gain an understanding of legal phenomena that exist in people's lives which relate to legal principles, legal norms and statutory regulations related to the implementation of partial roya towards the elimination of Mortgage Rights in the City of Tegal. The specifications of this research are research that is descriptive analysis, namely descriptive, which means research that provides a description of legal phenomena, systematically depicts factually and accurately about the implementation of partial roya towards the elimination of mortgage rights in Tegal City, while analytical means providing an assessment of the results of the description in question without intends to provide general conclusions.

3. Result and Discussion

3.1. Implementation of Roya Partial towards Elimination of Mortgage Rights in Tegal City

The existence of Roya cannot be separated from the Mortgage Right, this is because the Mortgage Right is a material right, namely a right that can be sued by the holder from a third party who controls or owns the object of the Mortgage Right when the object of the Mortgage Right is then transferred by the person giving the Mortgage Right.⁸

Given the Mortgage as a material right, the abolition of the Mortgage must also be followed by the deletion of recording in the land book of land rights which are the object of the Mortgage. This is because if it is not done then the third party will never know that the Mortgage has been deleted, so it is no longer binding on third parties.

The existence of Roya and Roya Partial in the Mortgage is more to the fulfillment of orderly administration of the existence of a Mortgage, this is as contained in the explanation of Article 22 UUHT which states that the Mortgage has been deleted due to the events referred to in Article 18. Deleting notes or Roya Hak Encumbrance is carried out for the sake of administrative order and has no legal influence on the relevant Mortgage Rights which have been removed.

The implementation of Roya in the Mortgage is very much influenced by the process of granting the Mortgage itself. This implies that the Roya that is carried out in deleting the record of a Mortgage is determined during the process of

⁸Sutan Remy Sjahdeini. 1999. Mortgage Rights Principles, Basic Provisions and Problems Faced by Banks (A Study of the Mortgage Rights Law). Print, 1. Alumni Publisher. Bandung. p. 148

granting the Mortgage itself whether it can be done partially or must be done as a whole. Mortgage rights, there are two ways of implementing Royalty, namely those carried out in its entirety in the sense that it cannot be divided as stipulated in Article 2 paragraph (1) of the UUHT and the implementation of Royalty which is carried out partially as stipulated in Article 2 paragraph (2) of the UUHT.

Regarding the Deed of Granting Mortgage Rights (APHT) in which several Mortgage Rights objects are guaranteed, the said deed also requires the inclusion of a royalty (write-off) agreement for some (partial) Mortgage Rights objects for which the debt has been paid in full.

The inclusion of such an agreement is actually the basis for enforcing Royalty Partial in the Mortgage Rights certificate by the Land Office. This is because if it is not agreed then what will apply are the provisions for the implementation of the royalty as a whole, as regulated in Article 2 paragraph (1) UUHT, which states that Mortgage Rights have the nature of not being able to be divided, unless agreed in APHT as intended in paragraph (2).

Based on this, in order to be able to carry out Royalty Partial Mortgage Rights, it must be agreed in the APHT that the repayment of the guaranteed debt can be carried out through installments in an amount equal to the value of each land right as part of the object of the Mortgage Rights, which will be exempt from the Mortgage Rights in question, so that in future the Mortgage Right only becomes a burden on the remaining object of the Mortgage Right to guarantee the remaining outstanding debt.

Based on the provisions of Article 2 of the APHT mentioned above, it appears that Royalty Partial has been explicitly agreed on from the object of Mortgage which has been repaid in accordance with the amount of the value of the debt stated. Fundamentally, UUHT provides arrangements regarding procedures and arrangements related to the use of Mortgage Rights (Royalty Partial) which are a means of guaranteeing land rights. This has the aim of providing legal certainty and protection for creditors as well as providing arrangements for the rights and obligations of the debtor in using the Mortgage Right.

The process of implementing Royalty Partial for the elimination of Mortgage Rights in Tegay City, namely the applicant submits an application for Royalty partial to the Tegay City land office. Royalty is carried out for administrative order. The UUHT stipulates that there are clear procedures and schedules regarding the implementation of the write-off and the head of the land office is only given seven working days after receiving the application to carry out the write-off of the Mortgage Right. De-registration of Mortgage Rights is a civil action that

follows the deletion of Mortgage Rights as stipulated in Article 22 paragraph (1) UUHT.⁹

If the mortgage right is removed, the land office will carry out a roya (cross-out) of the mortgage right note in the land title book and the certificate. The request for deletion of the Mortgage Rights record based on the district court's decision is addressed to the head of the land office by attaching a copy of the relevant district court's decision or decision. After receiving the application in question, the head of the land office will carry out the deletion according to the procedures stipulated by the applicable laws and regulations within 7 working days.¹⁰

Implementation of partial roya (removal of mortgage rights) in Tegal City or in any region generally involves several stages and procedures that must be followed. The following is the process of implementing partial roya for the elimination of mortgage rights:

- a. Examination of Legality and Requirements, namely submitting an application for the abolition of the Mortgage, parties who have an interest, whether debtors or third parties who wish to release the Mortgage, need to carry out an examination of the legality and applicable requirements.
- b. Document Preparation, namely parties who have an interest need to prepare the documents needed to submit an application for the abolition of Mortgage Rights. Some of the documents that may be needed include: Letter of Application, Deed of Encumbrance of Mortgage, Proof of Debt Settlement, Evidence of Third Party Agreement, and other supporting evidence.
- c. Submission of an Application, namely after the required documents have been prepared, interested parties can submit an application for the removal of Mortgage Rights to the authority that has the authority to do so, such as the land office or court.
- d. Inspection and Evaluation, namely after receiving the application, the authorized authority will carry out an inspection and evaluation of the submitted documents.
- e. Announcement and Notification, namely after the application is declared complete and meets the requirements, the competent authority will make an

⁹Interview with Mr. Sugeng, Head of Sub-Division of Transition, Assignment of Rights and PPAT of the Tegal Land Office, at the Office of the Former Land Agency, July 20, 2023

¹⁰Interview with Mr. Sugeng, Head of Sub-Division of Transition, Assignment of Rights and PPAT of the Tegal Land Office, at the Office of the Former Land Agency, July 20, 2023

announcement and notify interested parties, such as creditors or other rights holders, regarding the intention to remove the Mortgage Rights.

f. Deletion Process, that is, after the inspection and announcement stages have been completed, the competent authority will carry out the process of deleting the Mortgage Right from the land book or relevant records.

It is important to remember that the procedures and requirements for removing Mortgage Rights may vary depending on the regulations in force in certain jurisdictions, including in Tegal City.

3.2. Obstacles or Challenges and Solutions Faced by the Implementation of Partial Roya for the Abolition of Mortgage Rights in the City of Tegal.

Based on practice in the field, the implementation of Roya Partial carried out at the Tegal Land Office actually did not encounter any significant obstacles. However, according to Sugeng, there were obstacles faced by the Tegal Land Office in implementing Roya Partial, namely after the issuance of Minister of Agrarian Affairs/Head of BPN Regulation Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration. He further stated that the obstacle in question is related to the existence of regulatory provisions that conflict with each other, namely Article 2 paragraph (2) UUHT and the Minister of State for Agrarian Affairs/Head of BPN Regulation Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration, in Article 124 paragraph (2).¹¹

The implementation of roya partial (removal of mortgage rights) in Tegal City, like in any region, can face several obstacles or challenges that need to be overcome. There are several general obstacles that may be faced in implementing roya partial in Tegal City and solutions that can be applied to overcome them:

a. Complexity of Legal Procedures

The legal procedures relating to the removal of Mortgage Rights may be complex and require an in-depth understanding of the applicable regulations and requirements. Parties who have interests, such as debtors or third parties who wish to release mortgage rights, may experience difficulties in understanding and carrying out the procedure in question.

¹¹Interview with Mr. Sugeng, Head of Sub-Division of Transition, Assignment of Rights and PPAT of the Tegal Land Office, at the Office of the Former Land Agency, July 20, 2023

The solution to these obstacles is to consult with legal experts or notaries who have experience in the Tegal City area, who can provide assistance in understanding and following applicable legal procedures. They can provide appropriate guidance and advice and ensure that all requirements and necessary documents are met.

b. Disagreements between Debtors and Creditors

In some cases, sometimes there is a disagreement between the debtor and the creditor regarding the abolition of the Mortgage. The debtor may have the opinion that the Mortgage has been completed or has been paid, while the creditor may have a different view.

To overcome this, a solution can be made in the form of mediation steps or negotiations can be taken to find a solution that is acceptable to both parties. Neutral third parties, such as mediators or legal experts, can provide assistance in facilitating negotiations between debtors and creditors to reach mutually beneficial agreements.

c. Limited Information or Documents Available

Sometimes, parties who have an interest are faced with difficulties in obtaining information or documents needed to submit an application for the abolition of Mortgage Rights. The information and documents needed may be incomplete or difficult to access.

Efforts should be made to gather the required information and documents by conducting careful research and coordinating with the competent authorities, such as the land office or the courts. In addition, efforts can be made to consult with legal experts or notaries who have experience in providing assistance in identifying the documents needed and the procedures that must be followed.

d. Uncertainty regarding Applicable Requirements and Procedures

Not infrequently, there is uncertainty regarding the requirements and procedures that apply to eliminating mortgage rights in Tegal City. Legal regulations can change or differences in interpretation can arise, resulting in uncertainty in carrying out partial roya. Based on this, solutions that can be implemented include:

First, following the latest legal developments and ensuring that interested parties have a correct understanding of applicable requirements and procedures. *Second*, obtain an in-depth understanding of the current legal regulations applicable in Tegal City through research consultations with legal experts or

participation in related seminars or training. Third, consulting with a legal expert or notary who is up-to-date with the latest regulations can provide assistance in overcoming the uncertainty in question and ensuring the implementation of partial roya is in accordance with the law. Fourth, communicate with authorities who have the authority to obtain clarification regarding the requirements and procedures that must be followed.

It is important to remember that each situation and condition can have different challenges and obstacles from one region to another, including in Tegal City. Therefore, it is recommended to consult with a legal expert or notary who is experienced and has a deep understanding of the property laws and regulations applicable in the area to face specific challenges and ensure the smooth implementation of roya partial in the future. Using Mortgage Rights in Tegal City.

4. Conclusion

Partial Roya implementation process for the elimination of mortgage rights in Tegal City, the applicant submitted a partial roya application to the Tegal City land office. Roya is carried out for the sake of administrative order. The UUHT stipulates that there are clear procedures and schedules regarding the implementation of the write-off and the head of the land office is only given seven working days after receiving the application to carry out the write-off of the Mortgage Right. De-registration of Mortgage Rights is a civil action that follows the deletion of Mortgage Rights as determined by Article 22 paragraph (1) UUHT. If the mortgage right is removed, the land office will carry out a roya (cross-out) of the mortgage right note in the land title book and the certificate. The request for deletion of the Mortgage Rights record based on the district court's decision is addressed to the head of the land office by attaching a copy of the relevant district court's decision or decision. After receiving the application, the head of the land office will carry out the deletion according to the procedures stipulated by the applicable laws and regulations within 7 working days. The obstacle faced by the Tegal City Land Office in implementing the Roya Partial Mortgage is the legal procedures related to the abolition of Mortgage which are so complex and require an in-depth understanding of the applicable rules and requirements. Interested parties, such as debtors or third parties who wish to release Mortgage Rights, experience difficulties in understanding and following these procedures. In addition, interested parties face difficulties in obtaining the information or documents needed to apply for the abolition of Mortgage Rights. Information and documents required are incomplete or difficult to access.

5. References

Ariel Doni Dharmawan dan Maryanto, "Kekuatan Hukum Sertifikat Hak Tanggungan Dalam Hal Musnahnya Obyek Hak Tanggungan Karena Bencana Alam di Kabupaten Grobogan", *Jurnal Akta*, Vol 5 No 1 March 2018.

Ayu Indah Damayanti dan Akhmad Budi Cahyono. " Akibat Penyerahan Sertifikat Jaminan Yang Dititipkan Kepada Notaris Berdasarkan Bukti Surat Pelunasan Hutang Palsu Serta Eksekusi Terhadap Obyek Jaminan Yang Telah Dihapuskan (Studi Putusan Pengadilan Negeri Kepanjen Nomor 81/Pdt.G/2019/PN.Kpn)", *Jurnal Akta*, Vol.4, No. 15.

J. Satrio, B. 1993. *Hukum Jaminan, Hak-hak Kebendaan*. Citra Aditya Bakti. Bandung.

Primistha Elsyanita Devi. "Tanggung Jawa Notaris dan Kekuatan Hukum Dalam Pembuatan Akta Konsen Roya", *Jurnal Akta*, Vol.1, No.2.

Rachmadi Usman. 2001. *Aspek-aspek Hukum Perbankan Di Indonesia*. PT Gramedia Pustaka Utama. Jakarta.

S. Mantayborbir dan Jauhari Imam. 2003. *Hukum Pengurusan Pihutang Negara Indonesia*. Pustaka Bangsa. Jakarta.

Setyaningsih, Hidayat Abdulah, Anis Mashdurohatun, "Peranan Notaris Dalam Pembuatan Akta Pemberian Hak Tanggungan (APHT) Terhadap Perjanjian Kredit Antara Kreditur Dan Debitur Dengan Jaminan Hak Tanggungan Di Purwokerto". *Jurnal Akta*, Vol 5 No 1 March 2018.

Sutan Remy Sjahdeini. 1999. *Hak Tanggungan Asas-Asas, Ketentuan-Ketentuan Pokok Dan Masalah Yang Dihadapi Oleh Perbankan (Suatu Kajian Mengenai Undang-Undang Hak Tanggungan)*. Cet,1. Penerbit Alumni. Bandung.