

Partial Script of Registration (Roya) In the Implementation of Encumbrance Rights As A Micro, Small, Medium Enterprises Development Effort

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ABSTRACT: Micro, Small, and Medium Enterprises determine the economic development of Indonesia. In general, this business sector discusses most of the access to capital, because of the requirements provided. The regulation on partial roya is very beneficial for the encumbrance rights holder, especially for Micro, Small and Medium Enterprises (MSMEs). With partial roya of encumbrance right object, the roya of Right object that has been free from the burden of the roya of encumbrance right can be reused to obtain financing in business development. Although there is one side that is beneficial, but not many people use it because it still requires a portion of the roya. First the rules are different between the laws and regulations. The purpose of this study is to study and analyze the arrangements and protections of the parties in the implementation of Partial Roya of Encumbrance Rights guarantee on credit approval in Indonesia. The research method used in this study is a method of legal pluralism that integrates research, juridical, social legal, philosophical.

Key Words: Encumbrance Rights, Script of Registration, Roya, financing, legal protection

Date of Submission: 23-11-2019

Date of Acceptance: 07-12-2019

I. INTRODAUCTION

The aim of the Indonesian state as stated in paragraph IV of the 1945 Constitution is to create a just and welfare society. This will be realized through development in various fields including the national economy by basing Pancasila. In the economic sector development, funding activities will increase as well. Economic activities in general require relatively large funds and funds are a very important factor in carrying out economic activities in addition to other basic capital factors, such as labor and natural resources. In reality, meeting the need for capital funds is not easy, sometimes requiring complicated procedures and guarantees. "One guarantee that is often used in economic activities is the Encumbrance Right" [1]. Encumbrance rights is one of the collateral guarantee[2]. Therefore there are certain objects which are guaranteed objects [3].

Capital is needed by various business actors, both large and small and medium enterprises. These funds can be obtained from internal and external parties. "One of the biggest challenges that entrepreneurs face is getting funding for their projects"[4]. In the case that funds are obtained from other parties (external), they are generally based on agreements. "The agreement has an important role in the legal relationship between the parties in business activities" [5]. In the agreement to fulfill funds for other parties, creditors have a high risk. Therefore we need a guarantee. Guarantees are important for markets to operate efficiently. Their usage and practice has wide implications for various stakeholders such as banks, businesses, economies, governments and people [6].

Since the existence of the Encumbrance Right Act, namely Act Number 4 of 1996, there has been a legal unification of land guarantee. Before the existence of the Encumbrance Rights Act there was a dualism of legal guarantees for land. Guarantees for Western lands use mortgage institutions, whereas for Indigenous lands use creditverband. The presence of the Encumbrance Rights Act provides more legal certainty in the field of guarantees for land rights that can be encumbered with Encumbrance Rights. With the existence of Encumbrance Rights Act, there is a legal unification of land guarantee.

"Imposition of Encumbrance Rights is carried out through two stages, namely the granting of Encumbrance Rights and the registration stage of Encumbrance Rights." At the stage of granting Encumbrance Rights, it is conducted at the Office of the Official for Making Land Deed by making the Deed of Giving Encumbrance Rights by the Official for Making Land Deed. The Deed of Granting Encumbrance Rights contains things that must be loaded and content that is not required to be loaded (facultative). The contents of the The Deed of Granting Encumbrance Rights that must be included include the names and identities of the holders and givers of Encumbrance, the domicile of the holders and givers of Encumbrance Rights, the clear appointment of debts or debts guaranteed to be repaid with the Encumbrance Rights and also includes the names and identities of the debtors concerned, the value of the dependent, and a clear description of the object

of the Underwriting Right. These things must be stated in full, because if not included the Deed of Granting Mortgage Rights will be null and void. Contents that are of a facultative nature if not loaded do not affect the validity or illegality of the The Deed of Granting Encumbrance Rights.

After the granting of the Encumbrance Right, the granting of the Encumbrance Encumbrance right must be registered at the Land Office, as regulated in Article 13 of ActNumber 4 of 1996. Furthermore, the Land Office issues a certificate of Encumbrance Right as proof of the birth of the Encumbrance Right.

If the debtor has paid off his debt to the creditor who holds the Encumbrance Right, then the Encumbrance Right shall be deleted. After Encumbrance Right is removed, it will then be carried out by script of registration or roya. Roya of the Encumbrance Right record is regulated in Article 22 of Act Number 4 of 1996 which states that after the Underwriting Right is deleted, the Land Office crossed out the Encumbrance Right note in the land rights book and its certificate. The relevant Mortgage certificate is withdrawn and together with the Land Book, the Encumbrance Right is declared no longer valid by the Land Office. Roya is done as a whole. Article 2 paragraph (1) of the UUHT states that " Encumbrance Rights have the nature of indivisibility". The article shows that in the Underwriting Right there is a principle that cannot be divided. This means that the Encumbrance Right imposes a whole burden on the Encumbrance Right object and every part thereof. Repayment of a part of the guaranteed debt does not mean that a portion of the Encumbrance Right object is free from the burden of the Encumbrance Right. Encumbrance rights still burden all objects of Encumbrance Rights for the remaining outstanding debt (Explanation of Article 2 paragraph (1) Encumbrance Rights Act).

In the case of objects that are used as collateral with more than one Encumbrance Right being charged, then when the Encumbrance Right provider has paid off part of its debts, the Partial Roya can be carried out with prior agreement in the Deed of Granting Encumbrance Rights. This is regulated in Article 2 paragraph (2) of the UUHT, which states that:

"If the Encumbrance Right is imposed on several land rights, it can be promised in the Deed of Granting the Encumbrance Right in question, that the payment of the guaranteed debt can be done in installments with the amount equal to the value of each land right which is part of the Encumbrance Right object, which will be released from the Encumbrance Right, so that the Encumbrance Right will only burden the remaining object of the Encumbrance Right to guarantee the remaining outstanding debt. "

The provision shows that the principle of Mortgage that cannot be divided can be distorted with the condition that it was agreed in advance in the Deed of Granting Mortgage. This gives benefits to business actors because some of the land that is free from the burden of mortgage rights can be used again as collateral to obtain new financing in business development, especially small, medium businesses.

Although this gives benefits to the parties and has been regulated in the legislation, but not many people use it because there are still not many people who really understand the existence of this partial roya. As a result, it is often not pledged to pay off part of the debt that can be paid in installments guaranteed by the Encumbrance Rights with objects of more than one land, so a partial roya can be done. In the absence of a prior agreement, partial roya cannot be done, so that the situation can make it difficult for the Encumbrance grantor to pay off some of the debt.

Partial Roya is regulated further in the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997, but this regulation is different from the UUHT regulation. In Article 124 paragraph (2) of the Regulation of the Minister of Agrarian / Head of BPN it is stated that registration of the removal of Encumbrance Rights for some objects of Encumbrance Right can be carried out based on the release of Encumbrance Rights over some of the Encumbrance Right objects by the Encumbrance Right holder as outlined in the authentic deed or statement letter below hand by stating clearly the portion of the Underwriting Right object that is freed from the burden of the Encumbrance Right, without having to be promised in advance in the Deed of Granting Encumbrance Right. The existence of these provisions on the one hand can provide convenience in the implementation of Roya on some objects of Mortgage that have been repaid. On the other hand the existence of differences in this regulation results in legal uncertainty because it gives rise to different interpretations in its implementation. As a result, it does not provide legal protection for the parties.

The problem of this research is how the regulation and legal protection of the parties in implementing Partial Roya of Encumbrance Rights as an effort to develop micro, small and medium businesses in Indonesia? The purpose of this study is to find out and analyze the arrangements and legal protection of the parties in implementing Partial Encumbrance Rights in a credit agreement in Indonesia.

II. RESEARCH METHOD

This study uses a legal pluralism method that integrates philosophical research by examining legal principles, juridical studies of legislation, and socio legal that examines the values that develop in people's lives regarding the partial roya as an effort to protect micro, small and medium businesses.

III. DISCUSSION

A. Partial Roya Regulation of Encumbrance Rights in the Development of Micro, Small and Medium Enterprises

"Small Business is a productive economic business that stands alone, which is carried out by individuals or business entities that are not subsidiaries or non-branch companies that are owned, controlled, or become either directly or indirectly part of Medium Enterprises or Large Enterprises that meet the criteria Small Business as referred to in this Act "(Article 1 number 2 of Act Number 20 of 2008 concerning Micro, Small and Medium Enterprises, hereinafter referred to as the Micro, Small and Medium Enterprises Act).

"Small Business Criteria are as follows:

- a. has a net asset of more than Rp 50,000,000 (fifty million rupiah) up to a maximum of Rp 500,000,000.00 (five hundred million rupiah) excluding land and buildings for business premises; or
- b. has annual sales results of more than Rp.300,000,000.00 (three hundred million rupiah) up to a maximum of Rp2,500,000,000.00 "(two billion five hundred million rupiah). (Article 6 paragraph (2) of the Micro, Small and Medium Enterprises Act)

Medium Business is a productive economic business that stands alone, which is carried out by individuals or business entities that are not subsidiaries or branch companies that are owned, controlled, or become a part either directly or indirectly with a Small Business or Large Business with a net worth or annual sales proceeds as regulated in this Law.

"Medium Business Criteria are as follows:

- a. has a net assets of more than Rp.500,000,000.00 (five hundred million rupiah) up to a maximum of Rp10,000,000,000.00 (ten billion rupiah) excluding land and buildings for businesses; or
- b. has annual sales results of more than Rp2,500,000,000.00 (two billion five hundred million rupiah) up to a maximum of Rp 50,000,000,000.00 (fifty billion rupiah) (Article 6 paragraph (3) of the Micro, Small and Medium Enterprises Act).

In business activities, every business actor including small and medium businesses always needs funds[7]. These funds can be obtained from yourself or from other parties. In the event that funds are obtained from other parties, collateral is an important factor in providing creditors' credit security. One strong and easy guarantee of its implementation is the Encumbrance Right[8]. Since the enactment of Act Number 4 of 1996 concerning Encumbrance Rights and Objects Related to Land, the Encumbrance Rights on land are no longer valid. Encumbrance Rights is intended as a substitute for institutions and hypothetical provisions (Encumbrance Rights) as stipulated in the Second Book of the Civil Code and *credietverband* in *Staatsblad* 1908 Number 542 as amended by *Staatsblad* 1937 Number 190. This guarantee in various countries in the world is a factor important in business activities, among others are

The development of collateral law in the economy in Indonesia has a positive impact that is very beneficial for businesses, including micro, small and medium businesses. One of them is regarding the regulation of partial roya or partial deletion of Mortgage in the event of partial repayment of debtor's debt in accordance with a portion of the Underwriting Right object in the event that there is an Encumbrance Rights object of more than one parcel of land.

Roya is crossing out the Encumbrance Rights note in the Land Book of Encumbrance Rights. After the Encumbrance Rights are written off, the Land Book of the Encumbrance Rights is given a record regarding the abolition of said rights, and the Encumbrance Rights Certificate is declared no longer valid. Roya is also done on the land book and the certificate of land rights which were originally used as collateral. Certificate of land rights that have been affixed with these records, handed back to the right holders.

In the Encumbrance Rights there are principles that cannot be divided. This is regulated in Article 2 of Law Number 4 of 1996 concerning Encumbrance Rights Encumbrance Rights . This means that the Encumbrance Rights imposes a whole object on the Encumbrance Right and every part thereof. With the repayment of part of the guaranteed debt does not mean the release of a portion of the Encumbrance Rights object from the burden of the Encumbrance Rights, but the Encumbrance Rights still burdens the entire Encumbrance Rights object for the remaining outstanding debt (Explanation of Article 2 paragraph (1) of Law Number 4 of 1996 concerning Encumbrance Right).

Based on the Principle cannot be divided into Encumbrance Rights , the Partial Roya on Encumbrance Rights cannot be done. This can cause difficulties for the Encumbrance Right Provider if the Encumbrance Rights object is needed to recover funds from another party, even though some debtor debt has been repaid. According to Article 2 paragraph (1) jo paragraph (2) of the Encumbrance Rights Act, the inherent nature of the Encumbrance Right can be distorted by the parties if the parties want such thing by pledging it in the Deed of Granting Encumbrance Rights. This arrangement is an exception to the principle of non-division of the Encumbrance Rights. This deviation can only be done if:

1. The Encumbrance Right is imposed on several land rights,

2. Repayment of debt guaranteed by the Encumbrance Right shall be carried out in installments with the amount equal to the value of each land title which is part of the Encumbrance Right object.

3. Repayment of debt the amount of which is equal to the portion of the Encumbrance Rights object which will be freed from the burden of the Underwriting Right. Thus the Mortgage Rights only burden the rest of the Encumbrance Rights object to guarantee the remaining outstanding debt.

According to the explanation of Article 2 paragraph (2) of the Encumbrance Right Act, the exception is to accommodate the development needs of the credit world, including to accommodate the funding needs for the construction of housing complexes that originally used credit for the construction of the entire complex and then will be sold to users one by one, while to pay for it This end user also uses loans with collateral for the house concerned.

Based on the provisions of Article 2 paragraph (1) and paragraph (2) of the UUHT, Partial Roya can only be carried out if at the beginning of the Deed of Granting Mortgage, the Partial Roya has been agreed. In practice, not many people are aware of the existence of these normative requirements, including the Notary / Land Deed Making Officer (PPAT) and the banking sector. As a result, when making the Deed of Granting Rights, it did not include promises regarding Partial Roya in the event that the Encumbrance Rights object was more than one land right.

This often creates problems after the debtor repays some of his debts and wants to be able to free a portion of the land rights from being encumbered. Even though the creditor / bank can issue a certificate of release of a part of the Encumbrance Rights object from the burden of the Encumbrance Rights, in its implementation the Land Office refuses to make a partial roya, because it was not promised in advance in the Deed of Encumbrance Rights. The above conditions show that the Encumbrance Rights Act has not been fully able to meet the needs of the community. to carry out Partial Roya which is actually quite simple only involves an internal agreement between the debtor and the creditor / bank turned out to be hampered by the provisions of Article 2 paragraph (1) and paragraph (2) of the Encumbrance Rights Act.

Often the need to do Partial Roya is only realized when credit agreements and Mortgage Rights have already occurred. Thus it is not possible to do Partial Roya. On the other hand, debtors, especially small and medium businesses, really need these collateral objects to get new funds from creditors or other financial institutions to develop and expand their businesses. This prompted the National Land Agency to issue a Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration, particularly in Article 124 paragraph (2) which states:

(1) Registration of the registration script of Encumbrance Rights for a part of the Encumbrance Rights object can be done based on the repayment of most of the agreed upon conditions, provided that:

- a. The Encumbrance Right Object consists of several rights, and
- b. The possibility of the abolition of a portion of the Encumbrance Right is due to the repayment of most of this agreed in the Deed of Granting Encumbrance Right.

(2) The registration of the Encumbrance Right for some of the Encumbrance Rights can also be done not fulfilling the provisions of paragraph (1) based on the release of the Encumbrance Right for some Underwriting Rights by the Underwriting Right Holder as stated in the agreement deed or statement under the hand by stating clearly part of the Encumbrance Right object granted from the Encumbrance Right burden.

Provisions of Article 124 paragraph (2) to provide facilities for the community in implementing Partial Roya. The Deed of Granting Encumbrance Right may also not be agreed in advance with the release of rights from the Encumbrance Right Holder.

Article 2 paragraph (2) governing Partial Roya must be agreed in advance in the Deed of Granting Mortgage which is ratified by the Regulation of the Minister of Agrarian Affairs / National Land Agency Number 3 of 1997 specifically in Article 124 paragraph (2)).

B. Legal Protection of Small and Medium Enterprises in the Implementation of Partial Encumbrance Rights in Indonesia

Differences in the provisions of the two laws and regulations as described above can lead to unclear and lack of legal certainty in the implementation of roya partial Encumbrance Rights, which can lead to a lack of legal protection of the parties. On the one hand the principle of indivisibility is intended to provide legal protection to creditors holding Encumbrance Rights, because the main function of guarantees is to guarantee the performance of the debtor's performance or to guarantee the security of creditors' creditors. On the other hand, if the debtor has paid off some of the debt, in fact some collateral objects can be used to meet the need for new funds for business development. In the case that creditors' receivables are guaranteed with more than one collateral object, then in fact if after paying a portion of the receivables in accordance with the value of one of the collateral objects then a partial roya is performed, then the creditor actually has a legal certainty guarantee against the implementation of some debtor's outstanding achievements.

Differences in these regulations lead to differences of opinion. On the one hand, there are those who argue that partial roya can only be done based on an agreement that has been stated expressly in the Deed of Granting Encumbrance Rights. This opinion is based on Article 2 Paragraph (2) Encumbrance Right Act). On the other hand there are those who argue that without prior agreement in the Deed of Granting Encumbrance Right can also be done partial roya if there is a release of a portion of the Mortgage against some Object Encumbrance Right. This opinion is based on Article 124 Paragraph (2) Regulation of the Minister of Agriculture / Head of the National Land Agency No. 3 of 1997. These differing views in practice often lead to disputes because one party feels disadvantaged and does not feel justice.

In the law there are general legal principles that apply in the event of differences or disagreements between higher level regulations and lower regulations, then the higher rules apply. This principle is also called the *lex superior derogate lege inferior* principle. With this principle, higher legislation defeats and overrides the lower legislation. This principle also causes the emergence of a hierarchy or sequence of national legislation in Indonesia. The existence of the principle of *lex superior derogate lege inferior* causes the rule of law which is below must not conflict with the rule of law which is in a higher position if it involves the same problem. If in a case there is a conflict between the statutory regulations that do not have the same degree, the judge must apply the legislation which is higher in position as the basis for the judge's decision and establish a lower statutory regulation that does not have binding legal force. With the existence of the principle of *lex superior derogate lege inferior*, the lower level of rule of law cannot abolish and overturn the higher level rule of law. In addition, the rules made by higher authorities have higher power and position.

Based on the legal principle of the *lex superior derogate lege inferior*, because the law is a higher regulation than the ministerial regulation, then in relation to the partial roya in National Land Agency practice using the provisions as regulated in Article 2 Paragraph (1) and (2) of the Encumbrance Rights not based on Article 124 Paragraph (2) Regulation of the Minister of Agrarian / Head of National Land Agency. Therefore, if there is a partial roya request that is not promised in advance in the Deed of Granting Encumbrance Rights, the partial roya request will be rejected.

The policy based on the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 did not last long. In 2000 the Central National Land Agency gave instructions to the Land Offices throughout Indonesia that for the implementation of Partial Roya must be based on the provisions of Article 2 paragraph (1) and paragraph (2) of Law Number 4 of 1996 concerning Encumbrance Rights. The National Land Agency's instructions above were implemented based on the Circular of the Deputy for Land Measurement and Registration in the Name of the Head of the National Land Agency Number 600-494-D.IV dated February 8, 2000 addressed to the Heads of Regional Offices of the Provincial National Land Agency throughout Indonesia, the contents of which among others, that "Registration for the cancellation of Encumbrance Rights for a portion of the Underwriting Right object can only be done if the Encumbrance Rights object consists of several land rights and / or several rights for a unit of a flat where the possibility of abolishing some of the Encumbrance Rights object has already been agreed in advance in the Deed of Granting Encumbrance Rights (In accordance with Article 2 of Act Number 4 of 1996). "

With the issuance of the circular, the provisions that apply to the implementation of Partial Roya in Land Offices in all regions of Indonesia adhere to Law Number 4 of 1996 concerning Underwriting Rights, especially Article 2 paragraph (2), namely Partial Roya can be done if it has been first agreed first in the Deed of Granting the Mortgage Right Encumbrance Rights concerned.

The function of law is to protect human interests. Likewise, in an agreement, agreement law functions to protect the interests of the parties equally. Mortgage is born because there is an agreement between the parties. Therefore, the management of Encumbrance Rights is also intended to provide legal protection to the parties equally.

In the Encumbrance Rights there is a principle that the Encumbrance Rights can not be divided. The juridical consequence of the principle is that the Encumbrance Rights overload the entire object of the mortgage rights. This means that with the repayment of part of the debt, it will not free up a part of the mortgage right object. Such principle is to provide legal protection for creditor holders of Encumbrance Rights so that the payment of the receivables is guaranteed with all objects of collateral. On the other hand, often the Encumbrance Rights requires the object of collateral in the event that it has paid off part of the debt and more than one collateral object. Therefore, the principle of indivisibility is given an exception, in the case that the debtor has paid off part of his debt, then it can do a partial write off of the mortgage right. The exception to the principle of indivisibility is to provide legal protection for the parties, especially the giver of Encumbrance Rights.

The opportunity to cross-check (roya) notes that a part of the Encumbrance Right is very beneficial for small and medium businesses, which generally experience obstacles in capital procurement due to limited objects that can be used as collateral. Striking as a record of mortgage rights, then some objects of Encumbrance Rights that are free from the burden of Encumbrance Rights can be used again to obtain more funds from other parties.

Because the security right was born because of an agreement, it is very logical that the exclusion of principle cannot be divided must be agreed in advance. This is to fulfill the principle of balance for the parties. In this way justice can be achieved for the mortgage rights giver and the Encumbrance Rights holder. Therefore, in the implementation of roya partial Encumbrance Rights in Indonesia should be done based on an agreement between the parties mentioned in the Deed of Granting Mortgage. This is based on Article 2 Paragraph (1) and (2) of the Encumbrance Rights Act. Thus Partial Roya can only be implemented if a Partial Roya clause has been made contained in the Deed of Granting Encumbrance Rights. In the APHT the mortgage right and the mortgage right holder have agreed that the Underwriting Right object to be encumbered by the Encumbrance Rights can be determined the amount of the guarantee value for each of the Underwriting Right objects. In that case, it was also agreed that if the debt was paid in part, then a partial Encumbrance Rights of notes could be made.

In the roya application letter given by the creditor, clearly stated which rights to the land (or part of the parent certificate), for which the appeal is requested. The application is accompanied by a certificate of land rights to be tried and a certificate of Mortgage in question. For certificates of land rights, the process is carried out like roya mortgage rights in general. The difference is in the aspect of the Encumbrance Rights certificate, because in the implementation of Partial Roya, the Mortgage certificate is not withdrawn by the Land Office, but only records of which part, which is part of the collateral object (or which part of the parent certificate), are removed from the guarantee (crossed out), while other parts (or the remaining parent certificate) remain bound as collateral for the remaining debt. The certificate of mortgage is then returned to the creditor concerned.

IV. CONCLUSION

In the imposition of a mortgage guarantee, the principle applies cannot be divided. This means that the Encumbrance Rights overburden the entire object of the mortgage rights in the case of more than one Encumbrance Rights object. This general principle is exempted by the possibility of Partial Roya Rights as stipulated in Article 2 paragraph (2) of the Mortgage Rights Act. Thus Partial Roya can be implemented with the conditions already agreed in the Deed of Granting Encumbrance Rights. The regulation regarding partial roya in Indonesia has differences and even contradictions. The conflicting arrangement can be seen from Article 2 paragraph (2) of Law Number 4 of 1996 concerning Mortgage Rights and Article 124 paragraph (2) of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 Year 1997 regarding Land Registration. Differences in regulation and conflict between regulations regarding partial roya in practice give rise to different views in society. This results in legal uncertainty and results in a lack of legal protection for the parties. Because based on the general legal principle "lex superior derogat lege inferior", then there should be a conflict between higher and lower regulations governing the same thing, then higher rules override lower rules. Therefore, what should apply in partial roya is Article 2

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Muhammad Shafiyuddin Wafi. "Partial Script of Registration (Roya) In the Implementation of Encumbrance Rights As A Micro, Small, Medium Enterprises Development Effort". *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*. vol. 24 no. 12, 2019, pp 76-81.