

Implementation of the Principle of Publicity in the Charge of Mortgage Guarantees

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ABSTRACT

Legal principles are the initial foundation for the formation of a law. In Law no. 4 of 1996 concerning mortgage rights is also based on legal principles that prioritize rights, which of course aims to realize equal rights. Implementation of the Principle of Publicity in Charging Mortgage Guarantees is an important aspect that supports transparency and legal certainty in financial transactions involving collateral objects. The principle of publicity, which requires the registration of mortgage rights to be recognized and enforced against third parties, is the main pillar in the property guarantee system in Indonesia. The question that arises is what is the aim of applying the principle of publicity in the imposition of collateral law. Through normative methods with document analysis and literature study, this writing reveals that even though the principle of publicity has been confirmed in Law no. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, there are still challenges in practice, such as administrative problems and information accessibility. This article concludes that improving the registration system and increasing access to public information is the main key to overcoming these challenges, as well as strengthening the principle of publicity in the imposition of mortgage guarantees in Indonesia. The proposed policy and practice recommendations are expected to help increase legal certainty and efficiency of financial transactions related to property collateral.

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INTRODUCTION

In order to achieve significant domestic development while still prioritizing the economic sector, it is necessary to allocate greater resources, provide legal certainty to stakeholders, encourage greater community involvement, and increase community participation. To build an equal and successful community in accordance with Pancasila and the 1945 Constitution, a strong rights guarantee institution is needed and is able to encourage growth. Large resources are needed for sustainable development because it involves government and society, as well as society and legal organizations. Increased development activities result in higher demand for available funds, which are usually met through credit activities.

Along with faster economic growth, businesses run by local people also develop. Generally, when a business entity expands its business, the business entity will try to increase its capital by providing direct loans and credit from banks. The most widespread type of loan in society is a mortgage loan. The importance of

credit funds in the development process requires the protection of competent legal guarantee institutions so that they can provide legal security to all stakeholders, including lenders, recipients and other parties.

All aspects of land must be regulated by the state so that its use is maximized for the benefit of the people. The Basic Agrarian Regulations of the Republic of Indonesia Law Number 5 of 1960 or more often called UUPA regulate the use and management of land. Because currently there are two sets of national land laws, the aim of forming UUPA is to combine the two into one tool, increase the legal stability of land rights, and realize the optimization of land functions based on national land laws as a development need for Indonesian society. In accordance with Law of the Republic of Indonesia Number 4 of 1996, the phrase "mortgage rights" is increasingly commonly used. The Big Indonesian Dictionary defines a dependent as any property that is used as collateral. Upon receipt of the loan, the collateral itself becomes a collateral obligation.

The implementation of the UUHT makes the unification of national land law an important goal of the UUPA. Only mortgage rights can provide security for land as regulated in Article 51 of the UUPA. When one creditor gets preferential treatment compared to other creditors because of a security interest in the collateral promised to pay the debt, this is called an encumbrance. Creditors who have mortgage rights have the ability, more preferably than other creditors, to sell the collateral through auction in accordance with statutory restrictions in the event that the debtor fails. The development of a country, especially its economy, is greatly influenced by the existence of Mortgage Rights which assist in providing credit funds by banks.

Based on the basis of a strata of mortgage rights is the basis of publicity (*openbaarheid*) which means "notification" to the public regarding ownership status. Article 13 Paragraph 1 UUHT regulates the need to fulfill publicity objectives. The importance of registering the issuance of mortgage rights with the land office as the authorized party is emphasized in this article. The government needs to use the land mortgage book to register mortgage rights. The next step is to document ownership of the pawned items in a book. They need to make a copy of the notes on the land ownership certificate to prove the existence of mortgage rights. Any mortgage certificates can be found on the National Land Agency website.

Based on this explanation, the author believes that there are problems regarding how to implement the principle of publicity in the imposition of mortgage guarantees in Indonesia and what are the benefits after implementing the principle of publicity in mortgage guarantees which will be discussed in the next section.

RESEARCH METHODOLOGY

Method has many meanings that are often used in a scientific context, some of these meanings include methods, techniques or steps in doing something. The author uses normative legal research methods in this paper, which includes conducting legal research through examining secondary data or library sources. Because the exclusive focus of this writing is on written regulations or legal documents, normative legal studies are also known as doctrinal legal research. Data collection techniques were carried out using primary and secondary legal sources.

RESULTS AND DISCUSSION

1. Implementation of the Principle of Publicity in Imposing Mortgage Guarantees

Mortgage Rights are regulated in Article 1 Paragraph 1 of Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, which means that mortgage rights are financial ownership of a physical object. In accordance with the provisions of Law Number 5 of 1960 which regulates Basic Agrarian Regulations, the following two things are additional objects in the form of land, to pay off certain debts that prioritize certain creditors. The first paragraph of Article 1 stipulates that mortgage rights are security interests in immovable property which function to fulfill certain obligations and provide preferential treatment to certain creditors over others.

This means that if something happens that a debtor defaults or violates the law, in this case the creditor as the holder or in accordance with the requirements of statutory regulations, the mortgagee has the authority to sell the collateral through auction.

Imposition of mortgage rights based on the provisions of Law no. 4 of 1996 briefly explains that the granting of mortgage rights must be preceded by an agreement, the imposition of mortgage rights which aims to guarantee the repayment of special debts. Ratification of the imposition of mortgage rights is carried out through the making of a deed first by the PPAT and begins with the form of an agreement that establishes the legal relationship between debt and credit with a guarantee of repayment.

The principle of publicity or known as *openbaarheid* is a principle that publishes information about which parties are the subject of rights, as well as in what way changes and obligations change. This information is publicly available so anyone can find out. In this case, the publicity principle is obliged to provide legal information regarding the subject matter of rights, the name of the land rights, changes in rights and obligations

for land, including any objections before the issuance of the certificate. You have the right to submit a refusal to issue a deed certificate, lost deed or damaged deed. Legal certainty or cadastre recht is the aim of land registration. This includes making it easier to understand the subject and object of rights, as well as the status of registered rights. A certificate that serves as proof of validity or authenticity is issued after the registration procedure is completed. This principle documents the fact that a person owns land, and the purpose of land registration is simply to document how a person can legally obtain land.

Registration is data collection including levies, deletions, transfers, divisions, mergers, rights, confiscations, name changes, etc. The issuance of a certificate carried out by the State Land Agency is the existence of a mortgage right, usually the registration is carried out so that it is recorded in the land book and the certificate of ownership of the person concerned.

2. Benefits of Implementing Publicity Principles

a. Legal certainty

According to Soedikno Mertokusumo, the principle of publicity or *openbaarheid*, in other words, every person has the right to search and examine at the land office any and all documents relating to the name, transfer or encumbrance of land rights, as well as to submit objections to the certificate before the certificate is handed over. . issuing, requesting a replacement certificate, or reporting a damaged or lost certificate. When registering a plot of land, the principle of publicity gives other parties the opportunity to express their disagreement with the registered land before the certificate is issued. The principle of publicity regulates and ensures land ownership, which means that the publication of physical and juridical data is required for each registration application and within a certain time period.

In Article 26 of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that in this article 30 days are given for anyone to submit an objection. The disputing party can usually submit a block and/or lawsuit within this time. However, in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 6 of 2018, the time for systematic and comprehensive land registration is reduced to 14 calendar days. There are no changes to Article 26 of Government Regulation Number 24 of 1997 as a result of this revision

If the principle of publicity is not applied, the party concerned does not have the opportunity to express objections, in the end they can only file criminal or civil charges directly in court. The advantage of this announcement is that they have the opportunity to propose objections, rebuttals or lawsuits to the land office. The *openbaarheid* principle is linguistically defined as public access, *openbaarheid* is part of the administrative arrangements for the right to information that can create fair and efficient regulations. This principle aims to ensure that land registration procedures must be announced to the public. This means that the land registration procedure based on this principle assumes that the land registration procedure is not carried out in a secret or closed manner.

The state must guarantee that the law applies to the data or information contained in the certificate as a result of land registration activities. This means that if there is a party who objects to the correctness of the contents of the land use right, then the party who objects must prove that he or she is the party who has the greatest right to the land until it is proven by another party, the contents of the certificate must still be accepted as accurate data and information about the land.

b. So that there are no duplicate certificates

The definition of a double certificate is that a duplicate certificate is a certificate that lists the same plot of land. Any area that overlaps, whether the entire plane or just a small part of it, is called an overlap. Areas along city borders that do not yet have land registration maps or have not yet been developed often experience double certification. Land conflicts have been going on since ancient times and continue to this day despite efforts to resolve them. Year after year would probably pass like this if the concept of registration were not implemented, land issues have become a frequent problem and sometimes lead to disputes when trying to resolve them. Therefore, double certification may occur if the publicity principle is not implemented. This incident violates Article 1365 of the Civil Code because it can burden the owner of a previously issued certificate.

Apart from defending the owner, land registration also provides information about the owner, their rights and interests, the area of the land and its use. Land registration guarantees legal certainty by knowing the status of each registered right, the main points of each registered right, and the object of the right. The legal consequence of this land registration is to produce a certificate that proves title.

c. Differences in Publication Period

Publicity is based on the fact that land registration documents clearly indicate the object of rights, type of rights, transfer and fees. This principle is included in the list so that anyone interested in field data can now easily find it without having to conduct a survey in the actual field. because the land office provides all this information.

Looking at Article 26 of Government Regulation Number 24 of 1997, announcements or publicity are given a 30 day grace period, but looking at article 24 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 6 of 2018 states that the deadline for land registration announcements is shortened to 14 days .

Hans Kelsen argued that provisions in the legal field are arranged hierarchically, with lower provisions becoming the basis for higher standards, and so on, up to the level of fundamental norms. Based on the legal principle of *lex superior derogate legi inferiori* which states that legislation of a higher level can override or nullify legislation of a lower level, there is a difference in the publicity period for land registration between the two regulations. This means that if there are two or more laws that conflict, then the higher law takes precedence.

Even though there are differences, none of the regulations has shortcomings that can cause it to be void or illegal according to law. Lastly, the certificate issued is legally valid and can be considered valid, even though the deadline for announcing land registration varies and is not uniform. Ministerial regulations are issued more quickly than government regulations, but they still require careful consideration before being implemented so that the rights of other parties are not violated.

CONCLUSION

This writing discusses the implementation of the principle of publicity in the imposition of mortgage guarantees. This principle of publicity emphasizes the importance of openly announcing or notifying the public regarding the mortgage rights imposed on a property. The application of the principle of publicity provides several important benefits. Firstly, this makes mortgage rights transactions more open and transparent, thereby ensuring that all parties involved have equal access to information regarding property status. Second, the public announcement of a mortgage guarantee increases the legal protection enjoyed by all parties participating in the transaction.

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