

# LEGAL ANALYSIS REGARDING DEED RECOGNITION OF DEBT WHICH IS FOLLOWED BY AUTHORITY TO SELL WITH GUARANTEE OF LAND RIGHTS: Case Study of Cassation Voniss Number: 1011/K/Pdt/2014

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**Abstract:** There are relationships that have legal consequences and there are relationships that do not have legal consequences, relationships that have legal consequences give rise to rights and obligations, this makes the law develop rapidly so as well as contract law. In its development, the existing law is accompanied by the progress of reform in the field of law and legislation. The interaction of an increasingly universal society often brings conflicts of law in theory and practice, another result of this interaction is the emergence of various forms of agreements. The description in this journal raises issues that are still unanswered regarding the existence of a Mortgage Agreement Deed (APHT) which then arises or is followed by a Debt Recognition with guaranteed land rights accompanied by the power to sell. This research is classified as a normative research type, namely research on provisions relating to the power to sell on land rights guarantees based on the Deed of Debt Recognition through a juridical analytical descriptive approach. The result of this research is that the Deed of Recognition of Debt with guaranteed land rights followed by a power of attorney to sell basically does not conflict with the provisions of the applicable laws and regulations.

**Keywords:** Law, APHT, Rights and Obligations.

**Abstract:** Ada hubungan yang mempunyai akibat hukum dan ada hubungan yang tidak mempunyai akibat hukum, hubungan yang mempunyai akibat hukum menimbulkan hak dan kewajiban, hal ini membuat hukum berkembang pesat begitu pula dengan hukum perjanjian. Pada perkembangannya, hukum yang ada ini dibarengi dengan kemajuan pembaruan dibidang hukum dan perundangan. Interaksi dari masyarakat yang semakin universal seringkali membawa benturan hukum dalam teori dan praktek pelaksanaannya, akibat lain dari interaksi ini adalah munculnya berbagai ragam bentuk perjanjian. Adapun uraian dalam jurnal ini mengangkat permasalahan yang masih belum terjawab menyangkut adanya Akta Perjanjian Hak Tanggungan (APHT) yang kemudian timbul atau diikuti dengan adanya Pengakuan Utang dengan jaminan hak atas tanah yang disertai kuasa menjual. Penelitian ini tergolong jenis penelitian normatif yaitu penelitian terhadap ketentuan yang berkaitan dengan kuasa menjual atas jaminan hak atas tanah yang berdasarkan pada Akta Pengakuan Utang melalui pendekatan deskriptis analitis yuridis. Hasil dari penelitian ini adalah Akta Pengakuan Utang dengan jaminan hak atas tanah yang diikuti dengan surat kuasa menjual pada dasarnya tidak bertentangan dengan ketentuan peraturan perundang-undangan yang berlaku.

**Kata Kunci:** Hukum, APHT, Hak dan Kewajiban

## Introduction

In its development, the existing law is accompanied by the progress of reform in the field of law and legislation. The interaction of an increasingly universal society often brings conflicts of law in theory and practice, another result of this interaction is the emergence of various forms of agreements. An agreement is a legal act where a person promises to another person or the two people promise each other to carry out something, while the agreement itself is a source of engagement other than the law.<sup>1</sup>

The reason for choosing the title "Legal Analysis of the Deed of Mortgage Agreement (APHT) on Land Followed by Deed of Debt Recognition with Collateral and Authorization to Sell (Case Study of Cassation Decision Number: 1011/K/Pdt/2014)" is based on the results of observations and practices by the author. It is natural in handling civil cases that regarding debts and receivables, it is common for the public to obtain funds that are used as business capital. Banks are financial institutions that provide these facilities. However, this does not rule out the practice of accounts payable from individuals based on the Deed of Debt Recognition. Based on the Deed of Recognition of Debt, the Debtor is entitled to receive an amount of money from the Creditor as a debt and the Creditor is entitled to a refund of the debt along with interest according to a mutually agreed period. Deeds of Debt Recognition are usually strengthened by guaranteeing land rights which are then followed by the power to sell. This is done as a guide for the creditor to repay the debtor's debt if in the future the debtor turns out to be in default or has failed to pay. Both the Deed of Recognition of Debt and the power of attorney to sell are agreements made based on the principle of freedom of contract. As is

known, the agreement made legally applies as law for those who make it. One example of an agreement that is often carried out is a debt agreement, in practice this agreement occurs a lot in the community, where initially the parties have agreed to carry out their rights and obligations. In the loan agreement in written form followed by the delivery of guarantees. deed of acknowledgment of debt is actually an *acesoir* for the principal agreement that has been agreed beforehand, the deed of acknowledgment of debt will not appear before the principal agreement of the debt receivable exists first. Deed of acknowledgment of debt before a notary and becomes the power of proof.<sup>2</sup> In general, accounts payable is a condition where one party needs a certain amount of money and the other party is willing to lend the money. The development of the economy today is directly proportional to the increasing understanding of the Indonesian people about the importance of authentic deeds so that it cannot be denied that the role of Notaries as public officials is increasingly needed.

The case that will be raised by the author in this study is the case between PT PELAYARAN NASIONAL INDONESIA (PERSERO) as the plaintiff against H. WAGIMOEN TOEGIMAN (Defendant I), Mrs. WIDYARTI (Defendant II), SUWARTO (Defendant III), Mrs. SUKIMIN (Defendant IV), and AFRIDA PURNAMAWATI (Defendant V), this case began when Defendant I was a former employee at the Plaintiff's Company since March 2, 1974, with the status as a Permanent Employee Class III/a, with the last position as Junior Executive/ Division General. Defendant I retired on December 8, 2009, based on the Decree of the Board of Directors Number 161/HKO.01/DIR/XII-2009 dated December 8, 2009. This lawsuit was filed at the Bekasi District Court, then

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<sup>1</sup> Satrio, J. *Law of Guaranteeing Property Rights*, Bandung: Citra Aditya Bakti, 2002, p. 13

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<sup>2</sup> Notodisoerjo, R. Soegondo, *Notary Law in Indonesia*, (Jakarta: Raja Grafindo Persada, 2013), p. 93

appealed to the Bandung High Court and appealed to the Court of Appeal. Supreme Court of the Republic of Indonesia. Based on the description above, the author is interested in raising issues that are still unanswered regarding the existence of a Deed of Mortgage Agreement (APHT) which then arises or is followed by a Debt Recognition with guaranteed land rights accompanied by the power to sell with the title "Legal Analysis of Deeds of Debt Recognition. This is followed by the Power to Sell with Guaranteed Land Rights (Case Study of the Cassation Decision Number: 1011/K/Pdt/2014)."

## Literatur Review

There are several theoretical studies used, including the following:

### Definition of Agreement

According to Subekti, "An agreement is an event where one person promises to another person or where two people promise to carry out something.<sup>3</sup> From that event a relationship arises between the two people which is called an engagement".

### 2. Definition of Credit Guarantee

In general, credit guarantees are directed as the surrender of wealth or a statement of one's ability to bear the repayment of a debt.<sup>4</sup>

In discussing the problem of this research, the formulation of the problem to be studied includes:

1. What is the legal history of debt agreements with guaranteed land rights in Indonesia?
2. How is the execution of the power to sell

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<sup>3</sup> Subekti. R. Soebekti, *Covenant Law*, (Jakarta: PT. Intermasa, 2001), p. 1.

<sup>4</sup> T. Suyatno, et al., *Banking Institutions*, (Jakarta: Publisher PT Gramedia Pustaka Utama, 1993), p. 70.

on the guarantee of land rights based on the Deed of Recognition of Debt?

3. What is the consideration The judge in deciding case no. 1011 K/Pdt/2014 is in accordance with applicable law?

In this research, the research method used is research which is classified as normative research,<sup>5</sup> namely research on provisions relating to the power to sell the collateral for land rights based on the Deed of Recognition of Debt through a descriptive analytical juridical approach. Descriptive research is intended to describe, describe, discuss and describe legal phenomena or events accurately and clearly.

## Result and Discussion

### Of the Position

Case in Case number. 1011 K/Pdt/2014 the parties to the dispute are PT PELAYARAN NASIONAL INDONESIA (PERSERO) as the plaintiff against H. WAGIMOEN TOEGIMAN (Defendant I), Mrs. WIDYARTI (Defendant II), SUWARTO (Defendant III), Mrs. SUKIMIN (Defendant IV), and AFRIDA PURNAMAWATI (Defendant V), this case began when Defendant I was a former employee of the Plaintiff since March 2, 1974, with the status of a Permanent Employee Class III/a, with the last position as Junior Executive/General Division . Defendant I was dismissed by the Plaintiff due to retirement on December 8, 2009, based on the Decree of the Board of Directors Number 161/HKO.01/DIR/XII-2009 dated December 8, 2009.

### Consideration Analysis Judge in Deciding Case Number. 1011 K/Pdt/2014

From the position case above, it is known that the Plaintiff and Defendant I and II have agreed to bind themselves in an authentically made Deed of Recognition of Debt. Based on the Deed of Recognition

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<sup>5</sup> Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2016) h. 45

Deed of Recognition of Debt Number 4 dated August 20, 2009, which was drawn up and signed before Notary Raden Mas Soediarso Soenarto, SH, Sp.N. The rights and obligations of each party arise, namely the Plaintiff has the right in the form of repayment of the principal loan, loan interest, and the existence of a guarantee, and is obliged to provide loan money to the Debtor in accordance with the agreement while on the other hand Defendants I and II are obliged to return the loan amount along with interest. to the Plaintiff in accordance with the agreement between the two parties.

So it can be concluded that the legal act of debt and credit with an engagement results in a legal relationship between 2 (two) parties who give one the right to demand something from the other, while the other person is obliged to fulfill the demand.<sup>6</sup>

The main matters regulated in the Deed of Recognition of Debt are the parties, the amount of the loan and the validity period of the deed. The parties are **PT PELAYARAN NASIONAL INDONESIA (PERSERO)** as the Plaintiff and **H. WAGIMOEN TOEGIMAN and Mrs. WIDYARTI**, as Defendants I and II. The validity period of the deed is 3 (three) months from the signing of the Deed of Recognition of Debt so that it ends on October 20, 2014. During his work at the Plaintiff's company, it turned out that Defendant I had used the money belonging to the Plaintiff, bringing the total amount to Rp. 2,720,399,288.63 ( two billion seven hundred twenty million three hundred ninety nine thousand two hundred eighty eight Rupiah sixty three cents). Then for that use, before Defendant I was dismissed, Defendant I had stated the truth of the amount of the use of the money and promised to return all the money he had

used, and furthermore the money that had been used by Defendant I was the debt of Defendant I to the Plaintiff, as stated in the statement in writing dated July 24, 2009 (exhibit P-1).<sup>7</sup>

What is included and regulated in the Deed of Recognition of Debt is an agreement that binds both parties because the agreement issues an engagement for the parties who made it. Given that the Deed of Recognition of Debt is made by a Notary, the deed is authentic so that it acts as legal evidence that has perfect power.

According to Article 1868 of the Civil Code, in order for a deed to become an authentic deed, the requirements specified in this Article must be met, namely:

1. deed must be made by or in the presence of a public official
2. Whoever the deed is made must have the authority to make the deed.

In this case, the parties agreed that the Deed of Recognition of Debt was made by Notary Raden Mas Soediarso Soenarto, SH, Sp.N. Notaries in Jakarta are authorized to make them and are made in the formal form specified in the Law on Notary Positions. So basically the Deed of Recognition of Debt does not violate the provisions regarding the terms of the authentic deed regulated in Article 1868 of the Civil Code.

Taking a closer look, both the Plaintiff and the Defendant in the Deed of Recognition of Debt have been competent and authorized to carry out the legal action and do not contain elements of a defect of will. The form of the agreement also does not conflict with the law and its contents do not violate public order and morality as a condition for the cancellation of a deed made by or before a notary.<sup>8</sup>

<sup>6</sup> Mantayborbir. *Banking Law and Legal System of State Receivables and Auctions*, Medan: Pustaka Bangsa Press, 2006, p. 19

<sup>7</sup> Cassation Decision Number: 1011/K/Pdt/2014 p. 3

<sup>8</sup> M. Yahya Harahap, *Legal Aspects of Agreement*, (Bandung: Alumni, 2012), p. 16

1. Inability to act
2. Inability to act
3. Defect of will
4. Form of agreement
5. Contrary to the law, public order and morality

Inside each debt agreement is stated regarding the obligations that must be fulfilled by the debtor or the achievements of the debt given by the creditor. In accordance with the provisions of Article 1234 of the Civil Code, achievement can be in the form of giving something, to do something or not to do something.<sup>9</sup> In this case, the plaintiff only requested payment of the principal debt of Rp 2,720,399,288.63 (two billion seven hundred twenty million three hundred ninety nine thousand two hundred eighty eight Rupiah and sixty three cents) which is an achievement agreed by the parties. If it is not fulfilled then the Defendant is considered negligent and in default.

The obligation to fulfill the performance of the debtor is always accompanied by *liability*. In banking practice in case of bad credit, the usual efforts are:<sup>10</sup>

1. Providing an extension of the loan period if it meets the requirements (the loan is still rotating effectively, capital is still needed).
2. Rescheduling, provides an opportunity for the debtor to consolidate his business by rescheduling credit (the company still has the prospect of getting back up).
3. Credit restructuring, namely by adding back the loan amount or converting part or all of the loan into an investment in the company.
4. Execution. The execution of collateral items will only be carried out if other methods can no longer be taken. So the

execution of new collateral objects is carried out at the final stage.<sup>11</sup>

In this case, Defendant I requested an extension of time to the Plaintiffs to fulfill their obligations in submitting Certificate of Ownership Number 2436/Kelurahan Kalibaru, Certificate of Ownership Number 2434/Kelurahan Kalibaru and Certificate of Building Use Rights Number 2193/Kelurahan Kalibaru, until the latest date October 25, 2009. However, until that date has passed, even today Defendant I and Defendant II have not submitted the said certificates. With the non-submission of the Certificate of Ownership Number 2436/Kelurahan Kalibaru, Certificate of Ownership Number 2434/ Kelurahan Kalibaru and Certificate of Hak Guna Bangunan Number 2193/Kelurahan Kalibaru, by Defendants I and II to the Plaintiff, it has been proven that Defendants I and II have defaulted. . From this case, it can be concluded that:

1. The agreements made between the Plaintiff and Defendant I and Defendant II are valid and binding, namely:
  - a. Deed of Debt Recognition Agreement Number 4 dated August 20, 2009, which was signed before Raden Mas Soediarso Soenarto, SH, Sp. N., Notary in Jakarta;
  - b. Deed of Power of Attorney to Sell Number 7 dated August 20, 2009, which was signed before Raden Mas Soediarso Soenarto, SH, Sp.N., Notary in Jakarta;
  - c. Deed of Power of Attorney Number 8 dated August 20, 2009, which was signed before Raden Mas Soediarso Soenarto, SH, Sp.N., Notary in Jakarta;
2. Defendant I, Defendant II have committed acts of breach of promise (default);

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<sup>9</sup> Civil Code (Burgerlijk Wetboek)

<sup>10</sup> Fuady, Munir. *Contract Law: From a Business Perspective*, (Bandung: Citra Aditya Bakti, 2003), p. 137.

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<sup>11</sup> Abdulkadir Muhammad, *Law of Engagement*, cet. 3, (Bandung: PT. Citra Aditya Bakti, 2012), p. 17.



3. Defendant III and Defendant IV have good intentions in the transaction of transfer of rights to land and buildings located at Jalan Melinjo Number 14-14 A (Certificate of Ownership Number 2436/Kelurahan Kalibaru, on behalf of the right holder Haji Wagimoen Toegiman), and land and buildings located on Jalan Pisang Ambon Raya Number 10 (Certificate of Building Use Rights Number 2193/Kelurahan Kalibaru, on behalf of Mrs. Widyarti) is based on good faith;
4. The transaction of transfer of rights from Defendant I to Defendant III on land and building Certificate of Ownership Title Number 2436/Kelurahan Kalibaru, Certificate of Ownership Number 2434/Kelurahan Kalibaru, both written in the name of the right holder of Haji Wagimoen Toegiman, and Certificate of Hak Guna Bangunan Number 2193/Kelurahan Kalibaru, on behalf of Mrs. Widyarti, is valid and has binding power for the parties;
5. The amount of debt of Defendant I, Defendant II which has matured and must be paid to the Plaintiff is Rp2,720,399,288.63 (two billion seven hundred twenty million three hundred ninety-nine thousand two hundred eighty-eight Rupiah and sixty three cents);
6. Defendant I, Defendant II are charged with paying their debt payment obligations to the Plaintiff jointly and severally in the amount of Rp.2,720,399,288.63 (two billion seven hundred twenty million three hundred ninety-nine thousand two hundred eighty-eight Rupiah and sixty three cents);
7. Defendant I and Defendant II are subject to compensation for the Plaintiff's losses, in the form of:
  - Material losses from profits that should have been obtained by the Plaintiff.
8. Defendant I and Defendant II are jointly and severally liable to pay interest on the outstanding debt, which is 6% (six percent) per annum, starting from the maturity date, which is October 20, 2009 until all debts are paid at once;
9. Defendant I, Defendant II are charged with paying a fine of the Plaintiff's happiness, in the amount of Rp. 1,000,000.00 (one million Rupiah) every month, which is calculated from the time the default occurs until the payment of the entire debt of Defendant I and the interest thereof to the Plaintiff;
10. Invalid and worthless confiscation of collateral that has been carried out by the bailiff of the Bekasi District Court, against the goods as contained in the Minutes of Seizure of Guarantee Number 08/CB/2012/17/Pdt.G/2012/PN.Bks. dated December 13, 2012;
  - a. The Bekasi District Court is subject to reappointment of the bail confiscation that has been carried out by the District Court bailiff.
  - b. Defendant III is a true party and has good intentions;

Stating that:

  - Sale and Purchase Binding Deed Number 08 dated 22 July 2011 drawn up by the authoritarian Mochamad Soleh Alaidrus, SH, M.Kn.;
  - Sale and Purchase Binding Deed Number 07 dated July 22, 2011 drawn up by Notary Mochamad Soleh Alaidrus, SH, M.Kn.;

Both deeds are valid and have binding legal force for all parties;

  - c. Sentencing Defendant I Intervention to submit to and comply with the decision of this case;

- d. The original comparison of the Intervention Plaintiff is a buyer who has good intentions and is protected by law;
- e. The sale and purchase with Binding Sale and Purchase Number 09 dated July 22, 2011 before Notary Mochamad Soleh Alaidrus, SH, M.Kn., is legal according to law;
- f. Certificate of Ownership Number 3648/Kota Baru, covering an area of 115 m2, is legally owned by the original Comparator of the Intervention Plaintiff;

The Bandung High Court which canceled the Bekasi District Court's decision was not wrong in applying the law, because the decision was based on proper and correct considerations, namely that the Deed of Recognition of Debt and the Deed of Authorization to Sell were not Deeds of Transfer of Land Rights, so that the issuance of the Deed of Recognition of Debt did not transfer a person's rights *in casu* Defendants I and II/Interventional Defendants II and III over the disputed object's land, therefore Defendants I and II/Interventional Defendants II and III have the right to transfer their land to another party *in casu* Defendants III/Interventional Plaintiffs especially when the rights are transferred to land belonging to Defendant I and Defendant II to Defendant III/Plaintiff Intervention

Further Defendants III and IV and the Plaintiff Intervention can be said to be buyers in good faith, because the binding sale and purchase of the object of dispute as referred to Certificate of Ownership Number 2436, Certificate of Ownership Number 2434, Certificate of Rights Use Building Number 2193 and The Certificate of Ownership Number 3648 was carried out by Defendant III and the Intervention Plaintiff was carried out before a Notary because the sale and purchase agreement he signed was valid and

binding. Based on this, the cassation application submitted by the Cassation Petitioner: PT Pelayaran Nasional Indonesia (Persero) was rejected by the Supreme Court of Cassation with the verdict ACCESS:

1. Rejecting the Cassation Petitioner: PT PELAYARAN NASIONAL INDONESIA (PERSERO); .
2. Ordering the Cassation Petitioner/Plaintiff-Defendant Intervention I to pay court fees at this level of cassation in the amount of Rp. 500,000.00 (five hundred thousand Rupiah); .<sup>12</sup>

Basically the Deed of Recognition of Debt followed by a Power of Attorney to Sell does not violate the law. However, because the agreement is related to a guarantee, namely land security, it must pay attention to the elements in the guarantee law. Subekti stated that the law of guarantee provides collateral rights with the aim of regulating the balance of the position of the two parties, namely Creditors and Debtors in a legal relationship with collateral rights and is intended as an effort to secure credit in the field.<sup>13</sup> Guarantee rights have been regulated in general in the Civil Code in Article 1131 and further in Article 1132, namely the distinction between Concurrent Creditors (ordinary creditors), Separatist Creditors (holders of privileged security rights) and Preferred creditors (creditors who take precedence).

## Conclusion

Based on the formulation of the problem and analysis of research regarding the termination of this agreement, it can be concluded as follows:

1. The legal history of agreements, debts

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<sup>12</sup> Decision on Cassation Number: 1011/K/Pdt/2014, p. 33-65

<sup>13</sup> Widjaja, Gunawan and Kartini Muljadi. *Buy and sell*. (Jakarta: Raja Grafindo Persada, 2003), p. 58

and receivables with guaranteed land rights in Indonesia applies in several laws, some of which can be found in the law book Article 1721 of the Civil Code.

2. Deed of Recognition of Debt with guaranteed land rights followed by a power of attorney to sell basically does not conflict with the provisions of the applicable laws and regulations.

Consideration The judge in deciding case no. 1011 K/Pdt/2014 dated October 28, 2014 has been appropriate and in accordance with applicable law..

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