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THE LEGAL SYSTEM OF SOCIAL SECURITY IN INDONESIA

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Abstract

The Legal System of Social Security in Indonesia has been leading Indonesia's legal system of security to a good direction. Good direction that is meant is the existence of a system in the form of regulations that regulate the guarantee, especially borrow money in the banking. Borrowing money in the banking is one part of the social guarantee systems in Indonesia. What matters is why it is important to know about the social legal system, especially in the banking. The outcome of this research is to give description that there a legal system of social security and to provide a good explanation of the social security/guarantee, especially in the lending and borrowing of money in the bank. The bottom line is: realizing legal system of social security is a certainty and compulsory for all parties particularly lawmakers.

Keywords: *System, Legal Systems, Social Security.*



A. Introduction

According to the Constitution of the Republic of Indonesia, law has a high position. This can be recognized in a clear statement in the main content of the constitution of The Unitary State of the Republic of Indonesia which is in Chapter I Constitution of 1945 about Form and Sovereignty, Article 1 Subsection (3) that states that “Indonesia is a state of law”, which is also stated in the Elaboration of the Constitution of 1945 that ‘government system of state of Indonesia is a state which bases on law (rechtsstaat), not merely bases on power (machtsstaat)’. The implementation of this state of law is that every action taken or decided inside the government system accords with legal regulations or norms. Violation of such rules will be strictly sanctioned.

The word system is used to explain many things, but primarily it can be classified into two following categories: first, definition of system as an entity, which is a form of an object (abstract or concrete, including conceptually) and second, definition of system as a method or procedure. William A. Shrode and Voich in Tan Kamello’s book states something about the definition of system: The term “system” has two important connotations which are implicit, if not explicit, in almost any discussion of systems. The first is the notion of system as an entity or thing which has a particular order or structural arrangement of its parts. The second is the notion of system as a plan, method, device, or procedure for accomplishing something. As we shall see, these two notions are not markedly different, since order or structure is fundamental to each.

By that definition, ‘system’ is an entity, and it is correct that every existing rule has to be synchronous to one another, so the purpose of a national legal system can be actualized.



B. Method

The type of research used is descriptive analytical that is describing, describing, analyzing and explaining analytically the problems raised. This study includes the type of normative legal research or library legal research that is legal research conducted by examining library materials consisting of primary legal materials, secondary legal materials and tertiary legal materials. (Soerjono Soekanto and Sri Mamuji, 2004: 13-14).

C. Discussion

Legal System Of Social Security

Tan Kamello explains that apart from the fact that legal system acts as an entity, one of the characteristics is that such legal system contains sub-system. In sub-system, legal system is divided into some parts of legal sub-systems. It goes continuously that legal sub-systems will be divided into smaller legal sub-systems, which in its entirety has connection with one to another wholly and harmoniously, without damaging each other in order to serve the purpose. This makes legal system of security as a sub-system of legal system of object, whereas legal system of object is a sub-system of Indonesia's civil law system. That means that Indonesia's civil law system is a sub-system of national law.

Other than that, the meaning of the national legal system is meant as a regulation or set of rules of nationality, whether written or unwritten, made by a ruler who is a unity entity connected to each other, which applies to all his subjects and people, people who are in their area, and have strict sanctions.

For the term guarantee, Salim HS reveals that guarantee is a translation of the Dutch language that is *zekerheid* or *cautie*. *Zekerheid* or *cautie* covers in general the ways creditor guarantees the fulfillment of its claims, in addition to the debtor's general liability for his goods. The term of law of guarantee comes from the translation of *zekerheidsstelling* or security of law, so that for the legal sense of guarantee Salim HS states that the law of guarantee is the whole of the rules of law governing the



legal relationship between the giver and the recipient of the guarantee in relation to the imposition of collateral to obtain credit facilities.

So the legal guarantees system is so important that it will give the right direction for existing legal guarantees users. Therefore, the knowledge of the national guarantee, especially the guarantee in the banking agreement is very necessary.

Legal Relationship Of Guarantee With Mortgage Rights

Related to the guarantee, it is not separated by the Mortgage Right. There is a legal regulation governing land titles, namely Law No. 4 of 1996. This regulation is made to provide clear guidance on the use of land security as collateral in borrowing and lending agreements where the land must be registered.

According to A.P. Parlindungan, the purposes of legislating Law of Mortgage Right are :

1. To overcome a problem that has been going on all this time, about where the point of 'For the sake of justice based on the belief in the one and only God', whether in land certificates or in certificates of Land Titles Registrar, concerning especially debt collateral with land as the collateral; and to check if it is sufficient in the cover of certificate of Mortgage Right or in the head (crown) of the certificate of Mortgage Right.
2. To execute a strict order from Article 51 Law of Agrarian Affairs to create Law of Mortgage Right, in order to nullify erroneous interpretation towards this social system of security and to perform unification developed by Law of Agrarian Affairs in which social system of Mortgage Right acts as social system of debt collateral with land as the collateral.
3. To state the term for land security or collateral as 'Mortgage Right', and note neither 'lien' (as created by Law of Apartment and Article 57 Law of Agrarian Affairs) or *credietverband* (Article 57 Law of Agrarian Affairs) or 'fiduciary' stated in Article 15 Law No. 4 of 1992 on



Housing and Residence. By this, therefore, all terms 'lien' or creditverband stipulated in Law No. 16 of 1985 or regulated by Law No. 4 of 1992 must be read as Mortgage Right.

4. To give a precise solution. There is still an assumption in society that Usage Right (privaat) cannot be an object of Mortgage Right, in which the development of fiduciary will turn Usage Right into a registered collateral. Also as in banking practice, Usage Right is accepted as a bank collateral in many versions.

Because of practical reasons, Usage Right can be made debt collateral by the Mortgage Right (the new one) even though it is not mentioned in Article 15 Law of Agrarian Affairs.

5. To give a precise solution so that jurisprudence will also support both the Mortgage Right and the statement that the point of 'For the sake of justice based on the belief in the one and only God' is on the certificate of Mortgage Right, not on the deed of Mortgage Right. It is different from existing stipulations such as regulated in Article 224 HIR and Article 285 RBG.

To keep performing principle of nationality, and the authority of the process of making certificate of Mortgage Right is on the Land Titles Registrar located in the district where the lands are located.

It is recognized that Indonesia's civil law acknowledges collaterals or securities in the nature of object or matter right and individual right. Collaterals in the nature of object are collaterals in the form of an absolute right over an object, having the characteristics: having a direct connection with debtors' certain objects, can be defended against anyone, always following the objects (*droit de suite*) and can be handed over (for examples: *lien*, *pawn*, *et cetera*). Collaterals in the nature of individual are collateral that bring about direct connection to certain individuals, can only be defended towards certain debtors, towards debtors' possessions in general (for instance: *borgtocht*).

Apart from such characteristics, things that differentiate object right from individual right are principle of priority for object right and principle of equality for individual right. In object right, it is known that an



older (earlier) object right is preferable than a later one. In individual right, there is principle of equality (Article 113 and Article 1132 Indonesia's Code of Civil Law) which means that it does not differentiate an earlier credit from a later one. Both have equal position, not depending on timeline; both have equal position towards debtors' possessions. If then bankruptcy happens, outcome of auction will be divided based on the two rights 'ponds-ponds gelijk', proportionate to the amount of respective credit, unless terms in agreement say differently, then principle of equality can be breached (for examples: privilege, lien, pawn).

If there is a collision between object right and individual right, basically, object right is stronger than individual right. If the collision happens due to the same object or thing, object right will be won from individual right, without concerning whether the object right takes place before or after the individual right. There is an exception when the party having the object right is tied to the individual right that the party creates.

According to Sri Soedewi Masjchoen Sofwan, cited from Kartini Muljadi and Gunawan Widjaja, there are at least ten characteristics that distinguish object security and individual right, inter alia:

1. Law of object is a compelling law (dwingendrecht) which cannot be waived by parties.
2. Object right is transferable, in the sense that freehold right over objects can be handed over from its original owner to other parties, with all its legal consequences, unless it is opposing regulations, ethics and public order.
3. Individualiteit; which means that something that can be owned as an object is something that can be legally separated (individueelbepaald).
4. Totaliteit. This principle states that an ownership by an individual over an object means that it is a complete ownership over every part of the object. In this context, for example, a person could not have a part or some parts of an object if he himself does not have full freehold title over the object.



5. The principle of inseparability (onsplitsbaarheid). This principle constitutes a legal consequence from the principle of totaliteit where it is said that a person may not discharge some part of his freehold title over a complete object. Even though an owner is given the authority to impose his freehold title with other limited object rights (jura in re aliena), such imposition can only be applied to the whole object owned. Therefore, jura in re aliena cannot be applied to some part of an object, but the complete object as a whole.
6. The principle of prioriteit. In the explanation of principle of onplitsbaarheid, it is mentioned that an object is likely to be given jura in re aliena which gives limited object right over the object. This limited object right, by law, is given a position based on priority between one right and other rights. Remember, there is an object right that is limited. It is possible to impose result-usage right on freehold right where it is also possible to impose lien on the result-usage right.
7. The principle of mixing (vermenging). This principle is the continuous principle of jura in re aliena where it is stated that the holder of freehold title over object given limited object right (jura in re aliena) is not likely to be the holder of such limited object right (jura in re aliena). If the limited object right falls into the hand of the holder of the object freehold title, the limited object right will be eliminated by law.
8. The principle of publiciteit. This principle applies for immovable objects which are given object right.
9. The principle of different treatment towards movable and immovable objects.
10. The existence of agreement nature in every provisioning or establishing of object right. This principle reminds us of the fact that, basically, there is principle of object in every legal agreement and there is a nature of agreement law in every object right. The nature of this agreement is getting important because of the limited object right (jura in re aliena), as allowed by laws. Besides, as a form of security, object security gives preceding right to the creditor or the holder of right of object security over selling of object which is guaranteed by the



object right, in the case that debtors are in default on their obligation towards creditors.

Therefore, the author believes that legal certainty is an inseparable characteristic from law, especially for written norms. Laws, without value of certainty, will lose their significance because they cannot be the code of conduct for everyone. In Latin, *Ubi jus incertum, ibi jus nulum* means that where there is no legal certainty, there is no law.

Thus, it is an absolute for a regulation, which is a part of a legal system, to be harmonious, so that it gives legal certainty in its written norms and does not evoke confusion in its interpreting and implementation; in this case, the regulation intended is Law No. 4 of 1996 on Security Rights Over Lands And Objects Related To Land.

D. Conclusion

1. Indonesia's System of Social Security has given correct direction to implementation of security in Indonesia.
2. The existing legal guarantees system in Indonesia has provided a clear picture of where the intent and purpose of the guarantee law is made.

Bibliography

Erawaty, Elly, Bayu Seto Hardjowahono, dan Ida Susanti, *Beberapa Pemikiran Tentang Pembangunan Sistem Hukum Nasional Indonesia*, (Bandung: PT Citra Aditya Bakti, 2011).

Gunawan, Yopi dan Kristian, *Perkembangan Konsep Negara Hukum & Negara Hukum Pancasila*, (Bandung: PT Refika Aditama, 2015).

Kamello, Tan, *Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan*, (Bandung: PT. Alumni, 2004).



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Muljadi, Kartinidan Gunawan Widjaja, *Hak Istimewa, Gadai, Dan Hipotek*,
(Jakarta: Kencana, 2005).

Parlindungan, A.P., *Komentar Undang-Undang Tentang Hak Tanggungan
Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah (U.U.
Nomor 4 Tahun 1996/9April 1996/LN Nomor 42) Dan Sejarah
Terbentuknya*, (Bandung: MandarMaju, 1996).

Salim H.S., *Perkembangan Hukum Jaminan Di Indonesia*, (Jakarta: PT
RajaGrafindo Persada, 2008),

Undang-Undang Dasar 1945

Undang-Undang Nomor 4 Tahun 1996, Tentang Hak Tanggungan Atas
Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah.