

Legal Validity of Power of Attorney to Sell in Non-Performing Loans

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ABSTRACT

This study examines the use of a Power of Attorney to Sell (Surat Kuasa Menjual/SKM) as a substitute for Mortgage Rights (Hak Tanggungan) in the settlement of non-performing loans through the Simple Lawsuit (Gugatan Sederhana/GS) mechanism. The issue arises because Supreme Court Regulation Number 4 of 2019 restricts the resolution of land rights disputes through the GS mechanism, while in practice, loan disputes secured by land rights are still being resolved through GS using an SKM. This research aims to analyze the legal position of the GS mechanism in loan disputes involving land rights as collateral and to assess the legal validity of using an SKM as a substitute for Mortgage Rights. This study employs normative legal research using statutory and conceptual approaches. Primary, secondary, and tertiary legal materials were analyzed qualitatively through grammatical, systematic, and teleological interpretation methods. The analysis is grounded in Gustav Radbruch's Theory of Legal Certainty, Sri Soedewi Masjchoen Sofwan's Contract Theory, and the doctrine of legal circumvention (*fraus legis*). The findings indicate that the use of the GS mechanism in loan disputes secured by land rights is inherently connected to land rights disputes; therefore, its application must be strictly limited in accordance with Supreme Court Regulation Number 4 of 2019. Furthermore, an SKM cannot be equated with Mortgage Rights because it does not fulfill the principles of publicity and specificity as required under the Mortgage Rights Law. Accordingly, clearer limitations regarding land rights disputes within the GS mechanism and stronger regulations governing the use of SKM are necessary to ensure legal certainty and the protection of land rights.

Keywords: Simple Lawsuit, Power of Attorney to Sell, Mortgage Rights, Legal Certainty.

1. INTRODUCTION

The development of civil procedural law in Indonesia reflects the need for a dispute resolution mechanism that is simple, expeditious, and cost-effective as part of expanding access to justice. One of the legal instruments established to achieve this objective is the Simple Lawsuit mechanism (Gugatan Sederhana, hereinafter referred to as GS), which is regulated under Supreme Court Regulation of the Republic of Indonesia Number 2 of 2015, as amended by Supreme Court Regulation Number 4 of 2019 concerning Procedures for the Settlement of Simple Lawsuits (hereinafter referred to as SCR No. 4 of 2019). This regulation was enacted to provide an efficient means of resolving civil disputes, particularly those involving limited monetary claims and simple evidentiary requirements. (Handayani, 2022)

The scope of GS is expressly regulated under Article 3 of SCR No. 4 of 2019, which provides that a simple lawsuit may only be filed in cases involving breach of contract and/or tort with a material claim value not exceeding IDR 500,000,000. Furthermore, disputes falling within

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the jurisdiction of special courts and disputes concerning land rights are expressly excluded from the GS mechanism. This exclusion demonstrates the regulator's intention to distinguish ordinary civil disputes from disputes relating to land rights, which are generally considered more complex in terms of evidentiary requirements and legal consequences. (Nurbaiti, 2022)

However, SCR No. 4 of 2019 does not provide a clear definition of the phrase "land rights disputes." The regulation also fails to establish whether every dispute involving land should automatically be classified as a land rights dispute, or whether such classification is limited to disputes directly concerning the ownership, validity, status, or transfer of land rights. This ambiguity becomes particularly problematic in disputes arising from credit agreements where land is used as collateral. (Hutagalung, 2022)

In banking practice, legal relationships between creditors and debtors arise from credit agreements that are essentially obligational in nature. Nevertheless, in various financing schemes, particularly bank loans and People's Business Credit (Kredit Usaha Rakyat – KUR), land is frequently used as collateral to secure debt repayment. Consequently, disputes arising from non-performing loans involve not only contractual obligations between the parties but also legal issues relating to land as collateral. From one perspective, such disputes may be regarded as ordinary breach-of-contract claims because the primary issue concerns the debtor's failure to fulfill repayment obligations. From another perspective, the involvement of land as collateral introduces proprietary aspects relating to the exercise and enforcement of rights over land. This raises an important legal question as to whether credit disputes secured by land may still be resolved through the GS mechanism or whether they should be classified as land rights disputes excluded under Article 3 paragraph (2) letter (b) of SCR No. 4 of 2019.

Within Indonesian agrarian law doctrine, land disputes are not viewed as a single category. According to Maria S.W. Sumardjono, land disputes may be classified into several categories, including disputes involving colonial land rights, land reform, land acquisition for public purposes, customary land rights, and civil disputes relating to land rights. Based on this classification, credit disputes involving land collateral are more closely associated with civil disputes arising from contractual relationships rather than disputes concerning land administration or ownership status. (Usman, 2021)

A similar view is advanced by Imam Koeswahyono, who argues that Indonesian agrarian law regulates various legal relationships concerning land under different legal regimes. Consequently, not every dispute involving land should automatically be categorized as a land rights dispute. The determination should depend on the principal legal issue in dispute, namely



whether the dispute concerns the status of land rights or merely arises from a contractual relationship between private parties. (Soimin, 2013)

In judicial practice, however, courts have adopted differing interpretations regarding non-performing loan disputes involving land collateral. Some decisions have declared such claims inadmissible on the grounds that they concern land rights disputes and therefore fall outside the scope of GS. Conversely, other courts have accepted and adjudicated similar disputes through the GS mechanism, reasoning that the principal issue concerns breach of contract rather than land rights. These inconsistent judicial approaches indicate that the phrase “land rights disputes” in Article 3 paragraph (2) letter (b) of SCR No. 4 of 2019 constitutes a vague legal norm. This practice raises legal concerns because Indonesian law has already established a specific proprietary security institution, namely Mortgage Rights (Hak Tanggungan), regulated under Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (Mortgage Rights Law). Article 1 paragraph (1) of the Mortgage Rights Law defines Mortgage Rights as a security right imposed upon land rights to secure repayment of a specific debt and to grant preferential status to a particular creditor. Furthermore, Article 6 of the Mortgage Rights Law authorizes the first-ranking mortgage holder to sell the mortgaged property through *parate executie* if the debtor defaults. (Satrio, 2021)

These provisions demonstrate that the Indonesian legal system intends land-based security interests to be established through the Mortgage Rights mechanism, which ensures legal certainty and legal protection. Consistent with this principle, Indonesian land law also restricts the use of powers of attorney as instruments for transferring land rights. Article 39 paragraph (1) letter (d) of Government Regulation Number 24 of 1997 concerning Land Registration requires Land Deed Officials (PPAT) to refuse the execution of deeds where a party acts pursuant to an irrevocable power of attorney that effectively constitutes a transfer of rights. This provision confirms that powers of attorney are not intended to function as instruments for transferring land rights or replacing proprietary security rights. (Suntoro, 2022)

In practice, however, the SKM is frequently utilized as a credit security instrument that functionally resembles Mortgage Rights. The issue becomes increasingly problematic when disputes are subsequently filed through the GS mechanism under the characterization of ordinary breach-of-contract claims. As a result, a tension emerges between procedural efficiency in civil litigation and the principle of legal certainty underlying Indonesia’s proprietary security law system. (Santoso, 2022)



If this situation continues unchecked, it may not only create inconsistencies in judicial practice but also blur the distinction between obligational disputes and proprietary disputes. Furthermore, the use of an SKM as a substitute for Mortgage Rights has the potential to undermine the principles of publicity and legal certainty that form the foundation of Indonesia's proprietary security system. This situation reveals a legal issue in the form of a vague norm within Article 3 paragraph (2) letter (b) of SCR No. 4 of 2019, particularly concerning the meaning of "land rights disputes" and the criteria for distinguishing contractual disputes involving land collateral from disputes concerning land rights that are excluded from the GS mechanism. (Fakhriah, 2022)

Article 39 paragraph (1) letter (d) of Government Regulation Number 24 of 1997 on Land Registration requires PPATs to refuse the execution of a deed when one of the parties acts under an irrevocable power of attorney that essentially constitutes a transfer of rights. This provision confirms that a power of attorney is not intended to function as an instrument for transferring land rights or as a substitute for proprietary security rights over land. Nevertheless, in practice, a Power of Attorney to Sell (SKM) is frequently used as a credit security instrument that functionally resembles a Mortgage Right.

Accordingly, this research possesses both academic and practical significance. Academically, it seeks to provide a systematic analysis of the limitations of land rights disputes within the GS mechanism and the legal position of the SKM in resolving non-performing loans. Practically, it aims to provide normative clarity regarding the relationship between civil procedural law and proprietary security law in order to ensure legal certainty in resolving credit disputes secured by land. Against this background, this thesis is entitled: "The Legal Validity of Using a Power of Attorney to Sell as a Substitute for Mortgage Rights in the Settlement of Non-Performing Loans through the Simple Lawsuit Mechanism."

2. RESEARCH METHOD

This thesis employs a normative legal research method (juridical-normative research), which focuses on the analysis of legal norms, legal principles, and legal doctrines related to the settlement of non-performing loans through the Simple Lawsuit (GS) mechanism involving land rights as collateral. This method was selected because the issues examined are primarily normative in nature, namely the legal position of the GS mechanism and the use of a Power of Attorney to Sell (Surat Kuasa Menjual/SKM) within Indonesia's proprietary security law system. The research adopts both a statutory approach and a conceptual approach. The statutory approach is used to examine the consistency and harmonization of legal regulations governing the GS mechanism,



Mortgage Rights, land rights, and powers of attorney, while the conceptual approach is employed to analyze legal doctrines and theories concerning obligations, property rights, security interests, legal certainty, and legal circumvention (*fraus legis*). (Asikin, 2022)

The legal materials used in this research consist of primary, secondary, and tertiary legal sources. Primary legal materials include relevant legislation, such as the 1945 Constitution of the Republic of Indonesia, the Basic Agrarian Law, the Mortgage Rights Law, the Indonesian Civil Code, Government Regulations on Land Registration, and Supreme Court Regulations concerning the Simple Lawsuit mechanism. Secondary legal materials comprise books, scholarly journals, theses, dissertations, research reports, and expert opinions relating to land law, proprietary security law, contract law, and civil procedural law. Tertiary legal materials include legal dictionaries, legal encyclopedias, Black's Law Dictionary, and other supporting references. All legal materials were collected through systematic library research involving the stages of inventory, identification, and classification according to the relevant legal regimes. (Efendi, 2022)

The legal materials were analyzed qualitatively using grammatical, systematic, and teleological methods of interpretation. Grammatical interpretation was employed to ascertain the meaning of legal provisions based on their textual formulation, while systematic interpretation was used to examine the relationship among legal norms within different legal regimes. Teleological interpretation was applied to understand the objectives and purposes underlying the legal norms under examination. (Nurbani, 2021) The analysis was further conducted through a legal harmonization approach to assess the compatibility of using an SKM in loan settlement through the GS mechanism with the fundamental principles of Mortgage Rights, particularly the principles of publicity, specificity, and legal certainty. Finally, conclusions were drawn deductively by linking general legal norms to the specific legal issues under study, thereby producing systematic, normative, and prescriptive legal arguments. (Muhammad, 2021)

3. RESULT DAN DISCUSSION

Legal Regulation and Legal Position of the Simple Lawsuit Mechanism in Resolving Loan Disputes Secured by Land Rights

The legal regulation and position of the Simple Lawsuit (GS) mechanism in resolving loan disputes secured by land rights must be understood within the framework of Indonesia's national agrarian law and proprietary security law systems. Under Indonesian agrarian law, land rights are not merely viewed as economic assets but also as proprietary rights possessing both private and public dimensions. Through Law Number 5 of 1960 concerning Basic Agrarian Principles, the



State places land within a legal framework aimed at ensuring legal certainty, protection of rights, and the social function of land. Consequently, any legal act involving land rights, including encumbrance, transfer, or termination, must comply with the principles of publicity, legal certainty, and protection of third parties. These principles are reflected in the land registration system and the institution of Mortgage Rights (Hak Tanggungan) as the only proprietary security right over land recognized under Indonesian law. Recent developments in land regulations, particularly following the enactment of the Job Creation Law and Government Regulation Number 18 of 2021, further emphasize the importance of administrative compliance and publicity in legal actions relating to land. (Bahsan, 2012)

In credit relationships, the use of land as collateral creates legal consequences distinct from ordinary debtor-creditor relationships. A credit agreement fundamentally establishes an obligational relationship between creditor and debtor. However, when land is used as security for debt repayment, the legal relationship extends beyond the law of obligations and enters the realm of property law. Accordingly, Indonesian law requires land used as collateral to be encumbered with Mortgage Rights as regulated under Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. Mortgage Rights grant the creditor preferential status (*droit de préférence*), the right to follow the collateral regardless of its holder (*droit de suite*), and executorial powers facilitating debt recovery. By contrast, a Power of Attorney to Sell (Surat Kuasa Menjual – SKM) merely establishes a representative relationship under Article 1792 of the Indonesian Civil Code. It neither creates a proprietary right nor grants preferential status or executorial authority to the creditor. Nevertheless, SKM is frequently used in small-scale financing and People's Business Credit (KUR) schemes because it is considered simpler and more efficient than the formal process of establishing Mortgage Rights. (Zainuddin, Oktober 2017)

The issue becomes increasingly complex when loan disputes involving land collateral and an SKM are resolved through the GS mechanism. GS was introduced through Supreme Court Regulation Number 4 of 2019 to promote simple, expeditious, and low-cost dispute resolution. However, Article 3 paragraph (2) letter (b) expressly excludes land rights disputes from its scope. This exclusion reflects the understanding that disputes involving land rights are inherently more complex because they concern ownership, possession, encumbrance, and transfer of land rights, all of which require comprehensive judicial examination. Despite this limitation, courts have continued to receive GS claims involving non-performing loans secured by land, based on the argument that the principal issue concerns breach of contract rather than land rights. (E, Oktober 2016)



From the perspective of Gustav Radbruch's Theory of Legal Certainty, this situation reveals the existence of a vague norm within Supreme Court Regulation Number 4 of 2019. Although the regulation prohibits the use of GS for land rights disputes, it does not clearly define the criteria for determining when a dispute qualifies as such. As a result, courts have adopted inconsistent approaches in handling similar cases. Some judges consider disputes arising from credit agreements to be ordinary breach-of-contract cases eligible for GS, while others view the involvement of land collateral as sufficient to classify the dispute as one involving land rights. This inconsistency undermines legal certainty because parties cannot reliably predict whether their claims will be accepted under the GS mechanism. Therefore, the legal position of GS in disputes involving land collateral should be determined based on the substance of the dispute rather than its formal characterization. Where the dispute concerns only the debtor's failure to perform contractual obligations, GS may still be appropriate. However, where the dispute involves the exercise, transfer, encumbrance, or enforcement of rights over land, it should be classified as a land rights dispute and fall outside the scope of GS. (Mertokusumo, 1979)

The Legal Validity of Using a Power of Attorney to Sell as a Substitute for Mortgage Rights in Loan Settlement through the Simple Lawsuit Mechanism

The discussion concerning the legal validity of using a Power of Attorney to Sell (SKM) as a substitute for Mortgage Rights begins with the legal relationship established through a credit agreement between creditor and debtor. According to the Contract Theory developed by Prof. Sri Soedewi Masjchoen Sofwan, an agreement creates rights and obligations within the sphere of patrimonial law based on the parties' lawful consent. In credit transactions, the agreement grants the creditor the right to demand repayment and imposes upon the debtor the obligation to fulfill the agreed performance. However, such an obligational relationship differs fundamentally from a proprietary legal relationship. Consequently, when land is used as collateral, Indonesian law requires the establishment of Mortgage Rights to ensure legal certainty, legal protection, and preferential rights for creditors. (Setyawan, Oktober 2016)

In practice, particularly in KUR financing, creditors frequently rely on SKM as a credit security instrument because it is simpler, faster, and less costly than establishing Mortgage Rights through a Deed of Granting Mortgage Rights and land registration procedures. Legally, however, an SKM constitutes only a power of attorney governed by Article 1792 of the Indonesian Civil Code. It does not confer preferential rights, lacks the characteristic of *droit de suite*, does not satisfy the principle of publicity, and carries no executorial force. Therefore, although legally valid



as a contractual arrangement, an SKM cannot be equated with or substituted for Mortgage Rights as a proprietary security institution. (Widjaja, 2010)

The use of SKM also raises concerns regarding legal protection for both debtors and creditors. From the debtor's perspective, SKM is often executed within standard-form contracts where bargaining power is unequal. Debtors, particularly small-business borrowers, frequently accept contractual terms without fully understanding the legal consequences of granting an irrevocable authority to sell their land. (Maulidan, 2021) This situation creates the potential for abuse of circumstances (*misbruik van omstandigheden*), whereby a stronger party exploits the vulnerable position of another party. Conversely, creditors who rely solely on an SKM also face legal uncertainty because a power of attorney may terminate for various reasons under the Civil Code, including revocation or the death of the grantor. Unlike Mortgage Rights, an SKM lacks statutory protection, enforceability against third parties, and executorial certainty. (Utami, 2018)

The issue becomes even more problematic when disputes involving SKM are brought before the GS mechanism. Although GS is designed to resolve simple civil disputes efficiently, disputes involving land collateral often require extensive examination of the validity of the power of attorney, the balance of contractual relations, and issues concerning possession and transfer of land rights. Such matters exceed the simplified evidentiary framework contemplated by GS. Consequently, the use of GS in these circumstances may weaken legal protection for debtors, creditors, and third parties alike. (Harun, 2010)

When analyzed through the doctrine of *fraus legis* (legal circumvention), the use of SKM as a substitute for Mortgage Rights demonstrates indications of an attempt to avoid legal mechanisms specifically established by legislation. Formally, the use of SKM is lawful under the Civil Code. Substantively, however, it is often employed to perform functions reserved for Mortgage Rights, namely securing repayment and facilitating enforcement against land collateral upon default. In this respect, SKM no longer functions merely as a representative instrument but effectively operates as a proprietary security device without complying with the requirements of publicity, specificity, and registration imposed by the Mortgage Rights Law. (Utomo, 2017) Furthermore, the use of SKM in disputes filed through GS may obscure the distinction between contractual disputes and land rights disputes. While such claims are formally presented as breach-of-contract actions to satisfy the procedural requirements of GS, they remain substantively connected to the exercise of rights over land as a means of debt repayment. Consequently, from the perspective of *fraus legis*, the practice indicates an attempt to circumvent both the Mortgage Rights



regime and the exclusion of land rights disputes under Article 3 paragraph (2) letter (b) of Supreme Court Regulation Number 4 of 2019. (Sjahdeini, 2009)

Accordingly, this study concludes that although an SKM remains legally valid as a power of attorney within the law of obligations, it cannot be regarded as equivalent to or substituted for Mortgage Rights within Indonesia's proprietary security law system. The use of SKM as the principal instrument for securing credit not only risks undermining legal protection for debtors and creating legal uncertainty for creditors but also contradicts the objectives of the Mortgage Rights regime, which was designed to ensure legal certainty, transparency, and protection of land rights. Therefore, SKM should be limited to its proper function as a representative instrument, while land-based credit security should continue to be established through Mortgage Rights in accordance with Indonesian law. (Febriandini, 2014)

4. CONCLUSION

Based on the findings of this research, it can be concluded that the use of the Small Claims Court mechanism (Gugatan Sederhana / GS) in resolving credit disputes secured by land rights and supported by a Power of Attorney to Sell (Surat Kuasa Menjual / SKM) is only permissible insofar as the dispute is limited to a breach of contract arising from the credit agreement. However, when the dispute involves the execution of the power of sale, possession, or transfer of land rights, it enters the domain of land rights disputes and therefore no longer conforms to the characteristics of the GS mechanism. The lack of a clear distinction between breach of contract disputes and land rights disputes also indicates that legal certainty has not yet been fully achieved.

This research further concludes that, although an SKM is formally valid as a power of attorney agreement under the Indonesian Civil Code (KUHPerduta), it cannot replace the legal status of a Mortgage Right (Hak Tanggungan) as a security right over land. From the perspective of the *fraus legis* theory, the use of an SKM as the primary instrument for credit security and dispute resolution through the GS mechanism may constitute an attempt to circumvent the Mortgage Right mechanism, which has been specifically established within Indonesia's national system of secured transactions law.

Therefore, clearer regulations are needed regarding the scope and limitations of land rights disputes within the GS mechanism. Financial institutions should prioritize the use of Mortgage Rights as security over land, while Notaries and Land Deed Officials (PPATs) must exercise greater caution in the preparation of security-related legal instruments. Furthermore, the



government should harmonize relevant regulations to ensure legal certainty and provide balanced legal protection for both creditors and debtors.

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