

## REGISTRATION OF MONITORY RIGHTS IS BASED ON THE REGULATION OF THE MINISTER OF AGRARIAN AND SPATIAL PLANNING/CHAIRMAN OF THE NATIONAL LAND AGENCY OF THE REPUBLIC OF INDONESIA NUMBER 5 OF 2020 CONCERNING ELECTRONIC INTEGRATED MONITORY RIGHTS SERVICES

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### ARTICLE INFO

### ABSTRACT

#### Keywords:

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The Electronic Mortgage Service is a service from the Ministry of ATR/BPN in facilitating services to the public by utilizing the development of information technology. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 concerning Electronically Integrated Mortgage Services which came into effect on April 8 2020. The formulation of the problems raised in this study are (1) What are the legal implications of electronic mortgage service regulations for PPAT and creditors? and (2) What are the legal remedies for problems that occur as a result of data input errors in electronic registration of mortgage rights. The research method used in this writing is a normative juridical research method, namely through literature study using a statutory approach related to problems, besides that the author also uses books related to problems. The conclusion that can be drawn in this study is that the mechanism for registering mortgage rights electronically against PPAT and creditors, for creditors there is a change in the creditor's task mechanism where creditors are required to apply for registration of mortgage rights directly through the electronic system and have the power to make notes to print mortgage rights. attached to the mortgage document. In addition, it has an impact on the timeliness of registration, which is seven days so that it can facilitate the granting of credit to debtors, while for PPAT, the PPAT's task is only to send APHT electronically in the system and provide guarantees for the correctness of the documents contained in the statement letter sent via the electronic system. Regarding input errors when registering HT-el at the National Land Office, not only from the network system factor, but the human factor, namely human negligence which results in being unable to upload documents or access applications, and document factors such as data input errors when making the deed carried out by the PPAT.

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## INTRODUCTION

Land has many benefits for human life, when viewed from an economic and social perspective. Especially regarding agreements, land is often used as collateral for debts and receivables. If seen from an economic perspective, land is an immovable object that can be bought and sold and can be guaranteed in civil proceedings as collateral for mortgage rights. Meanwhile, from a social perspective, the use of land is as a place for human

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habitation. Therefore, it is necessary to register land so that it becomes an authentic sign of ownership of the land.

In an agreement regarding debts and receivables, when the debtor applies for a loan to a financial institution, collateral will be asked for. If seen from the principle of prudence, if the debtor in the future carries out legal action, namely default, then the collateral agreed upon by the parties during the loan agreement can be used to pay off the debts and receivables that have been lent to the debtor by auctioning the agreed collateral. Borrowing money by the public as debt owners (debtors) and banks as lenders or receivable owners (creditors) is carried out through credit agreements.

Mortgage is the right to land collateral as a form of security for a debt and receivable, and gives priority to certain creditors over other creditors. This means that if the debtor commits an unlawful act, the creditor as the owner of the mortgage has the authority to promote the collateral by registering it at the Auction Office regarding land collateral in accordance with applicable laws and regulations.

Registration of mortgage rights is regulated by Article 13 and Article 14 of the UUHT carried out conventionally, however, as the times progress, technology is increasingly fast, advanced and developing very rapidly, therefore the registration has shifted to being carried out electronically. In an era where the development of science and technology has massively influenced the life of the nation and state, the potential for developing technology-based services in the field of banking administration is important. This aims to implement and advance electronic registration of mortgage rights so that it fulfills the principles of openness, timeliness, speed, convenience and affordability of public services.

The task of the Land Deed Making Officer (hereinafter abbreviated as PPAT) for mortgage rights is to compare it with the original letter and make a deed of Power of Attorney to Encumber Mortgage Rights (hereinafter abbreviated to SKMHT) while the PPAT for mortgage rights according to the UUHT is appointed as the official who prepares the Deed of Granting Mortgage documents. (hereinafter abbreviated as PPAT). According to current law, PPAT has the authority to issue documents relating to the transfer of land rights as well as other documents whose deeds have been determined.

The lender, namely the debtor, must appear in person before the PPAT. If the mortgage rights provider cannot be present in person, the mortgage rights provider must provide a power of attorney to the other party by making a SKMHT deed and the letter must be made using a Notarial deed. APHT is a guarantee for payment of debts from debtors to creditors based on a loan agreement between the two parties. The deed stipulates the conditions for granting mortgage rights from debtors to creditors in connection with debts secured by mortgage rights. The purpose of granting this right is to give priority to creditors (preferred creditors) over other creditors (concurrent creditors) as contained in Article 1 paragraph (1) UUHT.

Electronic Mortgage Rights (hereinafter abbreviated as HT-el) have been stipulated for the first time by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 9 of 2019 concerning Electronic Integrated Mortgage Services and has been in effect since its promulgation, namely June 21

2019. System HT-el is the process of registering mortgage rights in the context of maintaining land registration data which is carried out through an integrated electronic system. Then, on April 8 2020, a new regulation regarding HT-el was issued to improve and amend the previous rules and regulations, namely the Minister of Agrarian Regulation and Spatial Planning/Head of the National Land Agency Number 5 of 2020 concerning Electronic Integrated Mortgage Services (hereinafter abbreviated to ATR/BPN Ministerial Regulation Number 5 of 2020).

PPAT's authority in HT-el registration is that in the case of an application for registration of mortgage rights, the application requirements in the form of APHT are submitted by PPAT as an electronic document in the form of a scan. The certificate issued at HT-el is in the form of an electronic Mortgage Rights Certificate with an electronic signature.

It is necessary to find solutions to problems that often occur during registration, especially for those who use the application, namely PPAT and creditors. This problem is related to regulations issued by ATR/BPN Ministerial Regulation Number 5 of 2020. The obstacles experienced are related to problems with the IT system and HT-el service servers. PPAT or Creditors must frequently confirm problems in the IT system with the organizer, namely the national defense office. In order to handle the registration of mortgage rights until the certificate is issued, PPAT and creditors are required to have good skills and abilities and be experts in using the application, because HT-el is a type of system created by humans, therefore to complete HT-el registration it is necessary Source Adequate human resources (hereinafter abbreviated as HR), both from PPAT, creditors and the HR department of the land office itself.

## **Literature Review**

### **Assurance Law**

Guarantee law consists of two words, namely law and guarantee. Law according to Soedikno Mertokusumo is the entire collection of rules or rules in a shared life, the entire rules of behavior that apply in a shared life, whose implementation can be enforced with sanctions. Meanwhile, the definition of guarantee is a strict formulation or definition of guarantee that is not found in the Civil Code.

The benefits of the guarantee are:

1. As a tool that creditors use to guarantee their power and rights regarding the repayment of collateral that the debtor has borrowed if he promises that he will repay his debts according to the time agreed in the agreement,
2. To minimize and prevent debtors from not paying off their debts because in credit practices, debtors also have a role in transactions in financing their business, so that they are unlikely to leave or harm themselves,
3. Providing guarantees to all parties, both third parties and debtors, that they will not lose the assets that have been guaranteed because this guarantee encourages debtors to actually realize their promises regarding repayment of their debts according to the conditions that have been made together.

Guarantees have functions including:

- 1) Collateral in the form of character, abilities and business prospects owned by the debtor is immaterial collateral which functions as a first way out.
- 2) Financing guarantee in the form of material collateral as a second way out.
- 3) Guarantee that debtors participate in transactions to finance their business so that the possibility of their business or project dying at the expense of themselves or their company can be prevented or at least the possibility of doing so can be minimized.
- 4) Providing encouragement to debtors to fulfill their promises, especially regarding repayment in accordance with agreed terms so that debtors and third parties who participate in guarantees do not lose assets that have been pledged to the bank.

### **Mortgage Rights**

Article 1 paragraph (1) UUHT is a security right imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, whether or not including other objects which are an integral part of the land, for the repayment of certain debts, which gives certain creditors a preferred position over other creditors.

The electronic mortgage certificate which is the result of registration from the HT-el system contains an electronic signature, which is of course identical to the regulations in the ITE Law, but it seems that the latest law, namely the ITE Law, does not explicitly regulate the regulations regarding electronic signatures, which in the law -The law only explains the definition of electronic signature as explained in article 1 paragraph (12). As is known, there are only a few provisions that have undergone changes in the ITE Law.

### **Land Deed Making Official (PPAT)**

PPAT is defined in Government Regulation Number 24 of 1997 Article 1 paragraph (24) as a public official who has the authority to draw up certain land deeds. Meanwhile, Article 1 paragraph (1) of the PPAT Regulations defines PPAT as: Public officials who are given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units. The legal basis for PPAT is stated in Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials (PPAT) Based on Article 1 PP No. 37 of 1998 concerning Position Regulations for Land Deed Drafting Officials (PPAT).

The code of ethics for Land Deed Making Officials refers to the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency regarding Ratification of the Code of Ethics for the Association of Land Deed Making Officials No. 112/KEP-4.1/IV/2017.

## **METHOD**

To understand the legal implications of electronic mortgage service regulations for PPAT and creditors and legal remedies for problems that occur as a result of data input errors in electronic mortgage registration, therefore in this research the author uses a normative legal research method, namely literature-based legal research. carried out through reviewing library materials or secondary materials. By using deductive thinking methods. The scope of normative legal research according to Soerjono Soekanto includes: Research on legal principles, Research on legal systematics, Research on the level of

vertical and horizontal legal synchronization, Comparative law and legal history. According to Soerjono Soekanto, data types can be divided into two, namely the first is called primary data or basic data. Then the second is called secondary data, including official documents and books. The data acquisition technique used by the author is observation and the data analysis technique that will be used is interactive analysis. Interactive analysis (interactive analysis model) is where all collected data is analyzed in two steps, namely data reduction and data presentation. In addition, in accordance with the existing steps, the procedure is carried out in such a way that the combined data is connected to each other systematically.

## RESULTS AND DISCUSSION

### Legal Implications of Electronic Mortgage Service Regulations for PPAT and Creditors

Mortgage rights are agreements that contain an *accessoir*, which means they have a main contract in the form of a money loan contract. Because it is an *accessoir* agreement, the existence of mortgage rights depends on the main agreement, and ends with the termination of the agreement. The mortgage right is a guarantee for repayment of debts when the creditor's position takes precedence over other creditors. Mortgage creditors are preference creditors, namely creditors who have priority and have the right to repayment of debts directly with the auction office. If the debtor defaults, the mortgage right holder can sell the object by means of a public sale or auction. The importance of registering a mortgage right is an absolute requirement for the birth of that right, so that the principle of publicity is fulfilled which has an important influence on the material guarantee agreement made by the debtor and creditor.

The issuance of ATR/BPN Ministerial Regulation Number 5 of 2020 also affects the change in the physical form of the mortgage right, with only a piece of paper of the Mortgage Rights certificate and a note of the Mortgage Rights encumbrance being attached to the deed so that it becomes one unit with the mortgage rights certificate. And the certificate no longer bears the signature of the head of the local land office, but rather a barcode containing all information about HT-el and the results can be checked by scanning the "*Touch Tanahku*" application. Apart from that, there are changes regarding the mechanism for the duties of PPAT and creditors (banks) regarding registration of mortgage rights. PPAT and banks carry out the following steps for HT-el registration:

a. PPAT:

- 1) The creditor/bank approaches the PPAT to submit the complete documents for making the APHT;
- 2) Validate the mortgage object guarantee certificate manually at the national land office and check it into the electronic system;
- 3) After the process is complete, an APHT is drawn up and signed by the parties listed in the deed;
- 4) The deed and other complete documents are scanned;
- 5) Then uploaded together with other documents, such as KTP, HT guarantee object certificate, PNBP, bank authorization, SKMHT (if the basis is from SKMHT), into the HT-el system;

- 6) Fill in the debtor's identity, if there is agreement, also complete the identity of the person who agrees; and
  - 7) Download the deed cover letter and submit it to the creditor/bank;
- b. Bank:
- 1) HT-el users submit service requests through the HT-el application system provided;
  - 2) HT-el users are responsible for the validity and correctness of the Electronic Document data that has been uploaded;
  - 3) Applications received by the system will be given proof of application registration;
  - 4) The debtor makes payment of fees according to the provisions through the bank no later than 3 days after the application registration date;
  - 5) Users are required to monitor the application and payment process on the HT-el system;
  - 6) If payment of the registration fee is not confirmed by the system, the user must confirm directly to the Land Office or Complaints Service and document proof of the confirmation made;
  - 7) Users document mortgage rights certificates and mortgage rights records on SHM/SHGB.

The application for HT-el registration is the creditor's obligation, therefore, if the creditor does not register it, the risk and legal consequences are that the guarantee provided does not provide the privileges granted by UUHT. In this case, PPAT only needs to check the certificate at the land office. The purpose of this check is to find out whether the land location is correct as stated on the certificate and so on. Creditors or PPAT can register on the official website of the Ministry of Agrarian Affairs and Spatial Planning of the National Land Agency, namely via <https://mitra.atrbpn.go.id>.

PPAT's obligation to submit APHT registration electronically based on statutory regulations provides a form of legal certainty for the owner of the mortgage rights concerned, this is confirmed in the provisions of Article 13 paragraph 4 UUHT, that: The date of the Mortgage Land Book as intended in paragraph (3) is the seventh day after complete receipt of the documents required for registration and if the seventh day falls on a holiday, the relevant land book is dated the following working day.

The date of the Mortgage Land Book as intended in paragraph (3) is the seventh day after complete receipt of the documents required for registration and if the seventh day falls on a holiday, the relevant land book is dated the following working day. As long as the Mortgage Rights Certificate has not been issued, the creditor's position remains as a concurrent creditor, so that delaying the APHT registration procedures will undoubtedly result in the birth of the Mortgage Rights. Parties who suffer losses due to delays in APHT registration can file a legal claim. No matter how serious the maker's mistake, there will always be an element of error, and that element must be met by compensating for the loss.

The debtor will suffer losses in terms of time and costs incurred in processing the HT-el object deed, and at the latest the deed must be registered within 7 days, due to the impact of the service not being able to operate so that the 7 days are due. According to ATR/BPN Ministerial Regulation Number 5 of 2020, the legal consequences of canceling

HT-el registration are that the system is disrupted or the specified time period has expired. As a result, this debtor will clearly be very detrimental to the creditor if he has given his capital to the debtor, but during the process of registering mortgage rights for the goods used as collateral, the debtor must not break his promise to the creditor, on the contrary, if the debtor does so, the goods used as collateral are entitled to become his property creditor.

Apart from PPAT, the National Land Office must also be responsible for negligence when granting land certificates and mortgage certificates due to non-registration of HT-el. He can be held responsible for unlawful acts (Onrechmatigedaad) as regulated in the Civil Code Article 1365; every person who commits an unlawful act is obliged to compensate for the losses arising from his mistake.

### **Legal remedies for problems that occur as a result of data input errors in electronic mortgage registration**

In this case, there is an error in data input as intended in Article 19 Paragraph 1 of ATR/BPN Regulation Number 5 of 2020, it is decided: In the event that there is an error in filling in the data in the HT-el Service application which is discovered after the HT-el Service results are published, the HT-el Certificate holder can submit a correction. Then in paragraph (2) it is explained: The application for repair of the HT-el Certificate as intended in paragraph (1) is submitted via the HT-el System no later than 30 (thirty) days from the date the HT-el Certificate is issued.

However, HT-el can actually make the case worse because the parties must first report data input errors before they can be corrected, which adds to the difficulty and length of the overall process. The authority of the HT-el Certificate Executor may be reduced due to errors in the data included in it. To avoid duplication with existing regulations with stricter provisions on them, reduce legal vacuum, and ensure legal certainty considering current developments, especially in the world of technology and formal law, these regulations must be reviewed by the government.

The second challenge is incorrect lien rankings, which the land office can often decide incorrectly. System damage is only covered for 30 days (thirty days) and pays PNBPN of IDR. 50,000, - (fifty thousand rupiah). if it is greater than that, the mortgage right must be resolved and the mortgage right must be reinstated, otherwise the creditor or debtor can file a lawsuit for errors in the object of the mortgage right which were granted outside the repair time, as stated in Article 13 of the ATR/BPN Ministerial Regulation Number 5 of the Year 2020, namely:

- a. Before the results of the HT-el Service are published, the Head of the Land Office or an appointed official must check the conformity of the document requirements and the concept of the HT-el Certificate.
- b. Checking the conformity of the HT-el Certificate requirements and concept documents as intended in paragraph (1) is carried out through the HT-el System.
- c. In the event that the results of the examination as intended in paragraph (2) contain incomplete or inappropriate documents, the Creditor and/or PPAT will be notified to immediately complete the documents.

- d. The required documents as intended in paragraph (3) must be completed no later than the 5th (fifth) day after the service request is received by the HT-el System.
- e. In the event that the time period as intended in paragraph (4) ends and the Creditor and/or PPAT do not complete the documents, then the application is declared void.
- f. In the event that the required documents are appropriate, the Head of the Land Office or an appointed official gives approval for the upload of the required documents and the concept of the HT-el Certificate.

Data can be corrected by PPAT by logging into the application at <http://htelpelaksanaan.atrbpn.go.id>. If an error occurs when uploading the KTP and KK files, there is a grace period of three days using the PPAT partner application. The legal consequences of an invalid HT-el certificate due to substantive defects are null and void, meanwhile mortgage rights become null and void if Article 1320 of the Civil Code is not followed. This has an impact both on changing the status of the mortgage holder to joint creditor and ending the authority to implement the invalid HT-el Certificate. In this case, data errors in the HT-el Certificate submitted (renewed) past the expiry date can give rise to objections (protests) or legal action from both creditors and debtors.

## CONCLUSION

The legal consequences of the issuance of ATR/BPN regulation no. 5 of 2020 regarding PPAT and creditors, for creditors there is a change in the creditor's duty mechanism, where creditors are required to submit applications for registration of mortgage rights directly via the electronic system and have the power to make notes to print mortgage rights which must be attached to the mortgage rights document. Apart from that, it has an impact on the timeliness of registration, namely seven days, so that it can make it easier to provide credit to debtors and make it easier to manage assets, because it is a matter of electronic system registration as well as reporting and monitoring the number and value of mortgage rights throughout the region. Meanwhile, for PPAT, the PPAT's task is only to send APHT electronically in the system and provide guarantees regarding the veracity of the documents contained in the statement letter sent via the electronic system. Input errors during HT-el registration at the National Land Office are not only due to network system factors, but human factors, namely human negligence which results in not being able to upload documents or access the application, and document factors such as data input errors when making the deed. carried out by PPAT. The legal consequences of an invalid HT-el certificate are due to substantive defects, namely being null and void, meanwhile the mortgage right becomes null and void if the conditions in Article 1320 of the Civil Code are not fulfilled.

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