

LEGAL POLITICS OF ELECTRONIC INTEGRATED MORTGAGE RIGHTS REGISTRATION

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ABSTRACT

The renewal of regulations on Electronic Mortgage Rights services is an effort by the government to facilitate people who want to get Mortgage land guarantee services for their business needs; hence, they do not have to come to the local Land Office. This research analyzes the legal politics regarding electronic integrated mortgage right registration and Land Deed Making Officials' (PPAT) position in the electronic registration of mortgage rights. This research employed normative legal research design and the statutory approach. The sources of legal materials consisted of primary and secondary legal materials. This research was analytical-prescriptive. Furthermore, the data analysis techniques used qualitative analysis. The research results indicated that in terms of carrying out the registration of mortgage rights after the enactment of Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency (ATR/BPN) Regulation Number 5 of 2020, namely during registration of mortgage rights manually where the PPAT must come directly to the National Land Agency (BPN) office to represent the bank taking care of everything until the issuance of the Mortgage certificate, recently the PPAT's task only submits APHT through the electronic system and provides guarantees for the validity of the supporting documents contained in a statement letter sent via the electronic system. Countries such as South Korea, Australia, Turkey, Malaysia, New Zealand, and Singapore have implemented digital services to implement electronic land certificates.

Keywords: Mortgage Rights; Electronic; Land Deed Making Officials (PPAT).

INTRODUCTION

The Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency has an important role in land allotment, managing government and individual land ownership rights, controlling documents related to land ownership as the key liaison between the people and the government, and government services to its people. Along with economic development in the people, indeed, the people's demand will increase rapidly; thus, the people need funds in the form of money (Hermansyah, 2020).

Not all people have excess funds because, basically, several groups of people do not have a good economy. Many people borrow money from banks based on high needs and an economy that cannot meet these needs. The bank is an intermediary institution for parties who have excess funds with parties who lack. Along with the development of technology and the people's increasing needs, Indonesia has carried out legal reforms which have had a major impact on civil law in Indonesia, especially in guarantee law.

Guarantee law is critical in supporting development and economic recovery, which is currently being actively implemented in Indonesia. The land guarantee institution is one of the guarantees whose ability to provide strong legal certainty and protect both the guarantor and the guarantee recipient, i.e., the Mortgage Right. *Mortgage rights* are collateral rights imposed on land rights, along with or not along with other objects that are an integral part of the land, for repayment of certain debts. The definition of Mortgage based on Article 1 point 1 of Law Number 4 of 1996 concerning Mortgage Rights, hereinafter referred to as (UUHT), states that "Mortgage rights over land and objects related to land, hereinafter referred to as Mortgage Rights, are collateral rights charged to land rights as referred to in Law Number 5 of 1960 on Basic Agrarian Regulations, including or not including objects that are an integral part of the land, for the settlement of certain debts that prioritize positions to certain creditors against other creditors".

The existence of a Mortgage Right is determined through an imposition process which is carried out through two stages, i.e., the first stage of granting a Mortgage Right is carried out by making a Deed of Granting Mortgage Rights (APHT) by the Land Deed Making Official (PPAT). In this case, the role of the Notary in the Mortgage Rights is to adjust it according to the original letter and make a Power of Attorney for Imposing Mortgage Rights (SKMHT). Meanwhile, the PPAT in Mortgage rights, according to UUHT, is appointed as an official to make APHT. In the applicable Laws and Regulations, PPAT is an official authorized to make the deed of transfer of land rights and other deeds whose form of deed has been determined. The PPAT deed is a tool to prove that a legal act has been carried out (Setyaningsih et al., 2018).

Renewal on Mortgage services triggers the government to issue Regulation of the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency Number 5 of 2020 concerning Electronic Integrated Mortgage Services, hereinafter referred to as Permen ATR/BPN Number 5 of 2020. The changes caused by the issuance of Permen ATR/BPN Number 5 of 2020 are the simplification of the Mortgage Right service process that is registered electronically, with the renewal of regulations on Electronic Mortgage services, as a government effort to facilitate people who want to get Mortgage land guarantee services to meet their business needs; hence, there is no need to come to the local Land Office. In Permen ATR/BPN No. 5 of 2020, the recording of the registration of the Mortgage Right is carried out electronically without the need to submit physical evidence at the Land Office counter with the renewal of this Electronic Mortgage Right integrated with Cyber Notary. A cyber notary is a concept that utilizes advances in technology for notaries in carrying out their daily duties, such as digitizing documents, signing deeds electronically,

holding General Meetings of Shareholders (GMS) via teleconference, and other similar matters. *Cyber Notary* has the main function of carrying out certification and authentication in electronic transaction traffic. The certification implies that a notary has the authority to act as a *Certification Authority (trusted third party)* so that a notary can issue digital certificates to interested parties. It differs from the authentication function related to legal aspects that must be met in electronic transactions (Rossalina et al., 2016).

Implementation of HT-el begins with verifying and validating user accounts such as creditors and PPAT as partners of the Ministry of ATR/BPN, then proceed with the HT-el registration process until the issuance of HT-el certificates, where all processes must comply with procedures and requirements under Permen ATR/BPN No. 5 of 2020, which is done electronically. The active role of the Land Office, including creditors and PPAT, is significant in implementing HT-el services. This research analyzes the legal politics of electronically integrated mortgage registration and the Land Deed Making Officials' (PPAT) position in the electronic registration of mortgage rights. Based on the description above, the researcher was interested in researching the legal politics on electronic integrated mortgage right registration.

METHOD

This research design was normative legal research. Normative legal research is a process of finding the rule of law, legal principles, and legal doctrines to answer the legal issues faced. The legal materials used in this research consisted of primary and secondary legal materials. This research employed a statutory approach that examined all laws relating to the legal issues studied and then related them to the issues to be discussed (Marzuki, 2005). Research in this legal writing used primary and secondary legal materials and non-legal materials. Primary legal materials consisted of statutory regulations, official records or treatises on making statutory regulations, and judges' decisions, while secondary legal materials were in the form of all publications that were not official documents, publications related to law included books, texts, legal dictionaries, legal journals and comments on court decisions, and non-legal materials in the form of books, research reports, journals and other scientific works in the form of theses, undergraduate theses, papers and relevant articles (Peter Mahmud Marzuki, 2017). The research was analytical prescriptive, i.e., the nature of research aims to describe and analyze a matter and obtain a complete picture of the legal situation that applies to legal issues. The data analysis technique employed qualitative analysis with deductive conclusions. electronic integrated mortgage right registration.

DISCUSSION

Legal Politics of Electronic Integrated Mortgage Registration

Legal politics is one of the studies to discover critically and comprehensively a certain purpose of legislation through an interdisciplinary approach (Anggoro, 2019). The term legal politics translated into Dutch is "*rechtpolitiek*". Meanwhile, in English, it is known as the terms Politics of Law and Politics of Legislation. However, there is not enough information regarding the use of the term legal politics since Indonesian legal scholars used the term legal politics. UUPA is the direction of the politics of Indonesian land law, which aims to ensure the realization of prosperity for weak groups of people through land policies, i.e., land registration. The implementation of land registration throughout the territory of the Republic of Indonesia is the obligation of the government and rights holders based on Articles 19, 23, 32, and 38 of the UUPA (Alfons & Mujiburohman, 2021).

Various attempts have been made to register land to ensure certainty and legal protection of land rights. One of the current accelerated land registration programs is the Complete Systematic Land Registration (PTSL) which targets that all land in Indonesia will be registered without exception in 2025. To achieve this objective, various regulations related to PTSL have been revised and perfected several times in the context of accelerating land registration. After the lands are registered, the idea of creating a positive publication system is proclaimed. The current publication system adopted is a negative publication system with a positive tendency. According to Hutagalung, the problem is the correctness of the physical and juridical data presented in land registration. If later it is declared incorrect, it depends on the publication system adopted (Hutagalung et al., 2012).

The publication system in land registration is divided into a positive and a negative publication system. Each of them has different characteristics and has legal implications for the legal force of land title certificates (Wulansari et al., 2021). Changing the positive publication system seems to be just an idea because, until now, no regulations have governed that direction. This positive publication review has been included in the 2015-2019 National Medium Term Development Plan (RPJMN). However, it is in the form of land registration using an electronic system. It is positive if implementing a system using a positive publication system and electronic land registration is carried out simultaneously. Several reasons can be put forward: *First*, the positive publication system and electronic land registration are both unworkable. Around 44 million land parcels have not been registered, as well as land map coverage of less than 80 percent; *Second*, in 2025, it is targeted that land will be registered through the PTSL program. Heretofore, land registration is still being carried out because the number of registered land parcels and the use of a positive publication system and electronic land registration are interrelated. The physical and juridical data accuracy must be valid and indisputable. Then, the validation and digitization process (problems, land books, and measurement certificates) requires a long time and costs a lot.

Mortgage Right is a security rights institution that can be charged to land rights as a substitute for the Hypotheek and Credietverband institutions. The Mortgage Law was born at the will of Article 51 UUPA (Nurasa et al., 2020). The law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land explained that the only land rights guarantee institution in Indonesia is a Mortgage Right.

Before the enactment of the Mortgage Right Law (UU HT) Number 4 of 1996, which was known as the Mortgage rights imposed on land rights as stipulated in Article 1162 to Article 1232 of the Civil Code (KUHPperdata) and Article 224 HIR or Article 258 RBg and for Creditverband regulated in Stb. 1908 number 452 was later changed to Stb. 1937 number 190. The definition of Mortgage Rights is mentioned in Article 1, paragraph (1) of the Mortgage Right Law. It states that “the security rights imposed on land rights as referred to in Law No. 5 of 1960 concerning the Basic Regulations on Agrarian Principles, including or not including with other objects as an integral part of the land, for the settlement of certain debts, which prioritizes certain creditors over other creditors. Furthermore, Article 2 states, “Mortgage Right has the nature of not being divided unless it is agreed in the Deed of Granting Mortgage Right if Mortgage Right is charged to several land rights. It can be agreed in the Deed of Granting Mortgage concerned that the payment of the guaranteed debt can be made by way of installments which is the same as the value of each land right as part of the Mortgage Right object and will be released from the Mortgage Right; thus, the Mortgage Right only burdens the remaining Mortgage objects to guarantee the remaining unpaid debts. An expert, Prof. Budi Harsono, defines the Mortgage Right as possessing land rights, containing the authority for the creditor to commit something about the land used as collateral. Nevertheless, not to be physically controlled and used but sold if the debtor defaults and take the proceeds in whole or in part as payment in full of the debtor’s debt to him (Salim HS, 2017).

Based on the Mortgage Right Law, the process of imposing Mortgage Rights is carried out through two stages of activities:

1. Granting Mortgage Right Stage

The granting of a Mortgage Right is preceded by a promise to provide a Mortgage Right as a guarantee for repayment of certain debts, which is outlined in and forms an integral part of the agreement on the debts concerned or other agreements that create debts. The granting of Mortgage Rights is carried out by making APHT by PPAT under applicable laws and regulations. By the nature of the accessoir of Mortgage Rights, the gift must be a follow-up to the main agreement, i.e., an agreement that gives rise to a legal relationship between debt and credit whose repayment is guaranteed. The agreement that triggers the debt-receivable relationship can be made with a private deed or must be made with an authentic deed, depending on the legal provisions governing the agreement’s substance.

2. Mortgage Right Registration Stage

According to Article 13 paragraph (1) UUHT, granting Mortgage Rights must be registered at the Land Office. The procedure for registering Mortgage Rights is as follows:

- a. After the parties sign the APHT made by the PPAT, the PPAT sends the APHT concerned and other documents required by the Land Office. The delivery must be carried out by the PPAT no later than seven working days after the signing of the APHT.
- b. The Land Office carries out Mortgage Right registration by making a Mortgage Right land book, recording it in the land title book as the Mortgage Right object, and copying the record on the relevant land title certificate. The date of the Mortgage Right land book is the seventh day after receipt of the complete documents required for registration, and if the seventh day falls on a holiday, the land book in question is dated the following working day. Mortgage Right was born on the date of the Mortgage land book. The principle of publicity is fulfilled by making the Mortgage land book, and the Mortgage Right is also binding on third parties.
- c. As proof of Mortgage Rights, the Land Office issues a Mortgage certificate under the applicable laws and regulations, which contains an *irah-irah* (head of decision) with the words “*FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD*”. The Mortgage certificate has the same executive power as a court decision with permanent legal force. It is valid as a substitute for the *grosse acte* mortgage insofar as it concerns land rights.
- d. After the Mortgage Certificate is issued, the Mortgage Certificate is handed over to the Mortgage holder.

The implementation of Mortgage services is regulated in Law Number 4 of 1996 but does not have to implement regulations or technical instructions. The Ministry of ATR/BPN issues policies governing the implementation of Mortgage Rights to improve quality and digital transformation with services that have been integrated electronically. Electronic Mortgage Rights are implemented in Ministerial Regulation ATR/Head of BPN Number 9 of 2019. The policy was then revoked and replaced with Ministerial Regulation ATR/Head of BPN Number 5 of 2020. Based on this regulation, Technical Instructions Number 2/Juknis-400 .HR.02/IV/2020 is issued.

In principle, the legal regulation of land rights guarantees with integrated services for Electronic Mortgage Rights is an efficient technological innovation. It provides positive benefits for the people, banks/ creditors, and PPATs, although its implementation still has obstacles. The benefits obtained from this Electronic Mortgage service include the mechanism for the binding process and registration of Mortgage rights being efficient, fast, and easy, costs being more certain, and legal certainty and legal protection for creditors being faster and guaranteed.

First, the difference between the conventional registration of Mortgage Rights and the HT-el System lies in the registration process, where previously, the registration was carried out by the PPAT. However, it is carried out by the creditor now. *Second*, all files are submitted to the Land Office in digital form (uploaded results) without physical files. *Third*, there is no more face-to-face registration of mortgage rights. *Fourth*, a certificate of mortgage rights can be printed directly along with the notes. *Fifth*, the signature on the mortgage certificate from the HT-el system is electronic. The Roya process at the Land Office has not used the HT-el system. The Roya process using a manual system can be completed in three days at the most. Nevertheless, Roya requests that are completed in more than three days can happen due to prior data validation.

Countries such as South Korea, Australia, Turkey, Malaysia, New Zealand, and Singapore have implemented digital services to implement electronic land certificates. In South Korea, the digitization of land certificates has been started since 1998 by an agency called the *Korea Land Information System*, which is tasked with duplicating and consistency of land data. Integrating services from conventional to digital is also to improve service quality. In this activity, the challenges faced by the *Korea Land Information System* (KLIS) are data duplication and consistency. The Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency

(ATR/BPN) received a visit from the South Korean *Ministry of Economic and Finance* (MoEF) delegation. This visit followed up on the *Economic Innovation Partnership Program* (EIPP) cooperation between the Ministry of National Development Planning (PPN)/Bappenas and South Korea's MoEF, which passed its first phase in 2021. This collaboration was carried out to support the planning and analysis of the plan to move the National Capital (IKN) of the Archipelago and a comparative study with the plan to move the capital city of Seoul to Sejong, South Korea. In the second phase, it would be continued with seven projects. One of them is related to land. The first project related to land will focus on matters of land acquisition, land management, and authorities related to land management. Through this meeting, the Ministry of ATR/BPN provided exposure and recommendations regarding land acquisition and management in Indonesia, specifically in the IKN area. In addition, it also explained the use of land on Land Management Rights (HPL)'s land (Ardiyanto, 2022).

One of the breakthroughs of the electronic certificate service in New Zealand is that the public can access the land data platform, including various maps and topographical data, and conduct *e-dealing* or land transactions online (Fauzian, 2021). New Zealand has implemented electronic land certificates since 1996, and one of the country's breakthroughs is that its land data platform can be accessed by the public, including various maps and topographical data, and conduct *e-dealing* for online land transactions.

Currently, Malaysia is piloting an electronic certificate program that has started the process of digitizing land data since 2018. The application of land digitization in Malaysia has spawned several applications, such as e-Land, e-Kadaster, and MyGeoName. At the Ministry of ATR/BPN, digital services are not new. Moreover, 54.1 percent of the total defense services at the Ministry of ATR/BPN have been carried out electronically. The government also performs various transformations, from analog to electronic certificates. However, ultimately, the implementation of the electronic certificates that had been initiated had to be postponed due to various pros and cons reactions. In particular, there are still many misunderstandings regarding the application of this concept in society. It is a *challenge*, and in the future, we will continue to ensure that digitalization is a necessity.

In implementing the electronic land certificate policy as a justification for ownership rights to the land, it can be said that Indonesia is quite left behind regarding electronic land certificates. Indeed, technology makes it easy to motivate fast, efficient, and flexible services. In fact, during the Covid-19 pandemic, the National Land Agency (BPN) has provided land services through four areas of electronic-based land services, i.e., Electronic Mortgage services, examination of land certificates, explanation of Land Value Zones (ZNT), and preparation of SKPT (Certificate Land Registration), which began to be carried out in all areas of the Land Offices in Indonesia. However, for the electronic land certificate service, there were several problems caused by the pros and cons of the people; hence, the program was postponed (Nafisah et al., 2021).

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Position of Land Deed Making Officials (PPAT) in Electronic Mortgage Right Registration

Land Deed Making Officials (PPAT) is a Public Official who is given the authority to create certain land deeds as regulated in the relevant laws and regulations, i.e., the deed of transfer and encumbrance of land rights and property rights of flats and deed of authorization to impose mortgage rights. Public officials are people appointed by authorized agencies to serve the general public in certain fields or activities (Harsono, 2005).

Article 1 point 24 of Government Regulation Number 24 of 1997 (hereinafter referred to as PP No. 24 of 1997) concerning Land Registration states that a PPAT is a public official authorized to create certain land deeds. The land deeds are authentic deeds regarding certain legal actions on land rights or ownership rights of flat units. This statement is in line with Article 1 paragraph (1) Government Regulation of the Republic of Indonesia Number 37 of 1998 Juncto Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 4 of 1999 concerning Regulations for the Position of Land Deeds Making Officials.

In the case of a service application in the form of registration of Mortgage Rights in the HT-el System based on Article 10 PMATR Number 9 of 2019, the task or authority of the PPAT is to submit the APHT as an application requirement in the form of an electronic document to the Land Office. APHT must comply with the Speciality Principle and Publicity Principle as stated in Article 11 UUHT:

1. Identity of the Mortgage holder and Mortgagee;
2. Domicile of the Mortgage holder and Mortgagee;
3. Total guaranteed debts;
4. Dependent value;
5. Mortgage object
6. Meanwhile, fulfilling the Publicity Principle is done through obligatory registration of Mortgage Rights at the local land office.

If the provisions above are not stated in full, then the APHT concerned is null and void as stipulated in the Explanation of Article 11 paragraph (1) UUHT. The deed of Granting Mortgage Rights (APHT), which is not registered with the Land Office, will result in the Creditor's position only as a concurrent Creditor (Imron & Imanullah, 2017).

PPAT, before registering Mortgage Rights, must first register in the PPAT Work Partner Application at mitra.atrbpn.go.id and have validated the data verified by the Land Office. The flow or mechanism for HT-el registration is carried out from the <https://htel.atrbpn.go.id> application by users registered as PPAT and Financial Services. After logging into the BPN partner application, the steps to be taken including:

1. The creditor/ bank comes to the PPAT to make APHT;

2. Checking the certificate/ measurement letter for the Mortgage guarantee object manually and checking it into the electronic system;
3. After checking and the results are appropriate, an APHT (Deed of Granting Mortgage) will be drawn up and signed by the bank and then returned to the PPAT;
4. APHT that has been signed is then scanned and entered into the system jointly with other documents, such as ID Card, Mortgage Right collateral object certificate, PNBPN, bank authorization, and SKMHT (if the basis is from SKMHT), into the HTel system;
5. Then, download the cover letter for the deed and submit it to the creditor/ bank.

CONCLUSION

The legal politics of electronically integrated mortgage registration have been implemented in Indonesia and in several other countries where the regulations regarding the electronic integrated registration of mortgage rights are regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency Number 5 of 2020 concerning Electronic Integrated Mortgage Services hereinafter called Permen ATR/BPN No. 5 of 2020. Electronic integrated registration of mortgage rights in Indonesia is still developing. However, Indonesia has made progress in adopting digital technology in several sectors, including the banking and housing sectors. However, electronic mortgage registration has not been completely implemented. Nevertheless, several steps have been taken toward implementing electronic mortgage registration in Indonesia. Several legal authorities, including the National Land Agency (BPN) and the Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency (ATR/BPN), have attempted to modernize the land registration system through projects such as the Spatial Information System (SISTR) and the Complete Systematic Land Registration-Application Project (PTSL). The project aims to provide land rights certificates for all Indonesian citizens and has accelerated the land registration process with the support of digital technology. Implementing electronic mortgage registration will likely involve cooperation between parties, including BPN, banks or financial institutions, notaries, and other related parties. Using digital technology, the mortgage registration process can hopefully become more efficient, transparent, and accessible online.

The registration after the enactment of Permen ATR/BPN No. 5 of 2020 is carried out at the time of registration of the Mortgage manually, where the PPAT must come directly to the BPN office to represent the bank taking care of everything until the issuance of the Mortgage certificate. Nowadays, the PPAT's task is only to submit APHT through the electronic system and provide guarantees for the legitimacy of the supporting documents contained in a statement letter sent through an electronic system, as well as the Bank, i.e., before the existence of the ATR/BPN Regulation Number 5 of 2020. The Bank does not play a role in binding Mortgage Rights, but currently, banks are also involved in the Mortgage Rights registration process through the electronic system.

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