

Juridical Review on Implementation of Registration of Certificate of Guarantee

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Abstract. This study aims to determine the process of electronically registering a mortgage guarantee deed at the Semarang City Land Office. In addition, to determine whether Law No. 4 of 1996 accommodates electronic registration of Mortgage Rights. The research method used in this thesis uses a juridical-empirical approach. Primary data sources and types of data are taken empirically, and secondary data is taken through the literature. The data collection technique used is through interviews and literature studies, and the data analysis techniques used are qualitative. The results of this research indicate that the electronic registration of Mortgage Guarantee Deeds is a policy innovation at Ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN/*Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional*) offices throughout Indonesia based on the regulations of the Minister of Agrarian Affairs and Spatial Planning of the National Land Agency No. 5 of 2020 concerning Electronically Integrated Mortgages. The service for registration of a mortgage guarantee deed electronically at the Semarang City Land Office is carried out with the Lentera Application System. Therefore, the policy for registering a mortgage guarantee certificate electronically regulated in Ministerial Regulation No. 5 of 2020 concerning Electronically Integrated Mortgage Services is not inconsistent with Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.

Keywords: Mortgage, Electronic, Guarantee Deed Registration.

1 Introduction

Regulations regarding land in Indonesia, in general, there is the 1945 Constitution of the Republic of Indonesia, in Article 33 Paragraph (3), which has regulations relating to land organized by the state to be able to regulate, manage and make land policies for the welfare of the community. Furthermore, to carry out the mandate of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the State has enacted Law No. 5 of 1960 concerning Agrarian Principles, the legal umbrella in regulating land in Indonesia.

Soil is closely related to human life. Everyone certainly needs land, not even just when they live. However, even when they die, humans still need a piece of land [1], so land use must be regulated by law to realize justice related to land control and regulation for citizens. The authority to regulate this land, as mandated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, is given to the government as a state representative. The government has the authority to make laws and regulations relating to land through the DPR and make administrative policies related to land given to the Executive Government. In Indonesia, administrative arrangements relating to land are given to the Ministry of Agrarian

Affairs and Spatial Planning/National Land Agency (ATR/BPN/ *Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional*).

Laws related to the administration of the land sector currently cover not only the recording of the legal status of the land, the granting of land rights, or related to the issuance of land certificates [2]. The development of today's era has made land have an economic aspect. The economic aspect of Indonesian land includes various matters relating to legal events between legal subjects, which usually involve the legal aspects of the agreement [3]. Land law is one field that often uses contract law in practice. One of the economic aspects of land law in Indonesia is the guarantee of mortgage rights over land, which is regulated by Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.

Mortgage rights to this land are closely related to bank credit agreements. Banking practice in Indonesia recognizes two types of credit guarantee rights, namely: First, an individual guarantee is an agreement between the creditor and a third person, which guarantees the fulfillment of the debtor's obligations; Second, according to Article 1131 of the Civil Code, material guarantees are material guarantees, namely all debtor objects, both movable and immovable, both existing and new in the future, become dependents for all individual engagements [4].

Principal guarantees in granting credit are generally in the form of guarantees for something or objects directly related to the requested credit. This guarantee is in the form of a material guarantee whose object is the debtor's property. Land rights is the most widely used form of collateral in bank credit agreements [5]. Because land is the most preferred collateral by creditors, this is because the land is generally easy to sell, has a high value and price and continues to increase, has proof of rights in the form of a certificate, is difficult to embezzle, and can be encumbered with mortgage rights that give creditors special rights [6].

The land certificate used as collateral is to convince the creditor that the debtor will repay the credit up to the agreed time. Debtors who get credit often do not settle their obligations in installments until they are paid off, resulting in bad loans. Various reasons are often given; for example, their business is experiencing a decline, bankruptcy, etc. To overcome this, the creditor usually immediately provides a warning letter to the debtor; it aims to make the debtor want to fulfill his achievements again. However, suppose the debtor still does not want to fulfill his achievements. In that case, the debtor can be considered to have been in default, and the debtor's debt repayment can be made by auction for the guaranteed material guarantees in the form of mortgage rights on land [7]. One of the conditions for an auction of the mortgage right to be carried out is the existence of a Mortgage Deed (*APHT/ Akta Pemberian Hak Tanggungan*), which is then registered with the mortgage deed on the land at the Land Office where the land is located [8].

The Ministry of ATR/BPN, through the Land Office in each City has a strategic role in carrying out the authority to regulate the management, land allocation, granting land rights to citizens, and other land administration. The Ministry of ATR/BPN must be able to work effectively and efficiently in meeting the needs of citizens related to land administration. Along with the rapid development of technology, it has changed the procedure in registering the deed of granting mortgage rights on land, which previously had to be registered manually at the Land Office directly, to be able to register electronically, better known as an internet-based system (online) [9].

Electronic mortgage deed registration has not been explicitly regulated in Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. The legal basis for this electronic mortgage deed registration is the Regulation of the Minister of Agrarian Affairs and the National Land Agency (ATR/BPN) No. 5 of 2020 concerning Electronically

Integrated Mortgage Services. However, juridically, the implementation of electronic mortgage deed registration is different from the regulation of Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Article 13 Paragraph (2), which states that registration of the deed of granting rights dependents is carried out by the Land Deed Making Officer (PPAT/ *Pejabat Pembuat Akta Tanah*) by sending the APHT file and other documents to the nearest Land Office. Therefore, the word sent in this article tends to be interpreted manually, not electronically.

Based on the description above, it can be concluded that the formulation of the problems that can be identified in this legal research, namely, how is the process of registering a mortgage guarantee deed on land electronically at the Land Office of Semarang City. The second problem is that the electronic registration of mortgage security deed does not conflict with Law No. 4 of 1996 concerning Mortgage on Land and Objects Related to Land.

2 Research Methods

The research method used in this study uses a juridical-empirical approach [10, 11]. Sources and types of data used are primary data taken empirically at the Land Office of ATR/BPN Semarang City and secondary data through the library. The data collection technique used was through interviews with the Head of the ATR/BPN Land Office and the Coordinator of the Substance Group for Land and Space Registration, Communal and Institutional Land, the Semarang City Land Office. In addition, a literature study obtained secondary data. The data analysis technique used in this research is qualitative analysis [12].

3 Discussion

3.1 The Process of Electronically Registering the Deed of Guarantee of Mortgage on Land at the Land Office of Semarang City

Banking practice in Indonesia recognizes two types of credit guarantee rights. Firstly, individual guarantee is an agreement between the creditor and a third person, which guarantees the fulfillment of the debtor's obligations. Secondly, according to Article 1131 of the Civil Code, material guarantees are that all debtor objects, both movable and immovable, both existing and those that will only exist in the future, become dependents for all individual engagements. Material rights in civil law in Indonesia are related to credit guarantees in banks, one of which is mortgage rights over land [4]. Arrangements regarding mortgage rights are regulated in Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.

Based on Law No. 4 of 1996, Article 1 No. 1 states that mortgage rights are mortgage rights on land and objects related to land are guarantees imposed on land rights as referred to in Law No. 5 of 1960 concerning the Basic Agrarian Regulations, including or not including other objects which are an integral part of the land, for the settlement of certain debts which give priority to certain creditors over other creditors. This means that a mortgage is a tool in the context of repayment of the creditor in which there has previously been a credit agreement between the creditor and the debtor. The mortgage is a guarantee if, in the future the debtor defaults.

Based on Law No. 4 of 1996, it is stated that the mechanism for granting mortgages must be preceded by a bank credit agreement with a mortgage guarantee as a debt settlement from the debtor to the creditor as outlined in the agreement and is an inseparable part of the credit agreement. Furthermore, based on Article 10 Paragraph (1) of Law No. 4 of 1996 states that:

“The granting of mortgage is preceded by a promise to provide mortgage rights as collateral for the settlement of certain debts, which are outlined in and are an inseparable part of the relevant debt agreement or other agreements that give rise to the debt.”

Further regulation is related to the mechanism for granting Mortgage Rights in Law No. 4 of 1996, namely in Article 10 Paragraph (2), which states that:

“The granting of mortgage rights is carried out by making a Deed of Granting Mortgage by PPAT in accordance with the applicable laws and regulations.”

To be able to issue Mortgage Grants, the mechanism has been regulated in Article 13 of Law No. 4 of 1996, which states that:

1. The granting of Mortgage Rights must be registered at the Land Office.
2. No later than 7 (seven) working days after the signing of the Deed of Granting Mortgage, as referred to in Article 10 Paragraph (2), the PPAT is obliged to send the Deed of Granting of Mortgage concerned and other necessary documents to the Land Office.
3. The registration of the Mortgage Rights, as referred to in Paragraph (1), is carried out by the Land Office by making the Mortgage Land books and recording in the Land Rights Books, which are the objects of the Mortgage Rights, and copying the notes on the certificates of the land rights concerned.
4. The date of the Mortgage Land book, as referred to in Paragraph (3), is the seventh day after the complete receipt of the documents required for registration. If the seventh day falls on a holiday, the relevant land book is dated on the next working day.
5. Mortgage Rights are born on the day of the Mortgage land book, which is regulated as referred to in Paragraph (4)

The Mortgage Certificate issued by the Land Office is required to contain references, “For Justice Based on the Almighty God,” to be able to provide the basis that the Mortgage Certificate has executive power which can be executed through voluntary execution or can be carried out by an execution auction if the right giver The Dependent makes a breach of contract to the holder of the Mortgage.

The registration of Mortgage Rights according to Law No. 4 of 1996 does not state that the registration of Mortgage Rights must be carried out directly at the Land Office because, in the opinion of the researcher, the Mortgage Law at the time it was made did not experience the rapid development and progress of information technology as it is today. Bearing that the Law governing Mortgage Rights was still passed in 1996, the registration mechanism still uses conventional methods and must come directly to the local Land Office.

The mechanism for registration of Mortgage Rights carried out at the Semarang City Land Office has now been carried out with an electronic system. The Semarang City Land Office no longer serves the counter for PPAT related to land registration in Semarang City. The service and mechanism for registration of Mortgage Rights at the Semarang City Land Office have

been carried out electronically or online and handled by a special team, namely the IT team that handles electronic mortgages. Registration can be done from the home or the creditor's office. Implementing online registration is indeed a policy, especially during the pandemic, to reduce the number of meetings; if possible, there will be no meetings. So that services are directed to all online [13].

Based on instructions from the Ministry of ATR/Head of BPN, services regarding land registration in all Land Offices in Regencies/Cities throughout Indonesia began to be carried out online or electronically. Land services related to land registration are carried out as an innovation considering the current conditions and situation. The condition of the development of information technology and the Covid-19 pandemic that is still being experienced are the main factors causing the electronic registration service policy at the Semarang City ATR/BPN Office. In the beginning, implementing the electronic mortgage registration service at the Semarang City ATR/BPN Office appeared various obstacles and problems, one of which was much opposed by PPAT because they were used to the manual method [13].

In the author's opinion, based on the description of the results of interviews in the field of services and the mechanism for registration of Mortgage Rights at the Land Office of Semarang City, all registration services have been carried out online without manual services.

Furthermore, the Deed of Mortgage in the credit agreement must be registered at the Land Office in the City of Semarang for the highest level of application for registration. Therefore, the Semarang City Land Office innovated to create a special PPAT service named Lentera application. With this application, PPAT does not need to come to the Land Office.

Regarding the legal basis for the electronic registration of Mortgage Rights, it has been regulated in the Regulation of the Minister of ATR/Head of BPN of the Republic of Indonesia No. 5 of 2020 concerning Electronic Integrated Mortgage Services. Article 1 No. 7 of the Regulation of the Minister of ATR/Head of BPN No. 5 of 2020, states that what is meant by Electronically Integrated Mortgage Services, hereinafter referred to as Electronic Mortgage Services (HT-el) is a series of Mortgage service processes in the context of data maintenance. Land registration is carried out through an integrated electronic system. The Electronic Mortgage Service (HT-el) at the Semarang City Land Office is carried out with the Trusted Convenient Counter (Lentera) system.

The mechanism for registering mortgage rights electronically at the Semarang City Land Office is carried out through the following stages:

1. Document Acceptance Stage
2. Document Check Stage
3. Stages of Payment of Filing Fees
4. Bookkeeping Stage
5. Certificate Granting Stage

In the author's opinion, related to granting a Mortgage certificate, a validation of the submitted files has also been carried out to avoid data falsification by the applicant. Validation includes the correctness of the data, checking that the object of the mortgage is not blocked, clean, and not in dispute. In addition, the Land Office must check each deed. This Lentera application system was created to upload scanned data from original documents. If the uploaded file is a photocopy or non-original document, the system will not be able to read the upload from the applicant.

3.2 Electronic Registration of Mortgage Deed is Not Contrary to Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land

Granting a mortgage protects the rights of creditors, usually legal entities, namely banks, which are preceded by a credit agreement [14]. The banking credit agreement states that the debtor will fulfill the promise of paying off debts to creditors (banks) with collateral in the form of immovable goods (land). Therefore, the debtor is willing to provide a mortgage guarantee on the land, inseparable from the banking credit agreement that creates debt between the debtor and creditor. The legal basis for the existence of Mortgage Rights has been regulated by Law No. 4 of 1996 concerning Mortgage Rights and Objects Related to Land. Article 13 and Article 14 of Law No. 4 of 1996, which are related to the mechanism for registration of Mortgage Rights, stipulate that the registration must be carried out directly at the local Land Office. It means that the registration of Mortgage Rights is carried out by visiting directly and manually the Land Office.

Regarding the direct and manual registration mechanism at the Land Office, considering the conditions and developments of the times at the time this law was made, the development of information technology and internet infrastructure was not yet advanced and still required verification of the required documents for registration of Mortgage Rights directly by the officer. Authorized Land Office. [15]

Developments in information technology today have demanded policy innovations that should be able to provide easy access for humans related to public services carried out by government institutions. The development of information technology based on the internet has increasingly opened and facilitated access to information for the public in managing public documents for the benefit of the community. [16] It has given rise to the discourse of e-government by utilizing information technology based on the internet.

To take advantage of current technological developments and internet networks, the Ministry of ATR/Head of BPN has also implemented services based on electronic systems. The legal basis is the issuance of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 5 of 2020 concerning Electronically Integrated Mortgage Services. This Ministerial Regulation of ATR/BPN No. 5 of 2020 is intended to build services to the community and especially service partners (PPAT and Legal Entities) in an effective, efficient, transparent and accountable manner. This electronic Mortgage registration service is better known as the Electronic Mortgage Service (HT-el). Nadira [17] states that HT-el services are a form of service delivery innovation by the ATR/BPN Office to facilitate the community by utilizing the development of internet information technology.

Regarding the juridical definition of Electronic Mortgage Rights (HT-el/*Hak Tanggungan elektronik*), it is regulated in Article 1 No. 7 of the Regulation of the Minister of ATR/Head of BPN No. 5 of 2020, which states that:

“HT-el is a series of service processes for Liability Rights in the context of maintaining land registration data which is carried out through an integrated electronic system.”

Concerning synchronization in statutory regulation, it is based on the theory of tiered law (Stufenbau theory) by Hans Nawinsky, which in essence, is that the rule of law under the law must not conflict with the rule of law that is higher [18, 19]. The rule of law is higher as the basis. Under the law, this Regulation of the Minister of ATR/BPN No. 5 of 2020 regarding the registration of Electronic Mortgage Rights (HT-el) does not conflict with Law No. 4 of 1996.

Article 13 Paragraph (1) and Paragraph (2) of Law No. 4 of 1996 do not state that the registration of Mortgage Rights must be registered directly by visiting the Land Office. Article Paragraph (1) states that “the granting of Mortgage Rights must be registered at the Land Office.” Whereas Paragraph (2) states that “No later than 7 (seven) working days after the signing of the Deed of Granting Mortgage as referred to in Article 10 Paragraph (2), PPAT is obliged to send the Deed of Granting Mortgage concerned and other documents required to the Office of Land.”

The two articles do not mention that the registration of the Mortgage Deed must be done directly at the ATR/BPN Office and manually. The law only states how long the time limit must be submitted by the PPAT or the applicant after the issuance of the APHT.

The electronic Mortgage registration service does not conflict with Law No. 4 of 1996 concerning Mortgage Rights because it still refers to the Mortgage Law, and this is a service innovation and even recommendations from the KPK as innovations, reducing crowds, and corruption, even all services. wish it was now electronic [13].

In the author’s opinion, the suitability of the electronic registration of Mortgage Deeds at the Semarang City Land Office with Law No. 4 of 1996 is because this electronic registration policy has a clear legal basis, namely through the Regulation of the Minister of ATR/Head of BPN No. 5 of 2020, where this rule still refers to Law No. 4 of 1996. In addition, the impact of the Covid-19 pandemic is to be able to control a wider spread, so people are prohibited from congregating in one place. Thus, service policy innovation with an online (electronic) system is a must run by the Semarang City Land Office.

The application of the policy for registering a mortgage guarantee certificate electronically at the Semarang City Land Office certainly faces various obstacles, considering that the registration mechanism will be different from the previous registration mechanism. The problem, for now, is that the system is not running as bad as it was when the system was first implemented. The obstacles were only limited to errors during doing the deed (APHT). In the past, there were still many obstacles due to the habitual transition from manual to electronic systems, scan errors, and data. But for now, there are not many problems because there have been many improvements, and if there is an error, it will be immediately notified to the creditor to be corrected [13].

In the author’s opinion, the obstacles in the implementation of the registration of the Mortgage Guarantee Deed electronically at the Semarang City Land Office are the system that sometimes has errors; there are errors when scanning and the data in the APHT. In addition, the transition from manual to electronic is also an obstacle because it is considered a hassle. After all, PPAT is used to using a manual system, but all these obstacles can now be overcome.

It is clear that based on the above description regarding the electronic registration of Mortgage Rights, this does not conflict with Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. Meanwhile, positive legal regulations governing the electronic registration of Mortgage Rights are regulated in the Minister of ATR/BPN Regulation No. 5 of 2020 concerning Electronically Integrated Mortgage Services.

4 Conclusion

The process of registering a mortgage guarantee certificate electronically is a policy innovation at the Semarang City Land Office based on the regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 5 of 2020

concerning Electronically Integrated Mortgage Services. The service for registration of a mortgage guarantee deed electronically at the Semarang City Land Office is carried out with the Lentera Application System. The stages in the registration of a mortgage guarantee deed in the Semarang city are the Document Receipt stage, the Document Inspection Stage, the Filing Fee Payment Stage, the Bookkeeping Recording Stage, and the Certificate Granting Stage.

The policy for electronically registering Mortgage Deeds regulated in Ministerial Regulation No. 5 of 2020 concerning Electronically Integrated Mortgage Services is not inconsistent with Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land because Article 13 Paragraph (1) and Paragraph (2) of Law No. 4 of 1996 do not state that the registration of Mortgage Rights must be registered directly by visiting the Land Office.

4.1 Suggestion

The Semarang City Land Office needs to do more socialization and guidance to the community, especially PPAT, regarding electronic service policies using the Lentera application system because the community still faces many obstacles.

For the central government, especially the parliament (*Dewan Perwakilan Rakyat Republik Indonesia/DPR RI*), there is a need for a revision of Law No. 4 of 1996 concerning Mortgage on Land and Objects Related to Land so that it can adapt to the times with the rapid development of information technology and the existing internet network, to facilitate services for land rights for the people of Indonesia.

People need to understand more about electronic services that the Land Office has socialized to make it easier to use these electronic services.

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