

Subject Limitation of Liability Rights to Enforcement

Irmawati and Akhmad Khisni^{**)}

^{*)} Student of Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-Mail: irmawati@gmail.com

^{**)} Lecturer Student of Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang

Abstract. *This study aims (1) To find out the legal consequences of the subject of limitation of the Underwriting Right Provider to the enactment of Act 9 paragraph (5) Regulation of the Minister of ATR/BPN Number 9 of 2019 concerning Electronic Mortgage Rights Services. (2) To find out the legal force of the Deed of Underwriting Right (APHT) if the provisions of Act 9 paragraph (5) of the Regulation of the Minister of ATR/BPN Number 9 of 2019 concerning Electronic Mortgage Rights Services are deviated by the PPAT. This research uses an Empirical Normative approach. Normative Approach is research that refers to laws and regulations to gain knowledge about the relationship between one regulation and other regulations and its application in practice. While the empirical approach is a method that sees law as a social phenomenon. This study sees the law as an independent variable that causes various effects in society called *cocio legal* research. This research yields (1). Due to the legal restrictions on the subject of granting Mortgage Rights to the enactment of Act 9 paragraph (5) Regulation of the Minister of ATR/BPN Number 9 of 2019 concerning Electronic Mortgage Rights Services, namely the element of will defects in APHT, the emergence of nominee agreements and PERMEN ATR/BPN No. 9/2019 contrary to the principle of *lex superiori derogat legi inferiori* Act 8 jo Act 4 paragraph (4) and paragraph (5) UUHT (2). The HT-el registration service for Underwriting Rights by PPAT that carries out the registration process is only an alternative and not mandatory. If after the enactment of HT-el then HT services are not manually operated or dispensed with by the Land Office, then the Land Office refusing HT registration outside HT-el is contrary to Permen 9/2019 and UUHT, so if the provisions of Act 9 Paragraph (5) Regulation of the Minister of ATR/BPN Number 9 of 2019 can be distorted by PPAT, by means of PPAT has the right to refuse making APHT if material data provided indicates that it is sourced from a legal deviation of imperfect rights. Because it is against Act 20 paragraph (4) PERMEN ATR/BPN No. 9/2019 which states that documents which are declared to be false are entirely the responsibility of the applicant both criminal and civil.*

Keywords: *Legal Consequences; Subjects for Underwriting Rights; Electronic Mortgage Services.*

1. Introduction

The problem that is being faced by Indonesia in building a land administration governance system is that it is not consolidated and accurate data equations using fast and sophisticated governance so that it is easy to find and find the data needed regarding the land object. In the event that the public's desire to apply for a loan from a bank is accompanied by the installation of mortgage rights on the land object as the object of collateral, it requires accurate and sophisticated data collection so that there

are no errors in data collection or loading related to the land administration data of the collateral object.

In line with the foregoing, the government will increase the distribution of credit or financing to the community, both commercial and consumptive credit, as well as people's business credit in order to improve the people's standard of living. Credit is the provision of money or an equivalent claim, based on a loan agreement or agreement between the bank and other parties in it, which obliges the borrower to pay off the debt after a predetermined period of time by giving money.¹

As a financial institution, the main activity of banking is lending. Etymologically, credit comes from the Latin word "credere", which means trust where a debtor obtains credit from a creditor because of trust.² Credit is the main activity of the bank because the profits or profits of the bank are mostly from lending, namely in the form of loan interest, fees and administrative costs. Credit consists of 4 (four) elements, namely, trust, grace period, achievement and degree of risk.³ Based on the credit analysis it does, the bank will make a decision to reject or approve the debtor's request. Provision of such funds is obtained through a credit process with various conditions that must be met by the prospective borrower or debtor. Considering the importance of the position of funds originating from bank credit, it is only natural that the parties, in this case the bank as the credit provider and the debtor as well as other related parties, receive legal protection, so as to provide legal certainty to interested parties, through a strong mortgage guarantee institution. as an effort to anticipate the emergence of various risks for interested parties in the future.

In a credit or financing agreement, it is not uncommon to find that the debtor is negligent in carrying out his performance. To anticipate losses if the debtor defaults on his promises, the bank as a creditor needs guarantees from the debtor. Generally, what is used as collateral is land because it has a high selling value, is easy to sell, has proof of rights, is difficult to embezzle, and can be burdened with mortgage rights that can give creditors special rights.⁴ Collateral in the form of land and objects on it or not with objects on it are referred to as guarantees of mortgage as regulated in Act No. 4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land.

In this regard, the provisions regarding legal protection for creditors in a credit agreement with guarantee of Land Rights based on Law No. 4 of 1996 on Mortgage

¹ M Bahsan. (2007). *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Jakarta: PT Raja Grafindo. p.75

² Hermansyah. (2008). *Hukum Perbankan Nasional Indonesia*. Jakarta: Kencana Prenada Media Grup. p.57

³ Muhammad Jumhana. (2000). *Hukum Perbankan Indonesia*. Bandung: Citra Aditya Bakti. p.370

⁴ Effendi Perangin. (1991). *Praktek Pengguna Tanah Sebagai Jaminan Kredit Rajawali Pers*. Jakarta p.ix.

Rights can be analyzed, that legal protection for creditors is absolute therefore the legal issue is a vague norm. in legal protection arrangements for creditors. The provisions in Act 20 paragraph 1 letters a and b of the Law on Mortgage Rights regarding the execution of collateral are the facilities provided by the law. Security rights are not legal protection, so that it is not sufficient to provide proportional protection for creditors.

Mortgage rights as regulated in Act No. 4 of 1996 concerning Mortgage Rights (hereinafter abbreviated as UUHT) are property security rights that can be imposed on land rights (HAT) or property rights over apartment units (HMSRS). Based on Act 1 number 1 UUHT, what is meant by Mortgage Rights is a guarantee right that is imposed on the right to land as referred to in the UUPA or not along with other objects which are an integral part of the land to pay off certain debts, which gives a position that is give priority to certain Creditors against other Creditors. Act 1 point 1 is the definition provided by the UUHT for Mortgage Rights itself.

From the meaning stated in Act 1 point 1, the main elements of Mortgage Rights can be described:

- a. Guarantee rights for debt repayment;
- b. The guaranteed debt is a certain amount;
- c. Objects of Mortgage Rights are rights to land according to UUPA, namely Ownership Rights, Building Use Rights, Business Use Rights, and Use Rights;
- d. Mortgage rights can be imposed on land and objects related to land or just the land;
- e. Mortgage rights, giving preference or priority rights to certain creditors over other creditors.

Furthermore, in Act 8 of the UUHT regulates the subject of the Giver of the mortgage, it does not impose a limit on who can be the subject of the Giver of the mortgage which will be used as a guarantee, the emphasis is on the Giver of the mortgage right is the one who is entitled to the mortgage right or HMSRS which will be the object of the mortgage right. Likewise, the provisions of Act 4 paragraph (4) and paragraph (5) also indicate that land rights that will be guaranteed with mortgage rights include non-land objects attached to mortgages that do not belong to the mortgage holder.

According to UUHT, the authority to grant Mortgage Rights is the owner/holder of land rights or HMSRS and/or owners of non-land objects attached to land rights who are voluntarily willing to provide security rights as collateral for debt. UUHT does not limit that the subject of the guarantor of the mortgage must be a debtor in the main

agreement, but it could also be that the Giver of the mortgage is a third party affiliated with the debtor.

In practice, there is no limitation on the subject that can become the Giver of the mortgage causing problems. If the Giver of the mortgage is a debtor of his own land, it does not cause a problem, because the debtor already understands the risks of default, the land that is guaranteed will be auctioned off to pay off his debt. Problems will arise if the land that is guaranteed by the debtor is land owned by a third party, because there could be an agreement between the third party as the owner of the land and the debtor in lending the land due to coercion (Dwang), mistake (Dwaling), Fraud (Bedrog) and abuse of circumstances (Misbruik van omstandigheden) which is a defective form of will.

In addition, the land which becomes the object of a third party's mortgage also creates problems if the debtor is declared bankrupt. The position of the object of collateral belonging to a third party in the bankruptcy has not yet received a clear regulation, whether it is entered as a debtor's bankruptcy bill or not.

To anticipate these problems, the government through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency issued ATR/BPN Ministerial Regulation Number 9 of 2019 concerning Electronic Mortgage Services, which limits the Mortgage Rights that can be registered if the guarantor is the debtor himself. In Act 9 paragraph (5) Regulation of the Minister of ATR/BPN Number 9 of 2019 states that the requirements in the form of a Certificate of Land Rights or Ownership of Flats must be in the name of the debtor. Some circles consider the regulation of Act 9 paragraph (5) as a form of prohibition against making APHT and registering HT that do not belong to the debtor himself.

Problems that can arise include conflicting principles, namely higher regulations overriding lower regulations *lex posteriori de rogat legi inferiori*, where Ministerial Regulation ATR/BPN Number 9 of 2019 contradicts the provisions of Act 8 in conjunction with Act 4 paragraph (4) and paragraph (5) of the UUHT . Furthermore, the problem that arises is the practice of sham buying and selling or commonly known as a nominee contract between the debtor and owner of a certificate of land rights for the sake of imposing mortgage.

2. Research Methods

This study uses a Normative Empirical approach. The Normative Approach is research that refers to statutory regulations to obtain knowledge about the relationship between one regulation and another and its application in practice. Meanwhile, the

empirical approach is a method that sees law as a social phenomenon. This study sees the law as an independent variable that causes various effects in society called Cocio legal research.

3. Results and Discussion

3.1. Legal Consequences of the Enforcement of Act 9 paragraph (5) of Regulation of the Minister of ATR/BPN Number 9 of 2019 concerning Electronic Mortgage Services

The guarantor of the mortgage right according to the provisions of Act 8 of the UUHT states that the Giver of the Mortgage is a person or legal entity that has the authority to take legal actions against the object of the dependent right in question. Based on Act 8, the Mortgage Giver here is the debtor or debtor. However, it is also possible for other legal subjects to guarantee repayment of debtors' debts on condition that the Giver of the Mortgage has the authority to take legal actions against the object of the Mortgage.

Security rights as a guarantee institution for land rights do not contain the authority to physically control and use the land that is used as collateral, so the land remains under the control of the guarantor of the mortgage. Except in the circumstances referred to in Act 11 paragraph (2) letter c of the UUHT. Thus, because the objects of the Mortgage are Ownership Rights, Business Use Rights, Building Use Rights, and Use Rights over state land, in line with the provisions of Act 8 of the UUHT, individuals or legal entities who can have rights Property, land use rights, building use rights, and use rights over state land. With due observance of Act 8 paragraph (2) of the UUHT. So the HT provider does not have to be a debtor or debtor,

The imposition of the Mortgage must meet the requirements set out in the UUHT, namely:

- a. Granting of Mortgage Rights is preceded by a promise to provide Mortgage Rights as collateral to pay off certain debts set forth in and constitute an inseparable part of the credit agreement concerned or other agreements that give rise to the debt.
- b. Granting of Mortgage must fulfill special requirements which include: name and identity of the holder and provider of the Mortgage, domicile of the parties, holder and provider of Mortgage Rights, clear designation of debts or debts that are guaranteed to be repaid with Mortgage Rights, insurance coverage, and a description of which clear regarding the object of the Mortgage.
- c. Granting of Mortgage must fulfill publicity requirements through registration of Mortgage Rights at the local Land Office (Municipality/Regency).

- d. The Certificate of Mortgage as proof of existence of Mortgage contains an executorial title with the words "For Justice Based on Almighty Godhead".
- e. Cancel by law, if it is agreed that the Mortgage holder will have the object of the Mortgage Rights if the debtor is in default (default).

Land mortgage guarantees are often used to obtain credit facilities because land has a high economic value and always increases over time. In the reality of the implementation of credit agreements, many debtors use collateral on behalf of the right holder who is another party, not himself, in this case it is often called a third party. Involvement of a third party in this credit agreement means that the third party can bear credit repayment by the debtor, as explained in Act 1820 of the Civil Code explained that coverage is an agreement whereby a third party, for the benefit of the debtor, binds himself to fulfill the agreement of the debtor. when this person himself doesn't fulfill it.

The legal rules regarding the implementation of the imposition of Mortgage Rights in a credit agreement aim to provide legal certainty and protection for all parties in utilizing land and objects related to land as credit collateral. For this reason, the practice of binding credit with guarantees of mortgage in banking activities should also be carried out in accordance with what has been regulated in the UUHT, which is intended to provide and provide balanced and good protection to credit recipients and credit providers by treating strong collateral rights institutions. and provide legal certainty as well.⁵Mortgage provides legal certainty and protection for parties involved in a credit agreement, legal certainty and protection can be seen from the existence of speciality requirements and publicity requirements. Act 12 of the UUHT also provides legal protection for third parties who provide Mortgage Rights, where in the Act it prohibits the granting of Mortgage Rights accompanied by a promise that if the Debtor fails to promise, the Creditor due to law will become the owner of the object of the Mortgage, and if such an appointment is made then will be null and void.

The nominee agreement is one of the agreements that is not strictly and specifically regulated, but in practice many parties use nominee agreements in land sale and purchase practices in Indonesia. Basically, a nominee agreement in Indonesia is not a form of agreement that violates the provisions of the agreement law, although has not been regulated explicitly and specifically in the Civil Code. However, if the material or object agreed by the parties is not in accordance with the prevailing laws and regulations in Indonesia, then this can cause legal problems.

⁵ Ignatius Ridwan Widyadharma. (1996). *Hak Tanggungan Atas Tanah Beserta Benda yang Berkaitan dengan Tanah*. Semarang: Universitas Diponegoro.p. 5

The provisions of Act 1317 of the Civil Code above can be a situation where:⁶

- a. A person promises to himself that he declares the right of ownership over an object to another, with himself still being a person who continues to enjoy enjoyment, whether in the form of individual rights or limited material rights - *jura in re-aliena* (for example in the form of usufructuary rights). result);
- b. A person promises to himself that he gives up individual rights as well as limited material rights - *jura in re-aliena* which gives enjoyment of said object (for example, usufructuary rights in material rights) free of charge, with he himself remains the holder of property rights, over these objects.
- c. A person gives ownership of an object to another person, with a promise to another person, that certain individual rights and material rights are limited in re-paragraph which gives enjoyment of said object (for example, rights in material rights) - on the object is handed over to another party free of charge.

Before the birth of the PerMen ATR/BPN No. 9/2019 which regulates the limitation of the subject of the mortgage rights provider there has been a transfer of land rights by the credit applicant with the certificate collateral owner by making a separate agreement after the Sale and Purchase Deed is signed before the PPAT. This is done by the parties in the sale and purchase in order to obtain credit approval from the bank.

Some banks have required the owner of the mortgage guarantee to be in the name of the debtor or at least in the name of the family lineage or above. This condition is done to anticipate resistance if the mortgage rights are to be executed.

In addition, nominee agreements usually occur when the seller has difficulty obtaining credit from the bank, so that what is done provides an opportunity for other parties to transfer their rights to land with the aim that after the transfer of the seller's name can be accepted as a debtor by the bank. Or the seller and the buyer agree that the disbursement of credit by the bank is used jointly, likewise the installment payment is borne according to the proportion used.⁷ So that the form of an agreement like this is similar to a joint responsibility agreement. The smuggling of the law by using a nominee agreement when viewed from the provisions of Act 1320 of the Civil Code in conjunction with Act 26 paragraph (2) of the UUPA, the legal action is null and void, meaning that these acts are deemed to have never existed by law, then these agreements by law is considered to have never existed as long as it contains an element of transfer of land rights. So that the AJB made before PPAT remains binding

⁶ Gunawan Widjaja. Op.Cit, p. 75.

⁷ Muhajir, Factors Causing Troubled Financing at BRISyariah Bank, BRISyariah Kendari Remedial Interview, December 20, 2019

on the parties even though later in fact the parties make an additional agreement which states that:⁸

- 1) The Sale and Purchase Deed made by PPAT only fulfills the requirements for credit application so that if we observe it, it is not a real agreement.
- 2) There is a clause in the agreement which states if the credit facility of the buyer, aqo debtor, is paid off, the debtor is obliged to return the certificate to the seller in its original state.

A cause is declared contrary to law, if the cause in the agreement concerned is contrary to the applicable law. Thus, it is logical to determine whether a cause is against the law, it only remains to look at the applicable laws, whether there are prohibitions regarding this matter or not. So that the concept of the agreement is said to be contrary to the law, it remains only to look at the applicable laws and those that prohibit the contents of the agreement.

At the beginning of the enactment of Permen ATR/BPN Number 9 of 2019, the bank has informed the notary that now customers are required to return their own name to the name of the new debtor, the credit approval process can then be carried out to then install mortgage rights. So that the PPAT is forced to make a transfer of rights either through a sale or purchase or a grant which is actually not controlled by the object of the mortgage right by the person receiving the transfer. This condition is contrary to Act 1321 of the Civil Code, namely the existence of Fraud (*bedrog*) in the buying and selling process or grants. Even the statements submitted by the parties to PPAT seem to be true but false, which can cause losses to the seller or the donor of the grant.⁹

If the provisions of Act 9 paragraph (5) of the Regulation of the Minister of ATR/BPN Number 9 of 2019 state that the requirements in the form of a certificate of land rights or ownership rights to apartment units must be enforced on behalf of the debtor, then what happens will further clarify or open up legal loopholes for the debtor to enter into a nominee agreement either with a straight lineage party or with another party, which results in potential disputes in the future.

Position of PerMen ATR/BPN No. 9/2019 Regulating the Restriction of HT Giver Subjects Contrary to the Principle of *Lex Superiori Derogat Legi Inferiori*

The position of the Ministerial Regulation that was established before the P3 Law came into effect, remains in effect as long as it is not revoked or canceled. However, there

⁸ A Widya Arung Raya, Chairperson of the Association of Southeast Sulawesi Regional Land Deed Making Officials, Interview on 27 December 2019

⁹ Sudirman, Chairman of the Kendari City Indonesian Notary Association, Interview dated December 30, 2019.

are two types of positions of Ministerial Regulations that were established before the enactment of the P3 Law. First: Ministerial Regulations which are formed on the basis of orders of higher statutory regulations, qualify as statutory regulations. Second, a Ministerial Regulation that is formed not on the basis of an order of a higher level statutory regulation (on the basis of authority) qualifies as a Policy Rule. This is because the P3 Law took effect from the date of promulgation (vide Act 104 of Law No. 12/2011 2011), so that there was a Ministerial Regulation that was formed before the date of promulgation of Law No. 12/2011 is still subject to the provisions of the old law (Law No.10/2004). Consequently,

Furthermore, the position of the Ministerial Regulation which was formed after the enactment of the P3 Law, whether formed on the basis of an order of a higher level of legislation or that which was formed on the basis of the authority in certain areas of governmental affairs that resided with the minister, qualify as statutory regulations. Thus, the Ministerial Regulation has legal force that is publicly binding and can be used as an object of examination at the Supreme Court, if it is deemed contrary to law.

The existence of PerMen ATR/BPN No. 9/2019, there are no laws and regulations above it that clearly delegates it. The provisions of Act 9 paragraph (5) of the Ministerial Regulation which regulates that APHT which can be registered in the HT-electronic system with the subject of the HT-Giver must be the debtor himself, potentially contradicting a higher regulation, namely UUHT. Therefore, according to the P3 Law, it can be categorized as statutory regulation, a judicial review can be conducted at the Supreme Court. The provisions in the UUHT regarding the birth of SKMHT because the debtor must be the owner of the guarantee. Only in the candy is the absence of a guarantor or guarantor again, so there is no longer the term guarantor or insurer: borgtocht or guarantor. Regarding this coverage is regulated in Act 1820 - Act 1850 KUHP). Borgtocht is a term in civil law commonly used in connection with guarantee law. There are two types of guarantees, namely material guarantees and personal guarantees.¹⁰

In the event that HT-el registration services outside the HT-el system are abolished, where HT-el only registers HT from the debtor's HT Giver (vide Act 9 paragraph (5), it can be interpreted that Act 9 paragraph (5) Permen 9/2019 as a form prohibition for HT that does not belong to the debtor and is contrary to the principle of *lex superior derogate legi priori*, namely UUPA and Act 8 in conjunction with Act 4 paragraph (4)

¹⁰ Widhi Handoko, Electronic Mortgage Online System and Absence of Borgtocht, Lecturers of MKn Undip & Unissula Semarang and Notary-PPAT Semarang City, Kabarnotariat.id, 23 August 2019.

and paragraph (5) UUHT UUHT. alone can file a judicial review at the Supreme Court of the Republic of Indonesia.

3.2. Strength of Binding Mortgage Assignment Deed (APHT) If the provisions of Act 9 Paragraph (5) of the Regulation of the Minister of ATR/BPN Number 9 of 2019 concerning Electronic Mortgage Services are misled by PPAT

Act No. 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA) which is the basic regulation governing the control, ownership, designation, use, and control of land use with the aim of implementing the management and utilization of land for the greatest prosperity of the people. One of the aspects needed for this purpose is the certainty of land rights which is the main basis for legal certainty of land ownership.

To ensure legal certainty over land rights, Act 19 of the UUPA has regulated the following basic provisions for land registration:

- (1) To ensure legal certainty, the Government has conducted land registration throughout the territory of the Republic of Indonesia, according to provisions regulated by government regulations.
- (2) Land registration referred to in paragraph (1) includes:
 - a) land measurement, mapping and bookkeeping;
 - b) registration of land rights and transfer of these rights;
 - c) giving letters of proof of rights which are valid as a strong means of proof.

The land registration publication system, which is a negative publication system as contained in Act 19 paragraph (2) letter d of the UUPA, states: "the provision of valid proof of rights documents as a strong means of proof." The UUPA only states that the proof of rights resulting from land registration is a strong (negative) evidence and not absolute (positive) evidence.

However, according to the regulation of Act 32 paragraph (2) PP 24/1997 which regulates that the publication system used in Indonesia is negative with a positive tendency, it contains certain conditions. The regulation of Act 32 paragraph (2) is not mandated by the UUPA, so that the negative publication system with a positive tendency still needs further review.

The existence and position of PPAT is a mandate of Act 26 paragraph (1) of the UUPA which states: "Buying and selling, exchanging, giving, giving with will, giving according to custom and other actions intended to transfer property rights and their supervision are regulated by a Government Regulation. ". As an implementation of the provisions

of Act 26 paragraph (1) of the UUPA, the provisions of Act 7 paragraph (1) PP 24/1997 stated that PPAT was appointed and dismissed by the minister (in this case the Minister of ATR/BPN).

Based on Permen No. 3/2019 concerning electronic signatures and Permen No. 7/2019 regarding the form of SHAT, it seems that the Ministry of ATR/BPN is preparing to use information technology in providing land services for the community.

To maintain the integrity and authenticity of electronic documents, a Certificate of Mortgage issued by the HT-e System is given an electronic signature. Electronic signature is a signature consisting of electronic information that is embedded, associated or related to other electronic information that is used as a verification and authentication tool as referred to in the law on electronic information and transactions.

Since its release Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Defense Agency Number 9 of 2019 concerning Electronically Integrated Mortgage Services, ("Agrarian Regulation 9/2019"), known as the Electronic Mortgage System ("HT-el System"). The HT-el system, as referred to in Act 1 point 6 of the Agrarian Regulation 9/2019, is: *A series of processes* service of mortgage rights in the context of maintaining land registration data which is carried out through an integrated electronic system.

As regulated in Act 27 of the Regulation of the Minister of ATR/Head of BPN RI Number 9 of 2019 concerning Electronically Integrated Mortgage Services; that the ministerial regulation comes into force on the date of promulgation, the PPAT should be prepared for implementation. The readiness referred to above certainly includes several factors, both internal and external factors. Internal factors arise from within the administration and management system of the PPAT office itself, while external factors relate to the relationship between the PPAT position and the Land Office, parties and other institutions.

Although it is not explicitly explained in Act 7 paragraph 1 that PPAT is one of the users of the integrated electronic mortgage system services, hereinafter referred to as Ht-el. However, PPAT's authority in implementing HT-el registration is clearly stated in Act 10, namely in the case of service requests in the form of Mortgage registration, the requirements for the application in the form of APHT are submitted by PPAT in the form of an Electronic Document. PPAT is required to be registered in the Partner Application, which is an application used as a working partner of the Ministry of Agrarian and Spatial Planning/BPN. The PPAT office administration and management

system must also carry out readiness supported by adequate electronics/technology such as scanners, internet and computer networks.

Act 13 paragraph (1) UUHT requires APHT to be registered at the Land Office. Registration of registration is carried out by the Land Office. However, the UUHT does not regulate who is the applicant for the HT registration. In PP 24/1997, those who can request land registration are land owners or rights recipients. Likewise in the case of mortgage rights, the applicant for registration is the recipient of the mortgage, namely creditors.

So far, registration has been done manually by submitting physical evidence to the counter at the land office, with PPAT first registering the registration online on the official portal of the Ministry of ATR/BPN. Application for registration and submission of APHT shall be made simultaneously by PPAT or an authorized person. Act 3 paragraph (2) Permen No. 9/2019 which regulates that services of mortgage rights can be implemented electronically through the HT-el system. The phrase "can" implies that there are options in obtaining mortgage services, namely manually as before, or through the HT-e system.

The challenges of land administration in Indonesia include:¹¹

- a. Increased competence in trying to be assessed through the EoDB (Ease of Doing Business) ranking
- b. Service Paradigm Change (Industry 4.0)
- c. The target of PTSL (Complete Systematic Land Registration) is extraordinary, derivative services are hampered
- d. The growth in the number of scripts was enormous

Furthermore, Stanly stated that online registration of household rights aims to:¹²

- a. Fulfillment of the principles of openness, punctuality, speed, convenience and affordability in the framework of public services as well as to complete developments in technological law.
- b. In order for easier access to the issuance of mortgage rights, it can create financial inclusion for the Indonesian people in improving their economy.

¹¹ Virgo Eresta Jaya, Electronic Services in Implementing the Land Administration System in Indonesia, Dissemination of the ATR/BPR Ministerial Regulation Number 9 of 2019 concerning Electronic HT, Kendari, 13 January 2020

¹² BPN RI, Electronic Services in Support of Information from the Ministry of ATR/BPN Towards a Digital Age, Socialization of the Minister of Energy and Mineral Resources Number 9 of 2019 concerning Electronic HT, Kendari 13 January 2019.

- c. High level of technology use in banking.
- d. Increasing the competence of trying to be assessed through the EoDB ranking.

Acceleration of HT-el services must be supported by the readiness of municipal districts throughout Indonesia, considering that the manual registration process has so far been felt to take quite a long time, so it can be hoped that with the presence of HT-el it will accelerate the issuance of certificates of dependency as referred to in the UUHT. It will even cut the cumbersome bureaucracy and reduce the number of violations preventing extortion at the Land Office. If this goes on, then information transparency and service accountability can be realized.

So that with the enactment of the Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency Number 9 of 2019 concerning Electronic Integrated Mortgage Services in effect since its promulgation, namely from 21 June 2019 (Permen ATR/KBPN 9/2019) it can have a direct impact on the growth of public trust in administrative arrangements Land agency that is fast, accurate, more transparent and free of corruption. With these conditions, it is certain that the level of the economy will also be easy to develop. Land Deed Making Officials who have the authority to make deeds to install mortgage rights over land are required to understand the provisions contained in Act 10 Permen ATR/BPN Number 9 Year 2019 and UUHT

Basically, to use HT-el System, users must first be registered with the following conditions:¹³

1. Users of HT-e system services consist of individuals/legal entities as creditors and the Ministry's State Civil Apparatus in charge of serving Mortgage Rights;
2. Individuals/legal entities as referred to previously must be registered users of the HT-el System, by meeting the following requirements:
3. has an electronic domicile;
4. Certificate of Registered at the Financial Services Authority;
5. statement of fulfillment of the requirements and criteria as well as approval of the provisions as a Registered User; and
6. Other requirements determined by the Ministry.
7. The Ministry verifies the registration and has the right to refuse the said registration.

PPAT as a general official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights or property rights over apartment units, it is

¹³ Act 7 Permen 9/2019.

necessary to prepare for the implementation of integrated electronic mortgage registration. This is related to the discrepancy between the readiness of one PPAT with another. The PPAT internal factor is that the Office needs to make readiness in the procurement of electronics and qualified technology in HT-el registration. Meanwhile, external factors include PPAT communication with the land office, stakeholders, and other related agencies.

The three elements that play a role in HT-e services, namely Bank, PPAT, Land Office, are the elements of human resources that determine the implementation of HT-E easily and in accordance with what is faced by the government and society. The three pillars of the elements mentioned above, namely the Bank, PPAT, and Land Office have the function of assisting government tasks.

Act 9 paragraph (5) HT grantor must be the debtor himself. Thus, if the HT provider is not a debtor, he/she cannot use the HT-el service, which means that HT registration is done manually/physically. The provisions of Act 9 paragraph (5) are not prohibited from granting HT by other parties (collateral owners) who are not debtors. This provision seems easy, but there is no regulation on how there is another party or a third party as a guarantor. Because in the business world a trust system develops between the parties. The regulation also separates the prevailing customs, namely the act of applying for APHT registration with the submission of APHT by PPAT. The submission of the APHT is an obligation of the PPAT under the threat of sanctions if it is negligent.

Regarding the deviation of the provisions of Act 9 paragraph 5 Permen ATR/BPN Number 9/2019 that the requirements in the form of a Certificate of Land Rights or Ownership of Apartment Units must be in the name of the debtor will reap controversy among PPAT and the banking sector. So that it will cause problems in the future if it is still forced. According to Albert Widya Arung Raya, this candy must be revised because it will have an impact on the emergence of a transfer of rights with the aim of fulfilling the provisions of Act 9 paragraph 5 Permen ATR/BPN Number 9/2019, which should not have happened.¹⁴

HT PPAT HT-el registration services that carry out the registration process, are only alternative and not mandatory. If after the implementation of HT-el then manual HT services are not organized or eliminated by the Land Office, then it means that the Land Office which refuses to register HT-el outside HT-el is contrary to Permen 9/2019 and UUHT.

¹⁴ A Widya Arung Raya, Opcit.

In the event that HT-el registration services outside the HT-el system are abolished, where HT-el only registers HT from the debtor's HT Giver (vide Act 9 paragraph (5)), it can be interpreted that Act 9 paragraph (5) Permen 9/2019 as a form prohibition for HT that does not belong to the debtor and it is against the UUPA and UUHT. Parties who are harmed by the enactment of Act 9 paragraph (5) may be able to file a judicial review at the Supreme Court of the Republic of Indonesia.

To anticipate this problem early on, BPN does not need to impose the provisions of Act 9 paragraph 5 Permen ATR/BPN Number 9/2019 to carry out electronic input. Because the HT-el data input provided was not valid or the occurrence of counter-documents which were formally correct but materially false. This is contrary to Act 20 paragraph (2), (3) and (4) Permen ATR/BPN Number 9/2019 which states:

1. Material correctness of documents on which the HT-el system service results is based is not the responsibility of the Land Office.
2. In the event that a document is declared to be false and used as the basis for the issuance of a Certificate of Mortgage, the Land Office staff cannot be held legally responsible.
3. The documents that are declared to be false as referred to in paragraph (3), are fully the responsibility of the applicant, both criminal and civil.

If PPAT and service users know that the birth of APHT originated from an imperfect agreement, it will cause the agreement to be null and void which can harm the creditor as the recipient of the mortgage. So that the PPAT party is obliged to provide an explanation to the Giver of the Mortgage that the guarantee of the certificate of right to his true land is not obtained through a transfer of rights that is contrary to law, morality and public order as referred to in Act 1337 of the Civil Code.

PPAT, BPN and Banks must coordinate not to enforce forcefully to enforce the provisions of Act 9 paragraph 5 Permen ATR/BPN Number 9/2019 by looking for a solution, namely that the registration is still done manually if there is an indication that the transfer of land rights to the debtor is basically for the benefit of installation of mortgage rights which is an absolute requirement of Permen ATR/BPN Number 9/2019. So that this provision is optional or not compelling (*aanvulend recht*) in order to provide legal certainty for parties in APHT.

4. Closing

As a result of the legal effect of limiting the subject of the Granting of Mortgage Rights to the enactment of Act 9 paragraph (5) of the Regulation of the Minister of ATR/BPN

Number 9 of 2019 concerning Electronic Mortgage Services, namely the defective element of intention in APHT, the emergence of a nominee agreement as a result of a counter-document that seems to have occurred land rights and the position of PERMEN ATR/BPN No. 9/2019 which regulates the limitation of the subject of the mortgage right is contrary to the principle of *lex superior derogat legi inferiori* Act 8 in conjunction with Act 4 paragraph (4) and paragraph (5) of the UUHT. The HT-el mortgage registration service by PPAT, which carries out the registration process, is only an alternative and not mandatory. If after the implementation of HT-el then manual HT services are not provided or canceled by the Land Office, it means that the Land Office refusing to register HT outside HT-el is contradicting Permen 9/2019 and UUHT, so that if the provisions of Act 9 Paragraph (5) of the Regulation of the Minister of ATR/BPN Number 9 of 2019 can be distracted by PPAT, by way of PPAT refusing to make it APHT if it is indicated that the material data provided originates from imperfect legal actions of transfer of rights. Because it is contrary to Act 20 paragraph (4) PERMEN ATR/BPN No. 9/2019 which states that documents that are declared to be false are the full responsibility of the applicant, both criminal and civil. by means of the PPAT rejecting the making of APHT if it is indicated that the material data provided originates from incomplete legal actions of transfer of rights. Because it is contrary to Act 20 paragraph (4) PERMEN ATR/BPN No. 9/2019 which states that documents declared to be false are the full responsibility of the applicant, both criminal and civil. by means of the PPAT rejecting the making of APHT if it is indicated that the material data provided originates from incomplete legal acts of transfer of rights. Because it is contrary to Act 20 paragraph (4) PERMEN ATR/BPN No. 9/2019 which states that documents declared to be false are the full responsibility of the applicant, both criminal and civil.

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