

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Juridical Aspects of Electronic Registration of Mortgage Rights in KANTAH BPN Semarang City

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Abstract. *In this era of increasingly advanced technology, everything uses electronics. Such as the implementation of electronic registration of mortgage deeds at the Semarang City Land Office. This research aims to determine the process of electronically registering a mortgage deed at the Semarang City Land Office. Apart from that, we also want to find out whether Law Number 4 of 1996 allows electronic registration of mortgage rights. The research method used in this research uses a juridical-empirical approach. The sources and types of data used are primary data taken empirically and secondary data through literature. The data collection technique used was through interviews and literature study and the data analysis technique used was qualitative analysis. The results of this research show that the registration of a Mortgage Deed is a policy innovation at ATR/BPN offices throughout Indonesia based on the regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Electronic Agency Number 5 of 2020 concerning Integrated Mortgage Rights Services. Electronic . The electronic mortgage deed registration service at the Semarang City Land Office is carried out using the LENTERA Application System. The policy for electronic registration of mortgage deeds regulated in Ministerial Regulation Number 5 of 2020 concerning Electronically Integrated Mortgage Services does not conflict with Law Number 4 of 1996 concerning Mortgage Rights for Land and Objects Related to Land.*

Keywords: *Electronics; Mortgage Rights; Registration of Guarantee Deed.*

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

1. Introduction

Laws relating to land administration currently do not only include recording the legal status of land, granting land rights or relating to the issuance of land certificates. Current developments have made land have an economic aspect. The economic aspects of Indonesian land include various matters relating to legal events between legal subjects, which usually include legal aspects of agreements. Land law is one area that often uses legal agreements in practice. One of the economic aspects of land law in Indonesia is the guarantee of mortgage rights over land which is regulated through Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land.

Mortgage rights to this land are closely related to credit banking agreements. Banking practice in Indonesia recognizes two types of credit guarantee rights, namely: First, individual guarantee, which 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 collateral is collateral, that is, all of the debtor's movable and immovable objects, whether existing or new that will exist in the future, are borne by all individual obligations.¹

The principal collateral in granting credit is generally in the form of collateral for something or objects that are directly related to the credit being applied for. This guarantee is in the form of material collateral whose object is the debtor's own objects. The form of collateral most widely used as collateral in bank credit agreements is land rights. Because land is the most preferred collateral by creditors. This is because land is generally easy to sell, has a high value and price which continues to increase, has proof of title in the form of a certificate, is difficult to embezzle and can be encumbered with mortgage rights which give special privileges to creditors.

The land certificate used as collateral is to guarantee the creditor that the debtor will repay the credit by the agreed time. It often happens that debtors who obtain credit do not complete their obligations in installments until they are paid off, resulting in bad credit. Various reasons are often given, for example: their business is experiencing a decline, they are going bankrupt and so on. To overcome this problem, the creditor usually immediately gives a written warning letter to the debtor, this aims to ensure that the debtor will fulfill his achievements again. However, if the debtor still does not want to fulfill his achievements, then the debtor can be considered to have defaulted and repayment of the debtor's debt can be carried out by auctioning the material

¹Subekti, Principles of Civil Law, PT. Intermasa: Jakarta, 2003, p. 15

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

collateral that is guaranteed, namely in the form of mortgage rights over land. One of the conditions for an auction of mortgage rights to be held is to have a Deed of Granting Mortgage Rights (APHT), which is then registered as a mortgage deed for the land at the Land Office where the land is located.

The Ministry of ATR/BPN through the Land Office in each city has a strategic role in carrying out the authority to regulate management, land allocation, granting land rights to citizens, as well as other land administration. The Ministry of ATR/BPN must be able to work effectively and efficiently in meeting the needs of citizens regarding land administration. Along with the rapid development of technology, the procedures for registering deeds granting mortgage rights on land have changed, which previously had to be registered manually at the Mortgage Office directly, so that registration can be done electronically or better known as an internet-based system (on-line).

Electronic registration of mortgage rights deeds is not yet expressly regulated in Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. The legal basis for electronic registration of mortgage deeds is the Regulation of the Minister of Agrarian Affairs and the National Land Agency (ATR/BPN) Number 5 of 2020 concerning Electronic Integrated Mortgage Services. However, juridically, the implementation of electronic registration of mortgage rights deeds is different from the provisions of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, Article 13 Paragraph (2) which states that registration of deeds granting rights The responsibility is carried out by the Land Deed Official (PPAT) by sending the APHT file and other documents to the nearest Land Office. Sending words in this article tends to be done manually, not electronically.

Based on the description above, a formulation of the problem that can be studied in this legal research can be drawn, namely, first, what are the principles and procedures for registering a mortgage deed? The second problem is whether Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land accommodates the development of electronic registration of Mortgage Rights?

2. Research Methods

The research method used in this research uses a juridical-empirical approach. The sources and types of data used are primary data taken empirically at the Semarang City ATR/BPN Land Office and secondary data through the literature. The data collection technique used was through

Juridical Aspects of Electronic Registration of Mortgage Rights ...
(Siti Aisyah, Anis Mashdurohatun & Isnawati)

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

interviews with Head of the ATR/BPN Land Office and Coordinator of the Substance Group for Land and Space Registration, Communal and Institutional Land, Semarang City Land Office. Secondary data was obtained by literature study. The data analysis technique used in this research is qualitative analysis.

3. Results and Discussion

3.1. Principles and Procedures for Registration of Mortgage Deeds

Banking practice in Indonesia recognizes two types of credit guarantee rights, namely: First, individual guarantee, which 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 collateral is collateral, namely all of the debtor's movable and immovable objects, whether existing or new that will exist in the future, are borne by all individual obligations. Property rights that exist in civil law in Indonesia, related to credit guarantees in banking, one of which is mortgage rights over land.² Regulations regarding mortgage rights are regulated in Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land.

Based on Law Number 4 of 1996, Article 1 Number 1 states that mortgage rights are mortgage rights over land and objects related to land which are collateral imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Agrarian Regulations including or not including other objects which are part of the property, for the repayment of certain debts which give certain creditors a preferred position over other creditors. This means that mortgage rights are a tool for repayment of creditors where a credit agreement has previously been entered into between the creditor and debtor. Mortgage rights are collateral if in the future the debtor defaults.

Based on Law Number 4 of 1996, it states that the mechanism for granting mortgage rights must be preceded by the existence of a banking agreement with a Mortgage Guarantee as repayment of the debt from the debtor to the creditor contained therein and is an inseparable part of the credit. Based on Article 10 Paragraph (1) of Law Number 4 of 1996, it states that:

²Subekti, Ibid

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

"The granting of mortgage rights is preceded by a promise to grant mortgage rights as collateral for repayment of a particular debt, which is embedded in and is an inseparable part of the relevant debt agreement or other agreement giving rise to the debt"

Further regulations regarding the mechanism for granting mortgage rights are in Law Number 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 Rights by PPAT in accordance with applicable laws and regulations"

In order for the granting of mortgage rights to be issued, the mechanism has been regulated in Article 13 of Law Number 4 of 1996 which states that:

1. The grant of mortgage rights must be registered at the Land Office.
2. No later than 7 (seven) working days after signing the Deed of Granting Mortgage Rights as intended in Article 10 Paragraph (2), PPAT is obliged to send the Deed of Granting Mortgage Rights in question and other necessary documents to the Land Office.
3. Registration of Mortgage Rights as intended in Paragraph (1) is carried out by the Land Office by making a Mortgage Rights land book and recording in the land book the rights to the land which is the object of the Mortgage Rights and copying the record on the relevant land title certificate.
4. The date of the Mortgage Land Book regulated as intended in Paragraph (3) is the seventh day after complete receipt of the documents required for its registration and if the seventh day falls on a holiday, the relevant land book is dated on the following working day.
5. The Mortgage Rights are born on the date of the Mortgage Rights land book as regulated as intended in Paragraph (4)

The Mortgage Rights Certificate issued by the Land Office must contain the instructions "FOR JUSTICE BASED ON THE ALMIGHTY GOD", to be able to provide a basis that the Mortgage Rights certificate has executorial power which can be carried out through voluntary execution or can be implemented by execution auction if the Rights grantor The Dependent's Dependent commits a breach of promise to the holders of the Mortgage Rights.

Registration of Mortgage Rights according to Law Number 4 of 1996 does not explicitly state that registration of Mortgage Rights must be carried out directly at the Land Office because in the researcher's opinion, at the time of its creation, the Mortgage Rights Law had not

Juridical Aspects of Electronic Registration of Mortgage Rights ...
(Siti Aisyah, Anis Mashdurohatun & Isnawati)

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

experienced the rapid development and progress of information technology as it is now. This. Bearing in mind that the Law governing Mortgage Rights was still passed in 1996, so the registration mechanism still uses conventional methods and requires coming directly to the local Land Office.

The mortgage rights registration mechanism carried out at the Semarang City Land Office is currently carried out using an electronic system. The Semarang City Land Office no longer serves counters for PPAT, related to land registration in Semarang City. The mortgage rights registration service and mechanism at the Semarang City Land Office has been carried out electronically or online. Handled by a special team, namely the IT team that handles electronic mortgage rights. Registration can be done from home or the creditor's office. Implementing online registration is indeed a policy, especially during the pandemic, to reduce meetings if there are no meetings. So that service is directed to all routes.³

Based on instructions from the Ministry of ATR/Head of BPN, services regarding land registration at all Land Offices in Regencies/Cities throughout Indonesia are starting 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 conditions of information technology development and the Covid-19 pandemic that are still being experienced are the main factors causing electronic registration policy services at the Semarang City ATR/BPN Office. At the beginning of the implementation of the electronic mortgage rights registration service at the Semarang City ATR/BPN Office, various obstacles and problems arose, one of which was much opposed by PPAT, because they were used to the manual method.⁴

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

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

³Heri Aprianto, Interview, coordinator of the Land and Space Registration Substance Group, Communal Land and Institutions, Semarang City Land Office, 3 February 2022.

⁴Heri Aprianto, *ibid*.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Regarding the legal basis for implementing electronic mortgage registration, it has been regulated in the Regulation of the Minister of ATR/Head of BPN of the Republic of Indonesia Number 5 of 2020 concerning Electronic Integrated Mortgage Services. According to Article 1 Number 7 of the Regulation of the Minister of ATR/Head of BPN Number 5 of 2020, it states that what is meant by Electronic Integrated Mortgage Services, hereinafter referred to as Electronic Mortgage Services (HT-el) is a series of Mortgage Rights service processes in the context of data maintenance. Land registration is carried out through an integrated electronic system. Electronic Mortgage Rights (HT-el) services at the Semarang City Land Office are carried out using the Trusted Comfort Counter (Lentera) system.

The mechanism for electronically registering Mortgage Rights at the Semarang City Land Office is carried out through stages, namely:

1. Document Reception Stage
2. Document Inspection Stage
3. Filing Fee Payment Stage
4. Bookkeeping Recording Stage
5. Certificate Awarding Stage.

In the author's opinion, in connection with the granting of the Mortgage Rights certificate, a validation of the submitted files has also been previously carried out in order to avoid falsification of data by the applicant. Validation by checking includes the correctness of the data, checking that the Mortgage object is not blocked, is clean and is not under reconstruction. Every time a deed is made, everything must be checked by the Land Office. This Lantera application system was created to upload scanned data from original documents. If the file uploaded is a photocopy or is not an original document, the system will not be able to read the applicant's upload.

3.2. Law Number 4 of 1996 has accommodated electronic registration of mortgage rights

Providing mortgage rights is a means of protecting the rights of creditors, which are usually legal entities, namely banks, which is preceded by a credit agreement. The banking credit agreement states that the debtor will fulfill the promise to pay off debts to the creditor (bank) with collateral in the form of immovable property (land). The debtor is willing to provide collateral for mortgage rights over the land which is not separate from the banking credit agreement which creates debt between the debtor and creditor. Legal land with mortgage rights has been

Juridical Aspects of Electronic Registration of Mortgage Rights ...
(Siti Aisyah, Anis Mashdurohatun & Isnawati)

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

regulated through Law Number 4 of 1996 concerning mortgage rights and objects related to land. Article 13 and Article 14 of Law Number 4 of 1996, which relate to the mechanism for registering Mortgage Rights, regulate that registration must be carried out directly at the local Land Office. This means that the registration of Mortgage Rights is done by visiting directly and manually at 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 written, the development of information and internet infrastructure was not yet advanced and still required verification of the documents required for Mortgage Rights registration directly by Office officers. Land authority.

Current developments in information technology have demanded innovation policies that should be able to provide easy access for people regarding public services provided by government institutions. The development of internet-based information technology has increasingly opened up and made it easier for the public to access information in managing public documents for the benefit of the community itself. This has given rise to the discourse of e-Government by utilizing internet-based information technology.

In order 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 regulation by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services. ATR/BPN Ministerial Regulation Number 5 of 2020 is intended to be able to build services to the community and especially service partners (PPAT and Legal Entities) effectively, efficiently, transparently and accountably. This electronic mortgage registration service is better known as the Electronic Mortgage Service (HT-el). Nadira similarly stated that the HT-el service was a form of innovation provided by the ATR/BPN Office to make things easier for the public by taking advantage of developments in internet information technology.⁵

⁵N. Nadira, "Electronic Mortgage Registration which will begin to be implemented at the Land Agency", in the Journal of Fairness and Justice: Scientific Journal of Legal Sciences Number 17 Volume 11, 2018, p. 163

Juridical Aspects of Electronic Registration of Mortgage Rights ...
(Siti Aisyah, Anis Mashdurohatun & Isnawati)

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Regarding the juridical definition of Electronic Mortgage Rights (HT-el), it is regulated in Article 1 Number 7 of the Regulation of the Minister of ATR/Head of BPN Number 5 of 2020, which states that:

"HT-el is a series of Liability Rights service processes in the context of maintaining land registration data which is organized through an integrated electronic system"

In connection with the synchronization of statutory regulations, it is based on the theory of Tiered Law (Stufenbau theory) by Hans Nawiansky, which in essence is that the legal rules at the bottom must not conflict with higher legal rules, and the higher legal rules become the basis under the legal regulations, then the ATR/BPN Ministerial Regulation Number 5 of 2020 regarding Electronic Mortgage Registration (HT-el) does not conflict with Law Number 4 of 1996. Article 13 Paragraph (1) and Paragraph (2) of the Law -Law Number 4 of 1996 does not state that 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". Meanwhile, Paragraph (2) states that "No later than 7 (seven) working days after signing the Deed of Granting Mortgage Rights as intended in Article 10 Paragraph (2), PPAT is obliged to send the Deed of Granting Mortgage Rights in question and other necessary documents to the Office. Land".

According to these two articles, it is not stated that the registration of the Mortgage Deed must be done directly at the ATR/BPN Office and must be done manually. The law only states how long the PPAT or application must be issued after the APHT is issued.

The electronic Mortgage Rights registration service clearly does not conflict with Law Number 4 of 1996 concerning Mortgage Rights because it still refers to the Mortgage Rights Law and this is a service innovation, even a recommendation from the Corruption Eradication Commission as an innovation, reducing congestion and corruption, even all services. I want electronics now.⁶

In the author's opinion, the suitability of electronic registration of Mortgage Deeds at the Semarang City Land Office with Law Number 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 Number 5 of 2020, where this regulation still refers to Law Number 4 of 1996. Apart from that, due to the influence of the Covid-19 pandemic in controlling its wider spread, people are

⁶Heri Aprianto, Loc. Cit

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

prohibited from congregating in one place. Thus, innovation in service policies with an online (electronic) system has become a necessity for the Semarang City Land Office.

Implementing the policy of electronically registering mortgage deeds at the Semarang City Land Office certainly faces various obstacles faced by the Semarang City Land Office, considering that the registration mechanism will be different from the previous registration mechanism. The current problem is that the system was already running and was not separated when the system was first implemented. The problem was only limited to errors when making the deed (APHT), in the past there were still many problems due to the habit of transitioning from a manual to an electronic system, scanning and data errors. However, for now there are not many problems because there have been many improvements and if there is an error, it is immediately notified to the creditor so that it can be corrected immediately.⁷

In the author's opinion, the obstacle in implementing the electronic registration of the Mortgage Deed at the Semarang City Land Office is that the system sometimes has errors, there are errors when scanning and data in the APHT. The transition from manual to electronic was also an obstacle because it was considered troublesome because PPAT was used to using a manual system, but all these obstacles have now been overcome.

It is clear that based on the description above regarding electronic registration of mortgage rights, this does not conflict with Law Number 4 of 1996 concerning mortgage rights over land and objects related to land. Meanwhile, positive legal regulations governing electronic mortgage rights registration are regulated in ATR/BPN Ministerial Regulation Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services.

4. Conclusion

The process of electronically registering a Deed of Mortgage Guarantee is a policy innovation at the Semarang City Land Office based on the regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services. The electronic mortgage deed registration service at the Semarang City Land Office is carried out using the LENTERA Application System. The stages of registering a mortgage deed in Semarang City are through the Document Reception stage, Document Inspection Stage, Filing Fee Payment Stage, Bookkeeping Recording Stage and

⁷Heri Aprianto, Loc. Cit

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Certificate Granting Stage. The policy of electronically registering mortgage deeds as regulated in Ministerial Regulation Number 5 of 2020 concerning Electronically Integrated Mortgage Services does not conflict with Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land due to Article 13 Paragraph (1) and Paragraph (2) of Law Number 4 of 1996 do not state that registration of Mortgage Rights must be registered directly by visiting the Land Office.

5. References

Journals:

- Indah Nailal Muna, Ana Silviana, R. Suharto, Legal Consequences of Land Buying and Selling Not Done Before PPAT. DIPONEGORO LAW JOURNAL. Vol.5 No.3, 2016
- N. Nadira, "Electronic Mortgage Registration which will begin to be implemented at the Land Agency", in the Journal of Fairness and Justice: Scientific Journal of Legal Sciences Number 17 Volume 11, 2018

Books:

- Subekti, Principles of Civil Law, PT. Intermasa: Jakarta, 2003

Regulation:

- Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land
- Law Number 5 of 1960 concerning Agrarian Principles
- Regulation of the Minister of Agrarian Affairs, Spatial Planning/National Land Agency Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services
- The 1945 Constitution of the Republic of Indonesia