

THE RELEVANCE OF HARAM-HALAL PERSPECTIVES IN FINANCIAL TECHNOLOGY LAW IN INDONESIA

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Abstract. The digital era is now this want existence acceleration in all joints life human, thing this including in Thingregistration Rightdependents. Previous HT registration conducted by traditional moment this has conducted by electronics, however there by in implementation electronic HT registration still have variousobstacle. Posts written with method juridical normative this try analyze related problem not effective law in Thing implementation electronic HT registration maturethis. Based onstudies carried out seen clear that in Thing electronic HT registration still have weakness in the form ofa dany a problem time changere lated old electronic electronic HT registration data error; existence opportunity misuse of debtor data through cyberspace; _ p completion HT dispute still character traditional and care frequent network make electronic HT registration is also problematic, so implementation registration Right Dependent Electronic must supported by readiness Source Power Humans who have ability qualified digital technology, the existence of availability supporting facilities and infrastructure, and policymore execution applicable and realistic in face dynamics law registration Right Dependent electronics in society .

Keywords: Effectiveness , Rights Dependent Electronics, Registratio , Legal Security

1. BACKGROUND

electronic technology, the Minister of ATR / Head of BPN issued Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency Number 9 of 2019 concerning Electronically Integrated Mortgage Services which came into force as of June 21, 2019 (Permen ATR / KBPN 9/2019). This provision was issued because it considers the improvement of services, timeliness, speed, convenience and affordability in the context of public services, as well as to adapt legal developments, technology and community needs, it is necessary to utilize information technology so that mortgage service procedures can be integrated electronically so that they become more effective and efficient. efficient.⁶⁴Basically , Mortgage Rights are collateral rights to land in order to pay off debts whose creditor position takes precedence over other creditors. Mortgage

⁶⁴Eugenia LiliawatiMulyono , *OverviewJuridicalConstitutionNumber 4 of 1996 concerningRightDependentinRelationwithGivingCredit by Banking* , Harvarindo , Jakarta, 2003, p . 1.

creditors are preference creditors, namely creditors who have priority in obtaining debt repayments and have the right to execute directly with the executing agency .⁶⁵

The provisions regarding Mortgage have previously been regulated in UUHT number 4 of 1996 concerning Mortgage on Land and other objects related to Land.⁶⁶Implementation of HT electronics in progress have various problem among others.⁶⁷

1. Not set yet sign hand electronics;
2. Existence problem time change related old electronic electronic HT registration data error;
3. Existence Article 22 Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency Number 9 of 2019 concerning Electronically Integrated Mortgage Services related giving username and password to the other party can potential did violation law that can harmful party HT owner who wants to register Right Dependent by electronics;
4. Solution HT dispute still character traditional, for example just evidence in court civil law still not yet basis progress technology information and communication completely ;
5. Maintenance frequent network make Electronic HT registration is also problematic and
6. Not all party have internet facilities and computer equipment, for example only in the interior of Indonesia.

Various the problem above clear will result in ineffectiveness implementation electronic HT registration. In give guarantee law for fig party related . Because various obstacles in Thing enforcement registration Right Dependent or HT electronics as described above will influence certainty and justice law in Thing implementation Right Dependent Electronics.

Progress technology has enter whole joints life public no except in Thing the country's economy, thing this require party banking which is institution *agent of*

⁶⁵Zidna Aufima , PPAT's Role as User Service Right Dependent Integrated by Electronics , *Journal of Judicial Review, Journal of Judicial Review* , 22, December 2020, p . 260.

⁶⁶Nadia Imanda , The Birth Right Dependent according to Regulation Government Agrarian About Service Right Dependent Integrated by Electronics , *Journal Notaire* , Vol. 3, No. 1, February 2020, p . 151.

⁶⁷Pandam Nurwulan , Implementation Service Right Dependent Electronic For Creditors and Officials Maker Land Deed , *Legal Journal Ius Quia Iustum* , Vol. 28 Issue 1, January 2021, p . 187.

trust at a time as *agent of development* to also improve quality facilities and infrastructure current work this has many digitally ⁶⁸based .

This thing because banking which is a provider institution credit for fulfillment life economy good in country scale and scale individual public must capable follow dynamics life the current society this part big supported by progress technology communication and information, in other words banking have position urgent because is the only one capable institution realize circulation finance stable and healthy national, To maintain the health of credit business institutions, especially banks, this credit business should also be accompanied by guarantees, this aims to provide security in the provision of credit and certainty of repayment of the credit. So that credit givers and recipients and other parties involved in it should beget protection through a guarantee institution that can provide legal certainty for all parties involved in the credit business.⁶⁹

In practice it can be seen that most of the objects that are the object of collateral in the credit agreement at the bank are land based on data on mortgages published from 2019 to 10 October 2019 totaling 1,390 in the city of Yogyakarta.⁷⁰ Then until currently, there are 142,477 Electronic Mortgage Certificates issued by 454 Land Offices in 33 Provinces with 1,150 creditor partners in the form of Bank Legal Entity.⁷¹

Position banking then clear becomes the more urgent specifically in thing implementation credit with guarantee right dependents. The important presence of banks in implementation HT credit is for ensure certainty and protection the laws of the existing parties . So that loss from existence implementation credit Right Dependent capable avoided.⁷² State the unreality not yet capable come true because problem as safe has described above. Writing this aim for analyze more carry on related problem effectiveness registration Haak Liability by electronics.

2. METHODSTUDY

Method used is method juridical normative where law studied as object shaped normative textual regulation legislation.

⁶⁸*Ibid*, p . 152.

⁶⁹*Loc, cit.*

⁷⁰<http://statistik.atrbpn.go.id> accessed on April 10, 2021.

⁷¹*Loc, cit.*

⁷²Hasannudin Rahman, *Aspects Giving Credit Banking in Indonesia*, Citra Aditya Bakti , Bandung, 1995, p . 9.

3. DISCUSSION

1. Implementation Registration Right Dependent Electronic

In relation to the practice of granting credit with guaranteed land rights, a guarantee rights institution is needed that is able to provide legal certainty for interested parties in realizing a prosperous, just and prosperous society in accordance with the mandate. Pancasila and the 1945 Constitution of the Republic of Indonesia. Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to the Land or abbreviated as "UUHT" was then formed to meet the needs of the community regarding the above idea .

In its development , the mechanism for registration of mortgage rights in the electronic system must still be recorded in the land book. This is done by the creditor by printing the Mortgage Certificate and attaching it to the Land Rights Certificate.⁷³Users of the electronic electronic HT system service consist of: individuals or legal entities (as creditors), PPAT, and ASN of the Ministry of Agrarian Affairs/BPN. PPAT is required to use the application provided by the Ministry of ATR/KBPN with:become a partner at BPN, register and create an account online through the partner portal in a browser at the address: <https://mitra.atrbpn.go.id/datappat/login/>. If you do not update the data, you will not be able to access and register services on the land service application electronically. So that PPAT cannot be a user in the Electronic Mortgage Rights service . Types of mortgage services in terms of the implementation of electronic HT that can be submitted through the electronic mortgage system include:⁷⁴

- a. Mortgage registration ;
- b. Transfer of mortgage rights ;
- c. Change of creditor's name ;
- d. abolition of mortgage (roya) ; and
- e. Data repair .

The results of the mortgage service through electronic HT are in the form of:

- 1) mortgage certificate;

⁷³Nadia Imanda , The Birth Right Dependent according to Regulation Government Agrarian About Service Right Dependent Integrated by Electronics, Journal of Notary Law, Notaire , Vol. 3 No. February I, 2020, p . 158.

⁷⁴*Loc, cit.*

- 2) Mortgage records in the land book and certificates of land rights or property rights over flat units.

The implementation of electronic HT starting from the land office prepares in advance, among others:

- 1) Validating all textual data and digital data in the KKP;
- 2) Ensure the correctness of the PPAT data uploaded to the partner application and ensure that the PPAT is still on active duty according to its working area;
- 3) Promote electronic HT services to PPAT and creditors (Banks or other financial institutions);
- 4) Appointment of ASN and creation of accounts for verifiers and official signing of electronic HT certificates;
- 5) Regulating the delegation of authority for the signing of the electronic HT certificate;
- 6) Strengthening internal SOPs related to account security in electronic services;
- 7) Set regional holidays in the application related to the birth time of electronic HT;
- 8) Improving employee competence in managing electronic HT documents and electronic documents;
- 9) Provide guidance to employees and PPAT not to lend accounts to other parties in electronic HT services.

The Electronic Mortgage Service, which is based on ATR Regulation Number 5 of 2020, aims to fulfill the principles of openness, timeliness, speed, convenience and affordability. In addition, to improve effective and efficient mortgage services by adjusting the development of law and information technology. The object of Mortgage that can be processed is the object of the Mortgage as regulated in the laws and regulations. The output of this Electronic Mortgage Service is an Electronic Mortgage Certificate for users, namely creditors (can be banking institutions/financial institutions, or individuals) as recipients of Electronic Mortgage Rights.

2. ProblemThe Effectiveness of Electronic Mortgage Registration in Legal Certainty Construction

Has explained previously that inregistration Right Dependent electronic have various problem that hinders effectiveness registration Right Dependent electronics, as forthe intended problem are:

- a. There is a change time problem related to the old electronic electronic HT registration data error

Coordinated electronic HT registration _by electronic make the system usedis an electronic system that connectsome official linkwith the link at the Ministry of Land and Spatial Planning page this make change on data error in electronic HT registration need quite a long time.⁷⁵

- b. Existence opportunity mis use of debtor data through cyber space

Existence Article 22 Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency Number 9 of 2019 concerning Electronically Integrated Mortgage Services related gift *username* and *password*to the other party can potential did violation law that can harmful party HT owner who wants to register Right Dependent by electronics .⁷⁶

- c. HT dispute resolution is still traditional

Mature this solution dispute Right Dependents which are branch from field law civil mostly resolved in court through mechanism that can say still traditional. This thing could seen inThing proof of the casec ivil law enter recording electronics and documents electronic as type tool evidence at trial.⁷⁷

- d. Network maintenance that often makes electronic HT registration is also problematic

Progress influencing technology all jointslife, has implications for public services that are increasingly day the more demanding speed and accuracy inperformance public service use realize excellent service

⁷⁵Nailu Vina Amalia, Alifia Soraya Qurbani, and Salvian Kumara, AnalysisProvisionRightDependentElectronics in the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 9 of 2019 concerningServiceRightDependent, *JournalScientific Education of Pancasila and Citizenship* , Volume 5, Number 332-339, pp . 337.

⁷⁶YuyutPrayuti, Happy Yulia Anggraeni, and Nurul Amalia, PositionCertificateRightDependentElectronicAs Evidence inImplementationExecutionLiveBased onLaw No. 4 of 1996 AboutRightDependent on Land and Related ObjectsWith Soil, *Journal The Glorification of the Law*, Volume 2, Number 1, 2019, p . 23-24.

⁷⁷Bambang Indra Gunawan , Application of E-Mail as Electronic EvidenceInCivil Law Disputes in Indonesia, *Journal of Lex Justitia* , Vol. 2 No. January 1 , 2020,p . 9-10.

for society. This thing result in spike number usage application administration public services in various sectors and in various regions of Indonesia. However there by state

This often not balanced on procurement and maintenance facilities and infrastructure administration service public specially in remote and underdeveloped areas.⁷⁸

3. Reflectivity of Pancasila Within Political Rights Law Dependent Electronic

Legal politics should be based on the value of Indonesian Unity, meaning that legal politics should be able to unite all elements of the nation with all their primordial ties. Legal politics based on populist values led by wisdom in deliberation/representation means that legal politics must be able to create state power which is under the power of the people,⁷⁹ or in other words, legal politics must be able to create a democratic country where the greatest power is in the hands of the people. (popular democracy).⁸⁰ Then the last one is that legal politics must be based on the value of Social Justice for All Indonesian People, meaning that legal politics must be able to create a socially just society that is able to create justice for the weak community both in the social sector and in the economic sector, so that there is no oppression between the *power community*. *full* of marginalized people.⁸¹

The various values contained in the five precepts of Pancasila are then concretized in the state objectives as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Unitary State of the Republic of

⁷⁸Dionysia Mariani Randang, William Djani, and Laurensius Say Rani, Analysis Readiness Government districts Manggarai In Application of E-Government, *Journal Administration and Democracy*, Volume 1, Number 1, November 2020, p. 53-54.

⁷⁹Erika and the Great God Sudika Mangku, *Pancasila Legal Politics in Paradigm of Social Values Indonesian Culture*, Pandecta, Volume 9. Number 1. January 2014, thing. 45-47.

⁸⁰Ibn Asqori Pohan, Aylia Eka Krisdayanti, and Dakka Get up Simanjuntak, *Reconstruction Thinking Economy Mohammad Hatta Democracy*, Journal Knowledge Politics and Government, Vol. 4 No. 1, November 2018, University Tasikmalaya, p. 21-31.

⁸¹Ferry Irawan Febriansyah, *Op, cit*, hlm. 16.

Indonesia. The Fourth Paragraph of the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia states that:⁸²

- a. Protect the entire nation and the entire homeland of Indonesia;
- b. Promote the general Welfare;
- c. Enrich the life of a nation;
- d. Participate in carrying out world order, based on freedom, eternal peace and social justice.

Reflection the value of Pancasila in political law should too capable reflected in political law Right Dependent Electronics. To use realize system excellent quality electronic HT registration, then already seyogya realized something system implementation effective law. Related system effective law Soerjono Soekanto state that for could walk effective, then law should have readiness related:⁸³

- a. The legal factor itself (the law) ;
- b. Law enforcement factors, namely the parties that form and apply the law ;
- c. Factors of facilities or facilities that support law enforcement ;
- d. Community factors, namely the environment in which the law applies and is applied ; and
- e. Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life .

Based one explanation Soerjono Soekanto above clear that in implementation law already should have readiness related Source Power Humans, facilities and infrastructure, as well as system clear policy.

4. Halal Right Dependent Electronic in Islamic perspective

If a contract of rights If the dependent is done through e-commerce, then the contract that occurs is in the form of an online or electronic contract. Thus, the documents related to the electronic contract are not contained in paper, but in the form of electronic documents. According to Law no. 11 of 2008 concerning Information and Electronic Transactions Article 1 point 4 defines electronic documents as any electronic information created, forwarded, sent,

⁸²Laurence Arliman S., *KeStand for Independent State Institutions in Indonesia For Reach The Purpose of the Rule of Law*, Journal Kertha Semaya , Vol. 8, No.7 of 2020, University Udayana, p . 1040.

⁸³Soerjono Soekanto , *Law Enforcement* , Bina Cipta , Bandung, 1983, p . 80.

received, or stored in analog, digital, electromagnetic, optical or similar forms, which can be seen, displayed, and/or heard through a computer or electronic system, including but not limited to writing, sound, pictures, maps, designs, photographs or the like, letters, signs, or numbers, access codes, symbols, or perforations that have meaning or significance or can be understood by people who are able to understand them. From the explanation above, it can be seen that the birth of an agreement in an e-commerce transaction is an offer and acceptance from each party. The seller makes an offer through electronic media and the buyer accepts the offer through electronic media as well, then the seller confirms to the buyer about the receipt of the receipt from the buyer. After going through these processes, an agreement in an e-commerce transaction is created. Contracts or agreements made in e-commerce transactions are not contracts or agreements made in writing on paper, but in the form of electronic documents. In buying and selling transactions in general, if there is a dispute, the parties can use a contract or agreement written on paper to be used as evidence that a sale and purchase agreement has occurred between the parties. If the agreement is in the form of an electronic document, it is difficult to serve as evidence in the event of a dispute.

The concept of *iltizam* According to Syamsul Anwar, engagement in Islamic law can be interpreted as: "Containing the dhimmah of a person or a party with a right that must be fulfilled by him to another person or other party." The term dhimmah is used by jurists when discussing the debt relationship between two or more parties. Linguistically the meaning of dhimmah is dependent, while in terms it means a container within a person that accommodates rights and obligations. So it can be said if someone has a debt of rights to another person, then that person's *dhimmah* has been filled.⁸⁴ Based on various types of weaknesses and problems related to HT electronics above, it is seen that electronic HT in Indonesia is still not yet capable to realize the principle of halal as intended by Islamic law.

4. CONCLUSION

⁸⁴*Ibid*, p . 48.

Implementation registration Right Dependent Electronic must supported by readiness Source Power Humans who have ability qualified digital technology, the existence of availability supporting facilities and infrastructure, and policy more execution applicable and realistic in face dynamics law registration Right Dependent electronics in society. Weakness this resulting in electronic HT still far from principle halal according to Islam.

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